# SIXTY-FOURTH REPORT

**OF THE**

# NORTH CAROLINA UTILITIES COMMISSION ORDERS AND DECISIONS

Issued from

January 1, 1974, through December 31, 1974

Marvin R. Wooten, Chairman

Hugh A. Wells, Commissioner

Ben E. Roney, Commissioner

Tenney I. Deane, Jr., Commissioner

George T. Clark, Jr., Commissioner

NORTH CAROLINA UTILITIES COMMISSION

Office of the Chief Clerk

Mrs. Katherine M. Peele
P. O. Box 991
Raleigh, North Carolina 27602

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

# LETTER OF TRANSMITTAL

December 31, 1974

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, 1974, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1974, and ending December 31, 1974.

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

Marvin R. Wooten, Chairman

Hugh A. Wells, Commissioner

Ben E. Roney, Commissioner

Tenney I. Deane, Jr., Commissioner

George T. Clark, Jr., Commissioner

Katherine M. Peele, Chief Clerk

CONTENTS

# 1974 ANNUAL REPORT OF DECISIONS

of the

# NORTH CAROLINA UTILITIES COMMISSION

## TABLE OF CASES AND ORDERS REPORTED

Note: For General Orders, see end of Alphabetical Index Listing.

D



E



F

None listed

G



H

I

None listed

J



K



L



M

Q



R



S

XYZ

None listed

GENERAL ORDERS

General



Electric



Gas

DOCKET NO. M-100, SUB 52

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Emergency Fuel Surcharge for Trans-<br>portation of Passengers and Freight<br>by Motor Carrier | )<br>)ORDER ALLOWING EMER-<br>)GENCY FUEL SURCHARGE<br>)FOR MOTOR CARRIERS |

BY THE COMMISSION. This proceeding is before the Commission upon the consideration of an emergency arising from the rapid increase in fuel costs of motor carriers, and upon the request of the Chairman of the Interstate Commerce Commission that State Commissions consider a 6% emergency fuel surcharge for intrastate transportation to match the 6% emergency fuel surcharge authorized by the Interstate Commerce Commission on February 7, 1974, for interstate transportation. The Commission has pending before it applications for intrastate rate increases from motor carriers of specified commodities with exhibits showing average increases of 32% in fuel costs from May 15, 1973, through January 15, 1974, from 31¢ per gallon to 41¢ per gallon, being in excess of 10¢ per gallon for motor carrier fuel. Upon notice being taken by the Commission of the urgent need for allowances for such cost increases in order to provide continued intrastate motor carrier service to the public of North Carolina, and in order to alleviate the emergency financial conditions resulting from such sudden fuel cost increases and to forestall curtailments of trucking and bus service or interruptions in such service, and upon consideration of the emergency fuel surcharge adopted by the Interstate Commerce Commission on February 7, 1974, for line haul transportation charges and other charges of interstate motor common carriers, authorizing a surcharge not to exceed 6% on interstate passenger fares and interstate freight charges to meet emergency situations arising from drastic and sudden increases in the fuel expenses of motor carriers, and based upon such increased fuel costs, the Commission makes the following

FINDINGS OF FACT

1. That the exhibits on file with the Utilities Commission in pending motor carrier rate cases show an average increase of fuel costs of 10¢ per gallon, being an increase from 31¢ to 41¢ since May 15, 1973, and that such increase of approximately 32% in the cost of fuel requires an increase of approximately 6% in operating revenues to accomplish a pass-through on a dollar-for-dollar basis for the increase in fuel costs in the transportation charges.

2. That some intrastate transportation in North Carolina is performed by owner-operators or independent truckers under lease to common carriers and contract carriers hauling on regulated freight charges, and the emergency fuel surcharge authorized herein should be authorized solely on the condition that the proceeds of the emergency fuel

surcharge will go to the person paying for the fuel used in each transportation charge, and in cases where a regulated motor carrier has used a leased operator to transport any shipment subject to this surcharge, the surcharge shall be passed through to the leased operator performing the highway transportation.

3. That the Interstate Commerce Commission on February 7, 1974, authorized an emergency fuel surcharge for line haul transportation of passenger and freight motor common carriers not to exceed 6%, based upon increases in fuel expenses throughout the nation which have increased motor carrier costs by amounts requiring an approximate increase of 6% in operating revenues, and that there is an urgent need for immediate relief in order that such carriers may recoup such average increased costs forthwith.

4. That the authorization of such emergency fuel surcharge for interstate carriers operating in North Carolina reflects similar emergency conditions for intrastate transportation in North Carolina, and if authorization for corresponding emergency fuel surcharge for intrastate traffic is not authorized that intrastate traffic will suffer from the lack of such emergency fuel surcharge and will be placed in jeopardy of interruptions and curtailments of service for failure to meet such operation costs of such intrastate service.

## CONCLUSIONS

The Commission concludes that an emergency exists in intrastate transportation by motor common and contract carriers of passengers and freight and exempt for-hire carriers due to the sudden increase in the cost of motor fuel since May 15, 1973, and requires an emergency fuel surcharge not to exceed 6% to cover said increased fuel expenses. Motor transportation is a vital necessity to the economy of North Carolina, and the present fuel emergency requires that emergency measures be taken to insure the continued availability of intrastate motor transportation and to forestall curtailments or stoppages of intrastate service due to inability of motor carriers to continue operation under such fuel expense increases without corresponding pass-through of said expense to the freight charges. The fuel expenses apply to both common carriers of freight and common carriers of passengers. Intercity common carriers of passengers can place a surcharge on passenger tickets in the same fashion that motor carriers of freight can place a surcharge on freight bills. The Commission will consider any feasible method of allowing the emergency fuel surcharge to be applied by intracity passenger carriers and will leave this proceeding open to consider the method of applying such surcharge so that the riding public will not be inconvenienced by a surcharge of carriers requiring exact change when the change for the riding passenger would not be available.

The Commission has considered applications now pending before the Commission for increases in freight charges on specified commodities, said increases being sought, in part, based upon fuel cost increases, and the Commission is suspending said increases for investigation and will consider the effect of the emergency fuel surcharge authorized herein in consideration of said investigations of general freight increases.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. All motor common carriers of passengers and freight, or their authorized publishing agents that have tariffs or schedules on file with this Commission, are hereby authorized to file on 1-day's notice an increase in passenger fares and in freight charges for line haul transportation and charges for other services which consume fuel, such as pickup and delivery, not to exceed 6%, by means of a percentage surcharge, except as otherwise authorized by this Commission.

2. The Commission shall analyze the impact of fuel expenses on a month-to-month basis to determine whether there is justification for increasing or reducing the surcharge authorized by this Order. Such analyses will be based on monthly reports to be filed by specified carriers consisting of the necessary data as required by the Utilities Commission to properly determine that portion of fuel cost increases applicable to each carrier's North Carolina intrastate operations and the North Carolina intrastate revenues derived from the emergency fuel surcharge; if conditions warrant, this Order will be amended accordingly. If the data is not furnished, the surcharge will not be continued.

3. The surcharge filed under the authority of this permission may take the form of a master tariff increase, or as a supplement to the affected tariffs or schedules.

4. If any motor carrier charging the freight charges or passenger fares subject to this emergency fuel surcharge utilizes the services of any lease-operator, owner-operator, or independent trucker, who is responsible for the fuel expenses of the transportation involved, the said common carrier collecting the freight charges shall remit the emergency fuel surcharge to the operator of the vehicle paying the fuel costs, in addition to other remuneration due to said lease-operator, owner-operator, or independent trucker, and the tariff publication containing the surcharge shall contain one of the following certifications, as may be applicable:

"This is to certify that each carrier party to this publication has been notified that:

North Carolina Utilities Commission Order in Docket No. M-100, Sub 52, dated February , 1974, requires

that the person actually responsible, by contract or otherwise, for the payment of fuel charges is to receive the full increase in revenue derived from surcharges published thereunder, and that a carrier's participation in a publication filed thereunder constitutes an undertaking to comply with that requirement.

or

"This is to certify that the person actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight revenue to be derived from the proposed surcharge."

5. Contract carriers of passengers or freight are hereby authorized to file amended contracts on 1-day's notice modifying the freight charges or passenger fares of said contracts to reflect the emergency fuel surcharge of 6% authorized herein.

6. Exempt motor carriers operating under Exemption Certificates in for-hire service are hereby authorized to increase charges for such service by the amount of the emergency fuel surcharge of 6% authorized herein.

7. This docket shall remain open for further consideration of the emergency fuel surcharge. All outstanding Orders of the Commission are hereby modified to the extent to permit the filing of the emergency fuel surcharge herein.

8. Notice of this emergency fuel surcharge shall be given to the general public by issuance of a general release of this Order to the public and by forwarding a copy thereof to all media covering releases from this Commission, and a copy to all authorized tariff publishing agents on file with the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 52

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Emergency Fuel Surcharge for Transportation) ORDER IMPLE-
of Passengers and Freight by Motor Carrier ) MENTING COMMON
) CARRIER MONTHLY
) FUEL USE REPORT

BY THE COMMISSION. On February 13, 1974, the Commission issued an Order granting a 6% emergency fuel surcharge to all for hire motor carriers of passengers and property operating in North Carolina. This Order arose out of the emergency fuel situation confronting for hire motor carriers operating throughout the United States. This Commission had received a request from the Chairman of the Interstate Commerce Commission that the State Commissions consider a 6% emergency fuel surcharge for intrastate transportation to meet the 6% emergency fuel surcharge authorized by the Interstate Commerce Commission on February 7, 1974, for interstate transportation.

In its Order of February 13, 1974, the Commission said:

> "The Commission shall analyze the impact of fuel expense on a month-to-month basis to determine whether there is justification for increasing or reducing the surcharge authorized by this Order. Such analyses will be based on monthly reports to be filed by specified carriers consisting of the necessary data as required by the Utilities Commission to properly determine that portion of fuel cost increases applicable to each carrier's North Carolina intrastate operations and the North Carolina intrastate revenues derived from the emergency fuel surcharge; if conditions warrant, this Order will be amended accordingly. If the data is not furnished, the surcharge will not be continued."

The Commission is of the opinion that the directive contained in its Order should be implemented effective with the April 1974 accounting period. To further this end, the Commission Staff has prepared a Monthly Fuel Use Report for property and passenger carriers, attached hereto as Exhibits A and B, respectively, for use by selected carriers. The Commission is requiring this Monthly Fuel Use Report so that it can monitor the fuel surcharge revenue impact on the participating carriers and determine the adequacy of the 6% fuel surcharge.

The Commission's Accounting Staff will assist the participating carriers with any problems that may arise from the use of the Monthly Fuel Use Reports.

IT IS, THEREFORE, ORDERED, as follows:

(1) That the Monthly Fuel Use Report for property and for passenger carriers, attached hereto as Exhibits A and B, respectively, shall be used by the carriers listed in Ordering Paragraphs 2 and 3 in reporting the monthly data requested therein. Each item, when applicable, must be completed by each carrier from its official, permanent, operating records. Each participating carrier shall be required to file the Monthly Fuel Use Report on or before the last day of each subsequent month.

(2) That the following property carriers shall be required to submit the Monthly Fuel Use Report for Property Carriers (Exhibit A) in compliance with this Order:

Burris Express, Inc.
Burton Lines, Inc.
Carolina Delivery Service Company, Inc.
Eastern Oil Transport, Inc.
Epes Transport System, Inc.
Estes Express Lines
Forbes Transfer Company, Inc.
Fredrickson Motor Express Corporation
Harper Trucking Company
Kenan Transport Company, Inc.
Morgan Drive-Away, Inc.
National Trailer Convoy, Inc.
Overnite Transportation Company
Standard Trucking Company
Southern Oil Transportation Company, Inc.
Thurston Motor Lines, Inc.
Widenhouse, A. C., Inc.

(3) That the following passenger carriers shall be required to submit the Monthly Fuel Use Report for Passenger Carriers (Exhibit B) in compliance with this Order:

Carolina Coach Company
Continental Southeastern Lines, Inc.
Greyhound Lines, Inc.
Seashore Transportation Company

(4) That this Order shall become effective for the above-listed carriers at the beginning of the April 1974 accounting period.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

MONTHLY FUEL USE REPORT (CURRENT MONTH COMPARED WITH CORRESPONDING MONTH OF PRIOR YEAR)-NORTH CAROLINA UTILITIES COMMISSION-PROPERTY CARRIERS

1. Accounting Period for the Month of _____(a) YEARS_____(b)

2. Name of Carrier:_____City:_____State:_____

3. Motor Carrier Certificate or Permit No.: MC_____P _____

4. Type of Carrier: Class I, II, or III_____(a) Common __ (b) Contract __
(c) General Freight __ (d) Other than General Freight __ (e)

| | Gallons Consumed | | Total Fuel Expenses 1/ | | Ave. Cost Per Gallon 2/ | | Fuel Taxes Paid 3/ | |
|---|---|---|---|---|---|---|---|---|
| | Prior Year (1) | Current Year (2) | Prior Year (3) | Current Year (4) | Prior Year (5) | Current Year (6) | Prior Year (7) | Current Year (8) |
| Fuel for Motor Vehicles - Diesel 4/ | | | | | | | | |
| 5. Line Haul (4511) | | | | | | | | |
| 6. Pickup & Delivery (4512) | | | | | | | | |
| 7. Terminal (4515) & Maintenance (4516) | | | | | | | | |
| 8. Other (4660 & 4670) | | | | | | | | |
| 9. Total Diesel | | | | | | | | |
| -. Fuel for Motor Vehicles -Gas | | | | | | | | |
| 10. Line Haul (4511) | | | | | | | | |
| 11. Pickup & Delivery (4512) | | | | | | | | |
| 12. Terminal (4515) & Maintenance (4516) | | | | | | | | |
| 13. Other (4660 & 4670) | | | | | | | | |
| 14. Total Gasoline | | | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| -. Total Diesel & Gasoline | | | | | | | |
| 15. Line Haul (4511) | | | | | | | |
| 16. Pickup & Delivery (4512) | | | | | | | |
| 17. Terminal (4515) & Maintenance (4516) | | | | | | | |
| 18. Other (4660 & 4670) | | | | | | | |
| 19. Total Fuel | | | | | | | |

NOTE: Account numbers 4511, 4512, 4515, 4516, 4660 & 4670 refer to the Uniform System of Accounts to become effective January 1, 1974. Data for 1973 should conform as closely as possible with the new system of accounts.
1/ Exclude all taxes whether federal, state, local or sales. 2/ Fuel expense excluding taxes divided by gallons consumed expressed in cents. 3/ Federal, state, local and sales taxes combined. 4/ Include LPG with diesel when applicable.....TOTALS FOR LINE HAUL AND PICKUP AND DELIVERY MUST BALANCE TO ACCOUNTS 4251 AND 4255 IN QFR REPORTS AND IN ANNUAL REPORTS COVERING 1973

MONTHLY FUEL USE REPORT (CURRENT MONTH COMPARED WITH CORRESPONDING MONTH OF PRIOR YEAR)

| ACCOUNTING PERIOD FOR THE MONTH OF_____ | Prior Year (a) | Current Year (b) |
|---|---|---|
| 1. System (Company Total) Revenue W/O Surcharge | | |
| 2. System (Company Total) Revenue Derived from Surcharge | | |
| 3. North Carolina Intrastate Revenue W/O Surcharge | | |
| 4. North Carolina Intrastate Revenue Derived from Surcharge | | |
| 5. Property Carriers: | | |

| | | |
|---|---|---|
| (1) Company System Weight in Pounds | | |
| (2) North Carolina Total Weight in Pounds | | |
| (3) North Carolina Intra-state Weight in Pounds | | |
| (4) System Miles Operated (Total) | | |
| (a) Diesel and LPG | | |
| (b) Gasoline | | |
| (c) Other (Specify) | | |
| (5) North Carolina Miles Operated (Total) | | |
| (a) Diesel and LPG | | |
| (b) Gasoline | | |
| (c) Other (Specify) | | |



NORTH CAROLINA UTILITIES COMMISSION

MONTHLY FUEL USE REPORT (CURRENT MONTH COMPARED WITH CORRESPONDING MONTH OF PRIOR YEAR) - PASSENGER CARRIERS -

1. Accounting Period for the Month of _____(a) YEARS_____(b)

2. Name of Carrier: _____City: _____State:_____

3. Motor Carrier Certificate or Permit No.: MC_____P_____

4. Type of Carrier: Class I ____(a) Class II ____(b) Common ____ (c) Contract _____ (d) Passenger ____ (e)

| | Gallons Consumed | | Total Fuel Expenses 1/ | | Ave. Cost Per Gallon 2/ | | Fuel Taxes Paid 3/ | |
|---|---|---|---|---|---|---|---|---|
| | Prior Year (1) | Current Year (2) | Prior Year (3) | Current Year (4) | Prior Year (5) | Current Year (6) | Prior Year (7) | Current Year (8) |
| -. Fuel for Motor Vehicles - Diesel 4/ | | | | | | | | |
| 5. Fuel for Revenue Equip. (4230) | | | | | | | | |
| 6. Operation of Maintenance and Service Equip. (4122) | | | | | | | | |
| 7. Collection and Delivery Service (4360) | | | | | | | | |
| 8. Other (Specify) | | | | | | | | |
| 9. Total Diesel | | | | | | | | |
| -. Fuel for Motor Vehicles - Gasoline | | | | | | | | |
| 10. Fuel for Revenue Equip. (4230) | | | | | | | | |
| 11. Operation of Maintenance and Service Equip. (4122) | | | | | | | | |
| 12. Collection and Delivery Service (4360) | | | | | | | | |
| 13. Other (Specify) | | | | | | | | |
| 14. Total Gasoline | | | | | | | | |
| -. Total Diesel and Gasoline | | | | | | | | |
| 15. Fuel for Revenue Equip. (4230) | | | | | | | | |
| 16. Operation of Maintenance and Service Equip. (4122) | | | | | | | | |
| 17. Collection and Delivery Service (4360) | | | | | | | | |
| 18. Other | | | | | | | | |
| 19. Total Fuel | | | | | | | | |

1/ Exclude all taxes whether federal, state, local or sales. 2/ Fuel expense excluding taxes divided by gallons consumed expressed in cents. 3/ Federal, state, local, and sales taxes combined. 4/ Include LPG with diesel when applicable.

MONTHLY FUEL USE REPORT (CURRENT MONTH COMPARED WITH CORRESPONDING MONTH OF PRIOR YEAR)

| ACCOUNTING PERIOD FOR THE MONTH OF_____ | Prior Year (a) | Current Year (b) |
|---|---|---|
| 1. System (Company Total) Revenue W/O Surcharge | | |
| 2. System (Company Total) Revenue Derived from Surcharge | | |
| 3. North Carolina Intrastate Revenue W/O Surcharge | | |
| 4. North Carolina Intrastate Revenue Derived from Surcharge | | |
| 5. Passenger Carriers: | | |
| (1) Number of Passengers Transported System - Total | | |
| (2) Number of Passengers Transported in North Carolina (Interstate and Intrastate) - Total | | |
| (3) Number of Passengers Transported in North Carolina Intrastate Only | | |
| (4) System Bus Miles Operated - Total | | |
| (a) Diesel & LPG | | |
| (b) Gasoline | | |
| (c) Other (Specify) | | |
| (5) North Carolina Total Bus Miles Operated | | |
| (a) Diesel & LPG | | |
| (b) Gasoline | | |
| (c) Other (Specify) | | |

DOCKET NO. M-100, SUB 52

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Emergency Fuel Surcharge for ) ORDER REDUCING EMERGENCY
Transportation of Passenger and) FUEL SURCHARGE FOR MOTOR
Freight by Motor Carrier ) CARRIERS

BY THE COMMISSION. This proceeding came before the Commission upon consideration of an emergency caused by the rapidly increasing fuel costs of motor carriers and upon the request of the Chairman of the Interstate Commerce Commission that State Commissions consider a 6 percent emergency fuel surcharge for intrastate transportation to match the 6 percent emergency fuel surcharge authorized by the Interstate Commerce Commission on February 7, 1974, for interstate transportation. By Order dated February 13, 1974, the Commission granted a 6 percent emergency fuel surcharge to all for hire motor carriers of passengers and property operating in North Carolina; said Order also provided that the Commission should analyze the impact of fuel expenses on a month to month basis to determine whether there existed justification for increasing or reducing the surcharge. By Order dated March 19, 1974, the Commission directed selected carriers to file with the Commission Monthly Fuel Use Reports so that the Commission could monitor the impact of the fuel surcharge revenue upon the participating carriers and determine the adequacy of the 6 percent fuel charge. Upon notice being taken by the Commission of the stabilized cost of fuel, recent action by the Interstate Commerce Commission, and the Monthly Fuel Use Reports filed with the Commission, the Commission makes the following

FINDINGS OF FACT

1. That the emergency fuel surcharge authorized by the Commission in its Order of February 13, 1974, being a response to rapidly increasing fuel costs caused by acute energy shortages, is interim in nature and subject to continual scrutiny and revision by the Commission.

2. That, although the price of fuel has stabilized, the Monthly Fuel Use Reports filed with the Commission pursuant to its March 19, 1974, Order indicate that, for the participating carriers' system and North Carolina intrastate operations, the 6 percent fuel surcharge has consistently generated revenues in excess of increased fuel expenses, and that a reduction of the surcharge from 6 percent to 4 percent will eliminate this excess.

3. That by Order issued July 10, 1974, in Ex Parte MC-92, the Interstate Commerce Commission, noting that the price of fuel had stabilized and that the revenues generated by the 6 percent fuel surcharge it had authorized on February 7, 1974, in Special Permission 74-2525 were

excessive, cancelled said 6 percent surcharge and instructed motor carriers to incorporate increased fuel expenses into their applications for general rate increases.

4. That although the price of fuel has stabilized, the price remains at a sufficiently elevated level to warrant continuation of relief to North Carolina Motor Carriers in the form of a fuel surcharge through June 30, 1975.

CONCLUSIONS

The Commission concludes that while the increased cost of fuel warrants a continuation of the fuel surcharge, the amount of the surcharge should be reduced from 6 percent to 4 percent and the surcharge itself should be terminated on June 30, 1975.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective December 1, 1974, the emergency fuel surcharge authorized by the Commission Order of February 13, 1974, shall be reduced to an amount not to exceed four (4%) percent.

2. That the emergency fuel surcharge shall terminate on June 30, 1975.

3. That with the exception of the aforesaid reduction of the emergency fuel surcharge maximum from six (6%) percent to four (4%) percent, the provisions of the Commission's February 13, 1974, Order shall remain in full effect.

4. That all motor carriers currently participating in any tariff schedule on file with this Commission containing the emergency fuel surcharge shall make an appropriate tariff filing reducing said surcharge to an amount not to exceed four (4%) percent effective December 1, 1974.

5. This Order shall in no way alter the filing requirements set forth in the Commission's Order of March 19, 1974, the provisions of which shall remain in full effect.

6. That Monthly Fuel Use Reports covering operations after June 30, 1975, shall not be required to be filed with the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-76 (b), (f) and )
Rule R2-83 (g), (p) (2) of the Motor ) ORDER
Carrier Rules and Regulations of the )
North Carolina Utilities Commission. )

BY THE COMMISSION: The North Carolina Utilities Commission, acting under the power and authority delegated to it by law for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, is of the opinion that the proposed revision in Rule R2-76 (b), (f) and Rule R2-83 (g), (p) (2) is in the public interest and should be approved.

IT IS, THEREFORE, ORDERED:

(1) That paragraphs (b) and (f) of Rule R2-76 of the Commission's Rules and Regulations be, and the same are, hereby amended to read as follows:

(b) Prior to operating a vehicle within the borders of North Carolina, the motor carrier shall place one of such indentification stamps on the back of the cab card in the square bearing the name of this State in such manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle, or driveaway operation and, in the case of a vehicle leased by the motor carrier such expiration date shall not exceed the expiration date of the lease. The appropriate expiration date shall be entered in the space provided below the certificate. Such expiration date shall be within a period of fifteen months from the date of any identification stamp or number placed on the back thereof.

(f) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: Provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier, or results from destruction or loss of a vehicle operated by such carrier under a lease of thirty consecutive days or more and such carrier provides a newly acquired vehicle in substitution thereof within thirty days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of

the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

(2) That paragraphs (g) and (p) (2) of the Commission's Rules and Regulations be, and the same are, hereby amended to read as follows:

(g) The NARUC shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this article shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of the State during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of the State in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation and, in the case of a vehicle leased by the motor carrier, such expiration date shall not exceed the expiration date of the lease. The appropriate expiration date shall be entered in the space provided below the certificate. Such expiration date shall be within a period of fifteen months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof.

(P) (2) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: Provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier, or results from destruction or loss of a vehicle operated by such carrier under lease of thirty consecutive days' duration or more, and such carrier provides a newly acquired vehicle in substitution therefore within thirty days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

(3) That this Order be made effective as of April 16, 1974.

BY ORDER OF THIS COMMISSION.

This the 16th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Revision of Rule R2-48 of the Commission's<br>Motor Carriers Regulations to Revise the<br>Classification of Motor Carriers of<br>Property to Conform with the Uniform System | ) ORDER AMENDING<br>) RULE R2-48 |

BY THE COMMISSION. The North Carolina Utilities Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, and upon consideration of its records and the Uniform Systems of Accounts adopted by the Interstate Commerce Commission for Class I, Class II, and Class III common and contract motor carriers of property, hereby adopts amendments to its Rule R2-48 to revise the classification of common and contract motor carriers of property to conform with the revision of the Uniform Systems of Accounts for Class I and Class II common and contract motor carriers of property and the classification of common and contract motor carriers of property under the Uniform Systems of Accounts adopted by the Interstate Commerce Commission.

IT IS, THEREFORE, ORDERED that Commission Rule R2-48 is hereby amended to read as follows:

Rule R2-48. Accounts; annual reports.---(a) The Uniform Systems of Accounts adopted by the Interstate Commerce Commission are hereby prescribed for use of Class I, Class II and Class III Common and Contract Motor Carriers of Passengers and Class I, Class II and Class III Common and Contract Motor Carriers of Freight, who operate under the jurisdiction of this Commission pursuant to the Public Utilities Act or through the Commission's authority to fix rates and charges. (G.S. 62-260, subsection (b).)

(b) For purposes of the accounting regulations common and contract carriers of passengers subject to the North Carolina Utilities Commission's jurisdiction are grouped into the following three classes:

Class I. Carriers having average gross operating revenues (including interstate and/or intrastate) of $1,000,000 or over annually, from motor carrier operations.

Class II. Carriers having average gross operating revenues (including interstate and/or interstate) of $200,000 or over but under $1,000,000 annually, from motor carrier operations.

Class III. Carriers having average gross operating revenues (including interstate and/or intrastate) of less than $200,000 annually, from motor carrier operations.

(c) For purposes of the accounting regulations common and contract carriers of property subject to the North Carolina Utilities Commission's jurisdiction are grouped into the following three classes:

Class I. Carriers having average gross operating revenues (including interstate and/or intrastate) of $3,000,000 or over annually, from motor carrier operations.

Class II. Carriers having average gross operating revenues (including interstate and/or intrastate) of $500,000 or over but under $3,000,000 annually, from motor carrier operations.

Class III. Carriers having average gross operating revenues (including interstate and/or intrastate) of less than $500,000 annually, from motor carrier operations.

(d) The class to which any carrier belongs shall be determined by the average of its annual gross operating revenues derived from motor carrier operations for the three calendar years immediately preceding the then current year.

(e) Each carrier shall keep its books on the basis of either (1) an accounting year of 12 months ending on the thirty-first day of December in each year or (2) an accounting year of thirteen 4-week periods ending at the close of one of the last 7 days of each calendar year.

(f) For the purposes of rendering an annual report, common and contract carriers shall secure from the Commission the proper form and make and file with the Commission an annual report as soon after the close of the calendar year as possible, but in no event later than April 30th of the succeeding year.

ISSUED BY ORDER OF THE COMMISSION.

This 24th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 56

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Increasing the Required ) ORDER INCREASING REQUIRED
Number of Copies of Filings.) NUMBER OF COPIES OF FILINGS

BY THE COMMISSION. The Commission Staff has increased in size and in its scope of inquiry. It is, therefore, necessary to increase the required number of copies of filings for all rules to an original plus seventeen (17) copies, with the following exceptions:

Exception 1. For filings by Class A & B electric and telephone utilities under Rules R1-5, R1-7, R1-15, R1-17, R1-24, R8-42, or R8-43, an original plus twenty-five (25) copies shall be provided to the Commission.

Exception 2. For filings by water and sewer utilities, an original plus five (5) copies shall be provided to the Commission.

Exception 3. For filings of applications by motor carriers under Rule R2-8 (a) (1) and (b) (1), an original and five (5) copies shall be provided to the Commission.

IT IS, THEREFORE, ORDERED:

1. That Rule R1-5 (g) shall be, and the same hereby is, changed to read in its entirety the following:

R1-5(g) Copies Required - The original plus seventeen copies of all pleadings shall be filed with the Commission, and shall include a certificate that a copy thereof has been mailed or delivered to each party of record in the cause or to counsel of record. If the names and addresses of such parties are not known, the certificate should so state, and five (5) additional copies, unless a greater number is requested, shall be filed with the Commission for the use of other parties and their counsel, (provided that in the case of applications for authority of motor carriers of property an original and five (5) copies shall be required) with the following exceptions:

Exception 1. For filings by Class A & B electric and telephone utilities under Rules R1-7, R1-15, R1-17, R1-24, R8-42, or R8-43, an original plus twenty-five (25) copies shall be provided to the Commission.

Exception 2. For filings by water or sewer utilities, an original plus five (5) copies shall be provided to the Commission.

Exception 3. For filings of applications by motor carriers under Rule R2-8 (a) (1) and (b) (1), an original and five (5) copies shall be provided to the Commission.

NOTE: A photocopy which has been signed after copying shall be considered an original.

2. That Rule R1-7(c) shall be, and the same hereby is, changed to read in its entirety the following:

R1-7(c) Copies; Notice to Parties. - Subject to the provisions of Rule R1-2(c) every motion made in a pending proceeding other than those made before the Commission or an Examiner at the time of the hearing, shall be filed with the Commission, with original plus the number of copies specified in Rule R1-5(g), and shall certify that a copy thereof has been mailed or delivered to each party of record in the cause, or to the attorney of record of each such party.

3. That Rule R1-15(3) shall be, and the same hereby is, changed to read in its entirety the following:

R1-15(3) Reply. - Within twenty (20) days after service of the Commission's Order suspending said schedule, the party filing such schedule may file with the Commission a reply [original plus the number of copies specified in Rule R1-5(g)], under oath, of the particular reasons, or conditions or relied upon to warrant the Commission in vacating said suspension order.

4. That Rule R1-24(f)(3) and R1-24(g)(3) shall be, and the same hereby are, changed to read in their entirety the following:

R1-24(f)(3) Copies. - Not less than an original plus twenty-five (25) copies of each exhibit shall be provided for the use of the Commission, with an extra copy for each party to the proceeding, unless the Commission shall require a larger number in the particular case.

R1-24(g)(3) Copies Required. - An original plus twenty-five complete copies of the testimony of each expert witness, as required by this rule, shall be filed with the Commission for its use.

5. That Rule R1-34 shall be, and the same hereby is, changed to read in its entirety the following:

R1-34 Exceptions to Number of copies to be filed. - In any case where the provisions of this chapter require the filing of a specific number of copies of any document and it appears that there is no reasonable or substantial need for said specific number of copies of documents under the procedures to be observed in the proceeding in which the document is to be filed, or where it is not feasible for other reasons to provide the specific number of copies, upon request of the party filing the document or on its own motion, the Commission may authorize a lesser number of copies by notifying the parties in writing of the number of copies to be filed. (NCUC Docket No. M-100, Sub 23, 8-18-69).

6. That Rules R1-11(b) and R2-11(d) shall be, and the same hereby are, changed to read in their entirety the following:

R1-11(b) Time for Filing. - Protests, as herein provided, must be filed with the Commission (original and seventeen copies) not less than ten (10) days prior to the date fixed for the hearing; provided, the notice of hearing may fix the time for filing protests, in which case such notice shall govern. All protests shall be signed and verified as provided in Rule R1-5, and shall certify that a copy thereof has been delivered or mailed to the applicant or to applicant's attorney, if any.

R2-11(d) The original and seventeen complete copies of the protest must be mailed or delivered to the Commission within the time fixed for filing protests, and it must appear in the verification or in some statement attached to the protest that a copy thereof has been mailed or delivered to the applicant and a copy to his attorney, if any, appearing in the notice of hearing.

7. That Rule R2-8(a) (1) and R2-8(b) (1) shall be, and the same hereby are, changed to read in their entirety the following:

R2-8(a)(1) Application for authority to operate either as a common carrier or as a contract carrier must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and five complete copies of the application, including exhibits, must be filed with the Commission. The original and the copies shall be fastened separately. A filing fee of $25.00 must accompany the application before it is considered as being filed.

R2-8(b)(1) Application for approval of sale, lease, or other transfer of operating authority shall be typewritten, shall be filed with the Commission by

providing an original and five copies, and shall be accompanied by a filing fee of $25.00. Such applications may necessarily differ according to the nature of the transaction involved, but must include the following:

a. The names and addresses of all parties to the transaction.

b. A full and complete explanation of the nature of the transaction and its purpose.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 57

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Revision of Rule R2-36, Paragraph (a) | ) ORDER |
| Thereof, of the Commission's Motor Carrier | ) AMENDING |
| Regulations to Revise the Liability Insur- | ) RULE R2-36, |
| ance Requirements for the Protection of the | ) PARAGRAPH |
| Public. | ) (a) THEREOF |

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, upon consideration of the ratification on April 8, 1974, of the North Carolina House Bill No. 1803, Chapter 1206, Laws 1974, requiring motor carriers licensed in North Carolina to maintain minimum limits of liability insurance of fifty thousand dollars ($50,000)/one hundred thousand dollars ($100,000)/ fifty thousand dollars ($50,000), with said House Bill No. 1803 being as follows:

"Section 1. G.S. 62-268 is hereby amended by adding thereto the following:
The Commission shall require that every motor carrier for which a certificate, permit, or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident, and subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars ($50,000) because of injury to or destruction of property of others in any one accident;

and the Commission may require any greater amount of insurance as may be necessary for the protection of the public.
Section 2. This act shall become effective on January 1, 1975."

the Commission finds and concludes that the "Schedule of Limits" contained in Rule R2-36, Paragraph (a) thereof, of the Rules and Regulations of the North Carolina Utilities Commission, presently being as follows:

"

SCHEDULE OF LIMITS
Motor Carriers--Bodily Injury Liability--Property Damage Liability

| (1) Kind of Equipment | (2) Limit for bodily injuries to or death of one person | (3) Limits for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum $25,000 for bodily injuries to or death of one person) | (4) Limit for loss or damage in any one accident to property of others (excluding cargo) |
|---|---|---|---|
| Passenger equipment: (seating capacity) | | | |
| 7 passengers or less | $25,000 | $100,000 | $10,000 |
| 8-12 passengers, inclusive | 25,000 | 150,000 | 10,000 |
| 13-20 passengers, inclusive | 25,000 | 200,000 | 10,000 |
| 21-30 passengers, inclusive | 25,000 | 250,000 | 10,000 |
| 31 passengers or more | 25,000 | 300,000 | 10,000 |
| Freight equipment: All motor vehicles used in the transportation of property | 25,000 | 100,000 | 10,000 |

"

should be amended to read as follows:

SCHEDULE OF LIMITS
Motor Carriers--Bodily Injury Liability--Property Damage Liability

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| King of Equipment | Limit for bodily injuries to or death of one person | Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $50,000 for bodily injuries to or death of one person) | Limit for loss or damage in any one accident to property of others (excluding cargo) |
| Passenger equipment: (seating capacity) | | | |
| 7 passengers or less | $50,000 | $100,000 | $50,000 |
| 8-12 passengers, inclusive | 50,000 | 150,000 | 50,000 |
| 13-20 passengers, inclusive | 50,000 | 200,000 | 50,000 |
| 21-30 passengers, inclusive | 50,000 | 250,000 | 50,000 |
| 31 passengers or more | 50,000 | 300,000 | 50,000 |
| Freight equipment: | | | |
| All motor vehicles used in the transportation of property | 50,000 | 100,000 | 50,000 |

effective on and after January 1, 1975.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the "Schedule of Limits" contained in Paragraph (a) of Rule R2-36, of the Rules and Regulations of the North Carolina Utilities Commission be, and the same is hereby, amended to read as follows:

SCHEDULE OF LIMITS
Motor Carriers--Bodily Injury Liability--Property Damage Liability

| (1) Kind of Equipment | (2) Limit for bodily injuries to or death of one person | (3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $50,000 for bodily injuries to or death of one person) | (4) Limit for loss or damage in any one accident to property of other (excluding cargo) |
|---|---|---|---|
| Passenger equipment: (seating capacity) | | | |
| 7 passengers or less | $50,000 | $100,000 | $50,000 |
| 8-12 passengers, inclusive | 50,000 | 150,000 | 50,000 |
| 13-20 passengers, inclusive | 50,000 | 200,000 | 50,000 |
| 21-30 passengers, inclusive | 50,000 | 250,000 | 50,000 |
| 31 passengers or more | 50,000 | 300,000 | 50,000 |
| Freight Equipment: | | | |
| All motor vehicles used in the transportation of property | 50,000 | 100,000 | 50,000 |

effective on and after January 1, 1975.

(2) That a copy of this Order be noticed in the Commission's Truck Calendar of Hearings; and upon Mr. B. F. Moffitt, Chief of Tariff Bureau, Motor Carriers Traffic Association, Inc., Agent, P. O. Box 1500, Greensboro, North Carolina 27402; Mr. J. T. Outlaw, Chief of Tariff Bureau, North Carolina Motor Carriers Association, Inc., Agent, P. O. Box 2977, Raleigh, North Carolina 27602; Mr. L. Vernon Farriba, Chief of Tariff Bureau, Southern Motor Carriers Rate Conference, Agent, P. O. Box 7347, Station C, Atlanta, Georgia 30309; Mr. Francis L. Wyche, Agent, North Carolina Movers and Warehousemen's Association, 2425 Wilson Boulevard, Arlington, Virginia 2220|; and Mr. P. J. Campbell, Chairman, National Bus Traffic Association, Inc., 506 South Wabash Avenue, Chicago, Illinois 60605 for and on behalf of their member carriers.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of August, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-27 of the Commission's Motor Carrier Regulations. ) ORDER AMENDING RULE R2-27

BY THE COMMISSION: The North Carolina Utilities Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, and upon consideration of the need to conserve fuel and to maintain and preserve the maximum efficiency and utilization of motor carrier vehicles engaged in transportation operations over the highways of this State, the Commission is of the opinion, finds and concludes, that Rule R2-27 of the Rules and Regulations of the North Carolina Utilities Commission, presently being as follows:

"Rule R2-27. DUAL OPERATIONS - No motor freight common carrier shall transport any property as a contract carrier which said carrier is authorized to transport as a common carrier. No such carrier authorized to operate both as a common carrier and as a contract carrier shall transport property as a common carrier and as a contract carrier in the same vehicle at the same time."

should be amended to read as follows:

"Rule R2-27. DUAL OPERATIONS - No motor freight common carrier shall transport any property as a contract carrier which said carrier is authorized to transport as a common carrier."

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Rule R2-27 of the Rules and Regulations of the North Carolina Utilities Commission be, and the same is hereby, amended to read as follows:

"Rule R2-27. DUAL OPERATIONS - No motor freight common carrier shall transport any property as a contract carrier which said carrier is authorized to transport as a common carrier."

(2) That a copy of this Order be served upon all motor freight carriers authorized by this Commission to operate in a dual capacity as both a common and contract carrier in intrastate operations within the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of Rule-making Procedure to Establish a Method of Adjustment for Rates Varying from Schedule or for Other Billing Errors | ORDER ESTABLISHING RULE |

PLACE: Commission Hearing Room, Raleigh, N. C.

DATE: March 28, 1974

BEFORE: Commissioners Hugh A. Wells, presiding, Ben E. Roney and Tenney I. Deane, Jr.

TIME IN SESSION: 10:00 to 11:30

APPEARANCES:

For the Commission Staff:

John R. Molm
Associate Commission Attorney
P. O. Box 991
N. C. Utilities Commission
Raleigh, North Carolina

For the Intervenors:

Steve C. Griffith, Jr.
Duke Power Company
P. O. Box 2178
Charlotte, North Carolina
For: Duke Power Company

R. C. Howison, Jr.
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina
For: Virginia Electric & Power Company

William O'Quinn
Carolina Power and Light Company
P. O. Box 1551
Raleigh, North Carolina
For: Carolina Power and Light Company

BY THE COMMISSION: By Order of January 14, 1974, the Commission instituted this rule-making proceeding to consider the adoption of proposed rule R8-44 entitled "Method of Adjustment for Rates Varying from Schedule or for Other Billing Errors". In this Order Instituting Rule-making Procedure, Setting Public Hearing, and Requiring Public Notice, both affected electric suppliers and members of the using and consuming public were invited to file

formal intervention and/or protest and to participate in the public hearing. Parties which responded by filing comments and motions for leave to intervene were Carolina Power and Light Company, Duke Power Company, and Virginia Electric and Power Company.

Appearing at the public hearing on March 28, 1974, were attorneys for all three intervenors and for the Commission Staff. Messrs. C. Curtis Griggs and J. Reed Bumgarner presented testimony on the necessity of and proposed changes in the rule for the Commission Staff, and Mr. Henry Cranford presented testimony on a proposed modification in the rule for intervenor Duke Power Company.

This Commission is of the opinion that the proposed Rule R8-44 in the form in which it appears attached hereto as Appendix "A", is a just and reasonable guideline for billing error adjustments and will ensure uniform treatment for all consumers throughout the State. Therefore, recognizing its duty under G.S. 62-140 to make reasonable and just rules and regulations to prevent discrimination in the rates or services of public utilities this Commission concludes that Rule R8-44 should be promulgated and made a part of the Rules and Regulations of the North Carolina Utilities Commission.

IT IS, THEREFORE, ORDERED:

1. That Rule R8-44, attached hereto as Appendix "A" be, and hereby is, adopted to be promulgated as a part of the Rules and Regulations of this Commission, effective June 1, 1974.

2. That each affected electric supplier be, and hereby is, directed to file five (5) copies of the appropriate tariff revisions by July 1, 1974.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Rule R8-44 -- Method of Adjustment for Rates Varying from Schedule or for Other Billing Errors

If it is found that a utility has directly or indirectly, by any device whatsoever, charged, demanded, collected or received from any consumer a greater or less compensation for any service rendered or to be rendered by such utility than that prescribed in the schedules of such utility

applicable thereto then filed in the manner provided in Article 62 of the North Carolina General Statutes; or if it is found that any consumer has received or accepted any service from a utility for a compensation greater or less than that prescribed in such schedules; or if, for any reason, billing error has resulted in a greater or lesser charge than that incurred by the consumer for the actual service rendered, then the method of adjustment for such overcharge or undercharge shall be as provided by the following:

(a) If the overcharge or undercharge is the result of a fast or slow meter, then the method of compensation shall be as provided in Rule R8-15.

(b) If the utility has wilfully overcharged any consumer, except as provided for in (a) above, then the method of adjustment shall be as provided in G.S. 62-139(b).

(c) If the utility has inadvertently overcharged a consumer as a result of a misapplied schedule, an error in reading the meter, a skipped meter reading, or any other human or machine error except as provided in (a) above, the utility shall at the customer's option credit or refund the excess amount paid by that consumer or credit the amount billed as provided by the following:

(1) If the interval during which the consumer was overcharged can be determined, then the utility shall credit or refund the excess amount charged during that entire interval provided that the applicable statute of limitations shall not be exceeded.

(2) If the interval during which the consumer was overcharged cannot be determined, then the utility shall credit or refund the excess amount charged during the 12-month period preceding the date when the billing error was discovered.

(3) If the exact usage and/or demand incurred by that consumer during the billing periods subject to adjustment cannot be determined, then the refund shall be based on an appropriate usage and/or demand.

(d) If the utility has undercharged any consumer as the consequence of a fraudulent or wilfully misleading action on that consumer's part, or any such action by any person other than the employees or agents of the company, such as tampering with, or bypassing the meter where it is evident that such tampering or bypassing occurred during the residency of that consumer, or if it is evident that a customer has knowledge of being undercharged without notifying the utility as such, then notwithstanding part (a)

above, the utility shall recover the deficient amount as provided by the following:

(1) If the interval during which the consumer was undercharged can be determined, then the utility shall collect the deficient amount incurred during that entire interval, provided that the applicable statute of limitations is not exceeded.

(2) If the interval during which the consumer was undercharged cannot be determined, then the utility shall collect the deficient amount incurred during the 12-month period preceding the date when the billing error was discovered by the utility.

(3) If the usage and/or demand incurred by that consumer during the billing periods subject to adjustment cannot be determined, then the adjustment shall be based on an appropriate estimated usage and/or demand.

(e) If the utility has undercharged any consumer as the result of a misapplied schedule, an error in reading the meter, a skipped meter reading, or any other human or machine error, except as provided in (a) and (d) above, then the utility shall recover the deficient amount as provided by the following:

(1) If the interval during which a consumer having a demand of less than 50 KW was undercharged can be determined, then the utility may collect the deficient amount incurred during that entire interval up to a maximum period of 150 days. For a consumer having a demand of 50 KW or greater, the maximum period shall be 12 months.

(2) If the interval during which a consumer was undercharged cannot be determined, then the utility may collect the deficient amount incurred during the 150 day period preceding the date when the billing error was discovered by the utility. For a consumer having a demand of 50 KW or greater, the maximum period shall be 12 months.

(3) If the usage and/or demand incurred by that person during the billing periods subject to adjustment cannot be determined, then the adjustment shall be based on an appropriate estimated usage and/or demand.

(4) The consumer shall be allowed to pay the deficient amount, in equal installments added to the regular monthly bills, over the same number of billing periods which occurred during the interval the customer was subject to pay the deficient amount.

(f) This Rule shall not be construed as to prohibit equal payment plans, wherein the charge for each billing period is the estimated total annual bill divided by the number of billing periods prescribed by the plan, and the difference between the actual and estimated annual bill is settled by one payment at the end of the year. However, incorrect billing under equal payment plans shall be subject to this rule.

(g) This rule shall not be construed as to prohibit the estimation of a consumer's usage for billing purposes when it is not feasible to read the consumer's meter on a particular occasion.

DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of Rulemaking Proceeding for Curtailment of Gas Service Due to Gas Supply Shortage | NOTICE OF REDUCED NATURAL GAS SUPPLIES FOR 1974-1975 |

BY THE COMMISSION. This proceeding was instituted by the Utilities Commission on November 6, 1973, to establish Rules for curtailment of retail natural gas customers, required by the reduced supplies of natural gas available to natural gas distribution companies in North Carolina from Transcontinental Gas Pipe Line Corporation (TRANSCO).

A public hearing was held on November 20, 1973, and evidence and testimony were received from numerous parties regarding the adverse effect of gas curtailment on the economy and continued industrial employment in North Carolina. The hearing was recessed, pending the outcome of proceedings before the Federal Power Commission relating to the gas supply of Transco, with further hearings to be conducted in September 1974 to consider Rules for curtailment of North Carolina retail gas customers during the winter heating season 1974-1975.

The North Carolina Utilities Commission has been advised of testimony before the Federal Power Commission in FPC Docket No. PR72-99, Transco Permanent Curtailment Proceeding, setting forth the latest estimates of curtailments of natural gas supply by Transco to North Carolina natural gas distribution companies during the 1974-1975 heating season. Such estimates are based on two curtailment plans for Transco presently under study by FPC. One plan is a continuation of the present Transco pro rata plan. The other is a plan based on FPC Order 467-B and is generally known as the FPC "end use" plan.

Under either of these plans, the curtailments during 1974-1975 will be substantially more severe than during the years 1973-1974. All interruptible customers, and potentially some classes of firm customers, will be curtailed in their supply of natural gas, and North Carolina will receive substantially reduced quantities of natural gas, the exact amount depending upon whether FPC Plan 467-B is ordered into effect for the 1974-1975 season, or whether the present pro rata plan will remain in effect during said season.

The anticipated reduction in supplies to North Carolina for the next twelve (12) months under the two plans has now been placed in the record of the FPC proceeding as follows:

1. The present interim or pro rata plan. The curtailments under this plan during 1973-1974 have averaged 14 to 16 percent less gas than the contract demand or the historical supply from Transco to North Carolina gas

distribution companies. It is now estimated that under the interim or pro rata plan, the North Carolina curtailment will be 30.9|% for |974-|975.

2. FPC 467-B plan (end-use plan). It is now estimated that the FPC 467-B or end-use plan would result in curtailments to North Carolina during the winter heating season up to 40.|8%, and that all interruptible customers in North Carolina would be cut off from gas during the entire |50-day winter heating season from November |974 through April |975. In the case of some of the North Carolina distribution companies, priority 3, 4 and 5 firm customers would be curtailed.

The Commission Gas Engineering Staff has prepared the memorandum and schedules attached hereto entitled "TRANSCONTINENTAL GAS PIPE LINE CORPORATION - DOCKET NO. RP72-99 CURTAILMENT PROCEEDING," which attachment describes in detail the impact of the increased Transco curtailment under both of the plans presently being considered by the Federal Power Commission. This study shows the effects of such increased curtailment not only to North Carolina distribution companies, but also to the interruptible and priority 3, 4, and 5 firm customers of such companies.

Based on the above evidence introduced in the FPC Docket No. RP72-99 and the Commission Staff report thereon, the Utilities Commission considers it of vital importance to the economy of North Carolina that all interruptible customers and priorities 3 through 5 firm customers of all natural gas companies in North Carolina be notified of the potential curtailment of their natural gas supplies for |974-|975, in order that they might begin immediately to make necessary arrangements for alternate fuel supplies. To assist in making such arrangements, there is attached hereto a letter from Fowler W. Martin, Director, State Energy Division, Department of Military and Veterans Affairs and a copy of Form FEO-|7. This letter and the FEO form are self-explanatory.

IT IS, THEREFORE, ORDERED:

|. That all interruptible and priority 3 through 5 firm customers in North Carolina are hereby notified of the forecast of increased curtailment of natural gas set forth in this Notice, and as further described by the Commission Staff memorandum and schedules attached hereto, and such customers should immediately begin to make arrangements or to establish contracts for an adequate supply of alternate fuel for the winter heating season |974-|975, including application for any additional allotments of fuel needed from the Federal Energy Administration. As a first step, such customers should complete and send in the FEO-|7 form by the date specified in the Martin letter.

2. That the hearing in this docket will be resumed in September 1974 by further Order of this Commission, to receive direct evidence in this docket of the natural gas supply in North Carolina for 1974-1975, and to receive reports and evidence of natural gas customers on the effect of proposed curtailments of natural gas on the economy in North Carolina and the continued operation of industry in North Carolina.

3. That a copy of this Notice of forecast reduction in natural gas supplies for 1974-1975, the Commission Staff memorandum and schedules attached hereto and the Martin letter and Form FEO-17 shall be mailed by each North Carolina gas utility to all interruptible customers of natural gas in North Carolina and to all priority 3 through 5 firm customers of said gas companies.

4. Each gas company shall reprint and mail this notice and the attachments hereinabove specified on or before June 25, 1974, and shall certify in writing to the Commission that such mailing has been done as required herein. Each gas company shall furnish a list of their customers to whom this notice has been mailed to the Commission and to the State Energy Division, Department of Military and Veterans Affairs.

5. Each gas utility shall notify its interruptible and category 3 through 5 firm customers of the forecast number of days their gas will be cut off from November 15, 1974, through April 15, 1975, based on normal weather under both the FPC 467-B plan and also the Transco interim plan.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

STATE OF NORTH CAROLINA

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

ENERGY DIVISION

June 11, 1974

TO: All Customers Subject to Curtailment of Natural Gas

The State Energy Division, Department of Military and Veterans Affairs (DMVA) has been aware of the forecasted decrease in North Carolina's supplies of natural gas. At present, the State Energy Division, DMVA, is working with the Federal Energy Administration (FEA) to plan various

approaches to potential problems resulting from the natural gas shortage. To insure thoughtful planning, the State Energy Division, DMVA, requests that those firms included in the classes of customers subject to curtailment complete Form FEO-17.

For the purpose of this survey, we ask that you assume that you will experience the maximum curtailment as stated in the Utilities Commission Docket G-100, Sub-18.

In addition to the information required on Form FEO-17, request you add in paragraph 18, or on a separate attachment, the following information:

1. If available, we would like to know the number of days in calendar year 1972 and 1973 that natural gas supplies were curtailed.

2. Volume of gas used by months in calendar years 1972 and 1973.

3. Volume of gas estimated to be lost by month from curtailment for the 12 months ending June 30, 1975. Include the 150 days already forecasted.

4. Explain the nature of your business (to include a breakdown of how you use natural gas in your business - percent of use for heating, processing, drying, etc.) Also include the number of employees who would be adversely impacted by various degrees in plant slowdown and/or complete shutdown due to fuel shortages.

5. Please attach a copy of the notification furnished you by the gas utility as per paragraph 5 in Docket G-100, Sub-18.

6. If you have already made the necessary arrangements to obtain an adequate supply of substitute fuels, you need not prepare a Form FEO-17. However, please send a letter to the State Energy Division, DMVA, confirming that you do have an assured source of product.

This information is needed to determine alternate/standby fuel requirements when natural gas shortages affect you as a customer. Communications with major oil companies have indicated that in order to be assured of an alternate fuel, you will be required to make a commitment to use the fuel on a continuous basis or to make a firm commitment for a specific quantity of product.

The Form FEO-17 is attached. If you need additional forms or assistance in completing the Form 17, contact your Local Energy Field Agent, Local Petroleum Council, or call the State Energy Division, DMVA, in Raleigh 919/829-2230. In completing Form FEO-17 the base period for propane is by calendar quarter during the period April 1, 1972, through March 31, 1973, corresponding to the current quarter; middle

distillate (kerosene, #2 fuel oil, etc.) is by calendar month 1972 corresponding to current month; residuals fuel oil (#4, 5, and 6, etc.) is by calendar month 1973 corresponding to current month.

The data being requested is for planning purposes only. It will not necessarily guarantee you a source of supply for alternate fuel. Upon receipt and compilation of reports from all customers, the State Energy Division, DMVA, will work with the FEA and the oil companies supplying product to the State to determine possible courses of action. You will be notified at a later date regarding any additional steps you will need to take. To facilitate our planning, the completed forms must be submitted as soon as possible, but not later than July 10, 1974. Please mail to:

State Energy Division
Dept. of Military & Veterans Affairs
116 West Jones Street
Raleigh, North Carolina 27611

ATTENTION: Alternate Fuel Coordinator

Your immediate cooperation will better enable North Carolina to avoid severe hardship situations.

Sincerely,

Fowler W. Martin
Director

FWM/pj

Attachment

Form Approved OMB 042R-1682

# FEDERAL ENERGY OFFICE
# MANDATORY PETROLEUM PRODUCTS ALLOCATION PROGRAM
# REQUEST FOR ASSIGNMENT OF A SUPPLIER
# OR ADJUSTMENT OF BASE PERIOD SUPPLY VOLUME

Do Not Write in this Box.
Case # _____
Received _____
Processed _____
Reply Sent _____

| 1. Name of Company | 1a. Date Year/Mo./Day | 6. Employer Identification Number (Internal Revenue Service Number) |
|---|---|---|

2. Street Address

| 3. City | 4. State | 5. Zip Code |
|---|---|---|

| 7a. Person to Contact | 7b. Telephone (Include Area Code) |
|---|---|

8. Location to which supply is delivered (If different from above - Attach additional sheets if more than one location - Complete 8a. through 8d.)

8a. Street Address - Delivery Location

| 8b. City | 8c. State | 8d. Zip Code |
|---|---|---|

10. Type of Product: Complete separate form for each type of fuel.

| | | | | | |
|---|---|---|---|---|---|
| 10a. ( ) | 110 | Propane | 10o. ( ) | 540 | #5 & #6 for Non-Utilities |
| 10b. ( ) | 120 | Butane | | | |
| 10c. ( ) | 130 | Propane/Butane Mix | 10p. ( ) | 550 | Bunker C |
| 10d. ( ) | 200 | Motor Gasoline | 10q. ( ) | 560 | Navy Special |
| 10e. ( ) | 310 | Kerosene | 10r. ( ) | 570 | Other Residuals |
| 10f. ( ) | 320 | #2 Heating Oil | | | |
| 10g. ( ) | 330 | Diesel Fuel | 10s. ( ) | 710 | Lubricants |
| 10h. ( ) | 340 | Other Middle Distillates | 10t. ( ) | 720 | Special Naphthas |
| 10i. ( ) | 410 | Aviation Gasoline | 10u. ( ) | 730 | Solvents |
| | | | 10v. ( ) | 740 | Miscellaneous |
| 10j. ( ) | 420 | Kerosene Jet Fuel | | | |
| 10k. ( ) | 430 | Naphtha Jet Fuel | | | |
| 10l. ( ) | 510 | #4 for Utilities | | | |

| 9a. Storage Capacity of Delivery Location (Gallons) | 9b. Current Inventory of Delivery Location (Gallons) |
|---|---|

|0m.( ) 520 #5 & #6 for Utilities
|0n.( ) 530 #4 for Non-Utilities

||. Type of Request (Please Check)
||a.( ) Request For Assignment of Supplier
||b.( ) Request for Assignment of Base Period Supply Volume
||c.( ) Request for Adjustment of Base Period Supply Volume - Adjustment less than 20%*
||d.( ) Request for Adjustment of Base Period Supply Volume - Adjustment Equal To or Greater Than 20%*
||e.( ) Request for Assignment of Non Bonded Fuels (See Instructions)

* All adjustments must be greater than |0% for motor gasoline and 5% for all other products.

|0w. Specify Grade of Product

|2. Name and Address of Suppliers (or Potential Suppliers if Requesting Assignment of a Supplier) - Complete |2a. through |2f. List principal supplier on the first line and others below. If more than four, provide additional sheets.

| |2a. Name of Supplier | |2b. Supplier Address (City, State, Zip) | |2c. Brand Name of Supplier | |2d. % of Base Period Supplied | |2e. Person to Contact & Telephone | |2f. Willing to Supply? |
|---|---|---|---|---|---|---|
| (1) | | | | | | Yes( ) No( ) |
| (2) | | | | | | Yes( ) No( ) |
| (3) | | | | | | Yes( ) No( ) |
| (4) | | | | | | Yes( ) No( ) |

GAS

|2g. Supplier's Decision on this request - Completed by Supplier.

Supplier Name_____. Please check appropriate box.

( ) Approved ( ) Disapproved If disapproved, indicate reasons for disapproval.

|3. Product Purchased For:
_____Resale
_____End Use - describe briefly:

|4. If there is a credit or legal problem involving your supply, briefly describe (Attach additional information if necessary).

| |5. Base Period Supply Volume by Month (Gallons) | | |5a. Base Period Year |
|---|---|---|---|
| January | May | September | |
| February | June | October | |
| March | July | November | |
| April | August | December | |
| |5b. Base Period Supply Volume | | Total | |

|5c. Does this base period supply volume agree with your supplier?
Check ( ) Yes ( ) No If "No" attach copy of Base Period Supply Volume Report and briefly describe disagreement.

|6. Actual purchases in the last twelve months and the percentage of the comparable base period month. (Total for all use categories in |6b.)

| Month | Year | Gallons | % of Base Period | Month | Year | Gallons | % of Base Period |
|---|---|---|---|---|---|---|---|
| January | 19 | | | July | 19 | | |
| February | 19 | | | August | 19 | | |
| March | 19 | | | September | 19 | | |
| April | 19 | | | October | 19 | | |
| May | 19 | | | November | 19 | | |
| June | 19 | | | December | 19 | | |

16a. Actual Purchases in the last twelve months. Total

16b. Actual purchases in the last twelve months and the percentage of the comparable base period month by use category. (Space for three use categories is provided. If more than three exist, attach additional sheets using the following format.)

(1) Use Category_____(Indicate name)_____

| Month | Year | Gallons | % of Base Period | Month | Year | Gallons | % of Base Period |
|---|---|---|---|---|---|---|---|
| January | 19 | | | July | 19 | | |
| February | 19 | | | August | 19 | | |
| March | 19 | | | September | 19 | | |
| April | 19 | | | October | 19 | | |
| May | 19 | | | November | 19 | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| June | 19 | | | December | 19 | | |
| | | | | | Total | | |

(2) Use Category _____ (Indicate name) _____

| Month | Year | Gallons | % of Base Period | Month | Year | Gallons | % of Base Period |
|---|---|---|---|---|---|---|---|
| January | 19 | | | July | 19 | | |
| February | 19 | | | August | 19 | | |
| March | 19 | | | September | 19 | | |
| April | 19 | | | October | 19 | | |
| May | 19 | | | November | 19 | | |
| June | 19 | | | December | 19 | | |
| | | | | | Total | | |

(3) Use Category _____ (Indicate name) _____

| Month | Year | Gallons | % of Base Period | Month | Year | Gallons | % of Base Period |
|---|---|---|---|---|---|---|---|
| January | 19 | | | July | 19 | | |
| February | 19 | | | August | 19 | | |
| March | 19 | | | September | 19 | | |
| April | 19 | | | October | 19 | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| May | 19 | | | November | 19 | | |
| June | 19 | | | December | 19 | | |
| | | | | | Total | | |

17. Requested adjusted base period supply volume and the percentage of the comparable base period month.

| Month | Year | Gallons | % of Base Period | Month | Year | Gallons | % of Base Period |
|---|---|---|---|---|---|---|---|
| January | 19 | | | July | 19 | | |
| February | 19 | | | August | 19 | | |
| March | 19 | | | September | 19 | | |
| April | 19 | | | October | 19 | | |
| May | 19 | | | November | 19 | | |
| June | 19 | | | December | 19 | | |
| 17a. Requested adjusted base period supply volume | | | | | Total | | |

18. Justification for volumes requested in item 17 above. Describe in detail the reasons justifying this request. (See Instructions)

FEDERAL ENERGY OFFICE

Request for Assignment of a Supplier
or Adjustments of Base Period Supply Volume
(FEO-17 (1-74))

Instructions

General Instructions

1. Who Submits and Where to Submit.

a. The following should submit this form to their current or prospective supplier.

(1) Wholesale purchasers who do not have a supplier.

(2) Wholesale purchasers who need to establish a base period supply volume.

(3) Wholesale purchasers who have had unusual growth (more than 10% per year motor gasoline and more than 5% per year for all other products) since the base period and wish to adjust their base period supply volume.

(4) Wholesale purchasers who wish to adjust their base period supply volume to cover certified increases in volume from end users allocated on the basis of 100% of current requirements.

b. The following should submit this form to the appropriate Regional Office of FEO:

(1) Wholesale purchasers who wish to adjust their base period supply volume to cover certified increases in volume from end users allocated on the basis of a percentage of base period supply.

(2) Suppliers who question the validity of this application.

(3) Suppliers who have approved an adjustment of the base period supply volume in excess of 20%.

(4) Wholesale purchasers who request an adjustment in the base period supply volume due to curtailment or abandonment of service of an energy source other than residual fuel oil or refined petroleum products.

c. The following should submit this form to the FEO National Office: (1) International air carriers requesting allocations of non-bonded fuels. (2) Civil Air Carriers and Public Aviation requesting redistribution of aviation fuels.

2. Fuels Covered

____ 110 Propane
____ 120 Butane
____ 130 Propane/Butane

____200 Motor Gasoline
____310 Kerosene
____320 #2 Heating Oil
____330 Diesel Fuel
____340 Other Middle Distillates
____410 Aviation Gasoline
____420 Kerosene Jet Fuel
____430 Naphtha Jet Fuel
____510 #4 for Utilities
____520 #5 & #6 for Utilities
____530 #4 for Non-Utilities
____540 #5 & #6 for Non-Utilities
____550 Bunker C
____560 Navy Special
____570 Other Residuals
____710 Lubricants
____720 Special Naphthas
____730 Solvents
____740 Miscellaneous

3. General Information
Adjustment or assignment for only one type of product can be requested on this form. If information on this form is not complete, the form will be returned to you. Forms sent to FEO should be submitted in triplicate.

Specific Instructions

1. Name of Company - Enter the corporate name, or the name of the entity making the request.
1a. Date - Enter the year, month and day of this request.
2. Street Address - Enter the street address of the company or individual making the request.
3. City - Enter the name of the city location of the company making the request.
4. State - Enter the name of the state location of the company making the request.
5. Zip Code - Enter the zip code of the company making the request.
6. Employer Identification Number - Enter the nine digit number that is used in all filings with the Internal Revenue Service.
7a. Person to Contact - Enter the name of the person to contact from the requesting company.
7b. Telephone - Enter the telephone number (Including area code) of the person to contact from the requesting company.
8a.,8b.,8c.,&8d. Street Address, City, State, Zip Code - Delivery Location - Enter the street address, city name, state name and zip code of the location to which the supply is to be delivered. This information should only be completed if the delivery location is different from the corporate address entered in 2.,3., & 4. above. If the delivery is to be more than one location enter the address of each

location, other than that in blocks 2.,3., & 4. on separate sheet(s) and attach to this form.

9a. Storage Capacity of Delivery Location - Enter the storage capacity in gallons for each location to which the product is to be delivered.

9b. Current Inventory of Delivery Location - Enter the inventory level in gallons as of the date of this request for each location to which the product is to be delivered.

10. Type of Product - Check only one box for the type of product for which supply or supplier is being requested.

10w. Specify Grade of Product - Enter the grade of the product under request such as Diesel #2, etc.

11. Type of Request - Check the appropriate box for the request being made.

12a. Name of Supplier - Enter the name of the supplier who is presently supplying you the product. There are four lines provided and the principal supplier should be entered on the first line. If there are more than four suppliers list on an additional sheet. If the request is for an assignment of a supplier, enter the names of potential suppliers who could provide the product to you. Rank preference of potential supplier with the highest preference on line (1).

12b. Supplier Address - Enter the city, state and zip code of the appropriate supplier.

12c. Brand Name of Supplier - Enter the brand name of supplier.

12d. % of Base Period Supplier - Enter the percentage of the annual base period volume that has been supplied by the appropriate supplier.

12e. Person to Contact & Telephone - Enter the name of the person to contact for each supplier and his telephone number including the area code.

12f. Willing to Supply? - For each supplier you have entered, indicate his willingness to supply by checking the appropriate box.

12g. Supplier's Decision on this Request - This section should be completed by the supplier. The supplier's name is entered and the appropriate box checked for approving or disapproving this request. If the request is disapproved, indicate in detail the reasons for disapproval.

13. Product Purchased For - Check the appropriate box for the type of use. If the product is for end-use rather than for resale, briefly describe how the product is used.

14. Credit or legal Problem - If there is a credit or legal problem involving your request for supply, describe the nature of the problem.

15. Base Period Supply Volume by Month - Enter for each month the gallons of product purchased during the base year.

15a. Base Period Year - Enter the base period year for which the request applies. For all products except propane, butane, and residual fuel oils the base year

is 1972. For propane the base period is October 3, 1972 to April 30, 1973. For butane the base period is the corresponding quarter of 1972. For residual fuel oils the base period is the corresponding month of 1973.

15b. Total - Enter entire total of base period volume.

15c. Base Period Agree with Supplier - Check the appropriate box for agreement with the supplier's records. If the base period supply volume does not agree, attach a copy of the Base Period Supply Volume Report and briefly describe the disagreement.

16. Actual Purchases in the Last Twelve Months - Enter the gallons purchased for each month for the latest twelve complete months prior to date of this application. Enter the appropriate year, for example, may begin with March 1973 and end with February 1974. Enter the percentage of the comparable month in the base period, for example, 1790.

16a. Twelve Month Total - Enter total purchases for the last twelve months.

16b. Actual Purchases by Use Category - Enter the gallons purchased in the last twelve months summarized for each use category. Only the following use categories are applicable.

____ Agricultural Production
____ Emergency Services
____ Energy Production
____ Sanitation Services
____ Telecommunications
____ Transportation Services
____ Space Heating
____ Industrial and Manufacturing
____ Cargo, freight and mail hauling
____ Utilities
____ Medical and Nursing Buildings
____ Civil Air Carriers
____ General Aviation
____ Public Aviation
____ Marine Shipping
____ Others

Indicate the use category name on the appropriate line. Space is provided for three use categories. If more than three are needed attach additional sheets using the same format prescribed herein. Also enter the appropriate year and the percentage of the comparable month in the base period.

17. Requested Adjusted Base Period Supply Volume - Enter for each month the gallons requested for the adjusted base period supply volume. This information should be included for all requests such as establishment of a base period supply, adjustment of a base period supply due to growth, allocation for non-bonded fuels or establishment of base period supply due to

curtailment of other energy source. Also enter the appropriate year, for example, 1974. Enter the percentage of the comparable month in the base period, for example, 125% if the request is an adjustment to base period supply volume.

17a. Requested Adjusted Base Period Supply - Total - Enter the twelve month total for the requested adjusted base period supply volume.

18. Justification For Volumes Requested - Describe in detail the reasons justifying these requested volumes. Indicate the names and telephone numbers of major customers whose requirements have substantially increased or major new customers who will be supplied. Also indicate the end-use for each of these customers and the impact on customers' operations if the request is denied.

If the requested volumes are for your own end-use, give a description including facilities or equipment, major changes since the base period, usage rates and how the rates are determined. For the addition of new equipment attach certified statement concerning usage rates and operational capacity.

If requested volumes are as a consequence of curtailed access to other sources of energy, or pursuant to a plan filed in compliance with a rule or order of a Federal or State Agency, indicate the energy source denied and its BTU equivalent.

19. Applied to State for Exceptional Hardship - If you have applied to the state for an exceptional hardship for the type of product under request, check the appropriate box. If "yes", indicate the state to which application was made, date of application, reason for hardship, quantity of product requested and the resolution of the hardship.

20. Application to the Federal Government - Indicate whether you have ever requested an assignment of a supplier or an adjustment of a base period supply for the type of product under request. Check the appropriate box and enter the case number if the answer is "yes".

21. Other Significant Factors - Enter any other significant factors or remarks that are important to this request.

22. List Titles of Attached Sheets - Enter the titles of the attached sheets in this section of the form.

23. Certification - The form must be certified both by the person completing it, and also by the person or a senior representative of the firm on whose behalf the request is submitted.

24. International Air Carriers Certification - For such requests, this additional certification is required by a senior company official.

19. Have you applied to the State for exceptional hardship? Check ( ) Yes ( ) No
If "yes", briefly describe.

20. Have you ever filed this form with the Federal Government for the type of fuel you are presently requesting action? Check ( ) Yes (If yes give case # ) ( ) No

21. Other significant factors, special requirements, or remarks (Provide additional sheets if required).

22. List titles of attached sheets.

23. Certification - I hereby certify that the above statements are true, accurate, and complete to the best of my knowledge and that any quantity requested for priority use will be used only for that use.

Signature of person completing form

Signature and title of certifying company official

24. International Air Carriers:
Additional Certification for Assignment of Non-Bonded Fuels - I hereby certify that bonded fuel supplies are not available at any price to provide a level of fuel comparable to the average percentage of base period fuel currently supplied to other international air carriers operating into the U.S.

Signature and title of certifying company official

Title 18 USC Sec. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

FEO-17(1-74) 50M

(Supersedes OOG-PAP-|7-||-73)

TRANSCONTINENTAL GAS PIPELINE CORPORATION

DOCKET NO. RP72-99

CURTAILMENT PROCEEDING

Impact of the Increased Curtailment Under the Ratable Plan and the 467-B Plan on North Carolina Consumers and Industrial Customers and the Amount of Alternate Fuels Necessary to Make Up for the Increased Curtailment Under Both Plans

Report by R. J. Nery
Chief Engineer, Gas Section

The purpose of this report is to illustrate the effect of the two proposed curtailment plans being considered by the Federal Power Commission in this Docket and their impact on gas customers in North Carolina and the financial impact on industrial interruptible customers in this state and the determination of the amount of alternate sources of energy which will be required to make up this deficiency.

The following is a summary of the actual curtailments by North Carolina companies for the calendar years |97|-|973 in MCF and in percent of contract entitlement and the estimated annual curtailment under the Pro rata Plan and the 467-B Plan for the twelve months beginning November |6, |974. The above estimates are based on Transco's exhibit introduced in Docket No. RP72-99 before the Federal Power Commission dated May |5, |974, and are predicated on Transco's estimated curtailments of 25.77% during the winter season and 34.74% during the summer season.*

| Year | MCF | Curtailment Expressed % of Contract Entitlement | |
|---|---|---|---|
| |97| | 8,950,339 | 4.7348 | |
| |972 | |5,647,059 | 8.2774 | |
| |973 | 24,0|5,832 | |2.7045 | |
| |974 | 30,773,073 | |6.29 | Year Ending April, |974 |

Estimated

| | | | |
|---|---|---|---|
| |974-75 | 58,433,755 | 30.9 | Pro rata |
| |974-75 | 83,457,0|6 | 44.| | 467-B |

* Winter Season - November |6 through April |5
Summer Season - April |6 through November |5

During the calendar year 1972, which is the base year for FEA's oil requirements, North Carolina utilities were curtailed by 15,647,059 MCF or 8.27%. If the Pro rata Plan is adopted with the increased curtailments projected by Transco for the twelve months beginning November 16, 1974, North Carolina gas utilities will lose 42,786,695 MCF or 305,497,009 gallons of number two fuel oil equivalents. If the 467-B Plan is authorized, North Carolina's increased curtailment over the base year 1972 will be 67,809,907 MCF or an equivalent of 484,163 gallons of number two fuel oil. It will be necessary for North Carolina industrial interruptible customers to obtain these quantities of oil or other energy equivalents by filing the appropriate applications through the FEA Offices. The difference between the adoption of the 467-B Plan over the Ratable Plan is a loss to North Carolina gas utilities and their customers of 25,000,000 MCF. The details showing the impact of the 467-B Plan over the Ratable Plan for each North Carolina gas utility is shown on Schedule No. 1 attached hereto.

Schedule No. 2 attached hereto shows the impact of the 467-B Plan on North Carolina gas utilities and the impact on priorities two through nine which priorities are designated in the 467-B Plan for both the winter and summer period. The impact of this plan on each company varies depending upon the mix of its customers and the priorities for which these customers use their gas. However, the average annual curtailment under the 467-B Plan for all North Carolina gas utilities is 44.15% as opposed to the Ratable Plan with an annual 30.91%. These curtailments do not include the effect of storage gas which each North Carolina gas utility has such as (GSS, LSS, LGA, LPG, LNG).

If the Ratable Plan is adopted assuming that each gas utility earned a fair rate of return at December 31, 1973, under the then existing 12.70% curtailment, the North Carolina gas utilities' customers' rates would have to be increased by 10.87¢ per MCF to make up for the revenue lost due to increased curtailment. If the 467-B Plan is adopted these customers' rates would be increased by 23.2¢ per MCF to make up for the loss due to the increased curtailment.

The loss of gas to industrial interruptible customers is substantial and to illustrate the future impact on these customers due to the increased curtailment under the Ratable Plan and the 467-B Plan based on the Transco exhibit is 34,417,923 MCF and 59,441,184 MCF respectively over 1973. At the present price for number five fuel oil ($11.38/bbl) based on this increased loss of gas the industrial interruptible customer's fuel bill will be increased by $34,417,923 and $59,441,184 respectively under the Pro rata Plan and the 467-B Plan.

The hearing in Transco Docket No. RP72-99 is in session at this time and it is anticipated that further Settlement

Conferences will convene after the hearing is completed, which is expected to end in about two weeks.

Schedule |

IMPACT OF 467B CURTAILMENT OVER RATABLE PLAN
FOR |974-75 BY COMPANIES OPERATING IN NORTH CAROLINA
BASED ON TRANSCO REVISED EXHIBIT 70 (MAY |5, |974) AND
ESTIMATED WINTER CURTAILMENT OF 25.77% AND SUMMER CURTAILMENT OF 34.54%

| | | Daily CD-2 Contract MCF/Day | Winter Period* |5| Days Summer Period 2|4 Days | CD-2 Contract Entitlement MCF | Transco Estimated Curtailment W-25.77% S-34.54% |
|---|---|---|---|---|---|
| N.C. Gas Service- | W | |0,400 | |5| | |,570,400 | 25.77 |
| | S | |0,400 | 2|4 | 2,225,600 | 34.54 |
| N.C. Natural - | W | |4|,000 | |5| | 2|,29|,000 | 25.77 |
| | S | |4|,000 | 2|4 | 30,|74,000 | 34.54 |
| Piedmont - | W | 205,200 | |5| | 30,985,200 | 25.77 |
| | S | 205,200 | 2|4 | 43,9|2,800 | 34.54 |
| Public Service - | W | |5|,400 | |5| | 22,86|,400 | 25.77 |
| | S | |5|,400 | 2|4 | 32,399,600 | 34.54 |
| United Cities - | W | 9,900 | |5| | |,494,900 | 25.77 |
| | S | 9,900 | 2|4 | 2,||8,600 | 34.54 |
| Total CD-2 | W | 5|7,900 | |5| | 78,202,900 | 25.77 |
| Total CD-2 | S | 544,500 | 2|4 | ||0,830,600 | 34.54 |
| Total Annual | | | | |89,033,500 | |

W - Winter Season November |6 - April |5
S - Summer Season April |6 - November |5

IMPACT OF 467B CURTAILMENT OVER RATABLE PLAN Schedule 1
FOR 1974-75 BY COMPANIES OPERATING IN NORTH CAROLINA
BASED ON TRANSCO REVISED EXHIBIT 70 (MAY 15, 1974) AND
ESTIMATED WINTER CURTAILMENT OF 25.77% AND SUMMER CURTAILMENT OF 34.54%

| | | Estimated Ratable Curtailment MCF | Estimated 467-B Curtailment MCF | Increase in Curtailment 467-B Over Ratable MCF |
|---|---|---|---|---|
| N.C. Gas Service - | W | 404,692 | 630,949 | 226,257 |
| | S | 768,722 | 1,183,321 | 414,599 |
| N.C. Natural - | W | 5,486,690 | 8,006,274 | 2,519,584 |
| | S | 10,422,099 | 10,374,657 | (47,442) |
| Piedmont - | W | 7,984,886 | 13,147,642 | 5,162,756 |
| | S | 15,167,481 | 21,826,742 | 6,659,261 |
| Public Service - | W | 5,891,383 | 8,868,322 | 2,976,939 |
| | S | 11,190,822 | 17,601,933 | 6,411,111 |
| United Cities - | W | 385,236 | 769,964 | 384,728 |
| | S | 731,764 | 1,047,212 | 315,448 |
| Total CD-2 | W | 20,152,887 | 31,423,151 | 11,270,264 |
| Total CD-2 | S | 38,280,888 | 52,033,865 | 13,752,977 |
| Total Annual | | 58,433,775 | 83,457,016 | 25,023,241 |
| Curtailment % | W | 25.77 | 40.18 | |
| | S | 34.74 | 46.95 | |
| Total Annual % Curtailment | | 30.91 | 44.15 | 13.24 |

W - Winter Season November 16 - April 15
S - Summer Season April 16 - November 15

Schedule 2

IMPACT OF THE F.P.C 467-B PLAN - TRANSCO GAS PIPELINE RP72-99
VOLUME ENTITLEMENT BY CUSTOMERS N.C. USING ACTUAL DELIVERIES
IN BASE PERIOD BASED ON TRANSCO ESTIMATED SYSTEM CURTAILMENT
OF WINTER 25.77% - SUMMER 34.54%

| Customer | * | 1st Curtailment | Priority 9 | 8 | 7 | 6 | 5 | 4 |
|---|---|---|---|---|---|---|---|---|
| N.C. Gas Service | W | 13100 | -- | 733 | -- | 33469 | -- | -- |
| | S | 6802 | -- | 420068 | -- | 37388 | -- | -- |
| Subtotal | | 28112 | -- | 42080 | -- | 507287 | -- | -- |
| N.C. Natural | W | 57459 | | 26372 | 2822 | 105252 | -- | -- |
| | S | 2277855 | 370002 | 3078837 | 14247 | 2685763 | -- | -- |
| Subtotal | | 3849314 | 370002 | 3205209 | 359468 | 3790 5 | -- | -- |
| Piedmont | W | 223550 | 79543 | 99890 | 498208 | 2244860 | -- | -- |
| | S | 335006 | 2499324 | 556950 | 833696 | 6502566 | -- | -- |
| Subtotal | | 5546556 | 2578867 | 676840 | 233904 | 8747426 | -- | -- |
| Public Service | W | 646475 | 62039 | 480730 | 258673 | 2633057 | -- | -- |
| | S | 2445867 | 4333807 | 2323147 | 12914 | 5900232 | -- | -- |
| Subtotal | | 4092342 | 4395846 | 2803877 | 380587 | 8533289 | -- | -- |
| United Cities | W | 07663 | 289 | 2358 | 39 | 25906 | -- | -- |
| | S | 59935 | 78529 | 37606 | 6664 | 569399 | -- | -- |
| Subtotal | | 267598 | 7888 | 39964 | 8055 | 828460 | -- | -- |
| Total | W | 5670247 | 1487 | 8 0083 | 976493 | 6375699 | -- | -- |
| | S | 8366675 | 728662 | 142608 | 41352 | 603778 | -- | -- |
| Grand Total | | 14036922 | 7423533 | 323691 | 50900 4 | 22407477 | -- | -- |

* W - Winter Season November 16 - April 15
S - Summer Season April 16 - November 15
All figures are MCF excluding last column

Schedule 2

IMPACT OF THE F.P.C 467-B PLAN - TRANSCO GAS PIPELINE RP72-99
VOLUME ENTITLEMENT BY CUSTOMERS N.C. USING ACTUAL DELIVERIES
IN BASE PERIOD BASED ON TRANSCO ESTIMATED SYSTEM CURTAILMENT
OF WINTER 25.77% - SUMMER 34.54%

| Customer | * | 3 (S-33.\|0%) | 2 (W-25.95%) | 467-B Total Period Curtailment | Total Period Contract Demand | % Curtailment |
|---|---|---|---|---|---|---|
| N.C. Gas Service | W | 35\|799 | 3\|848 | 630949 | \|570400\| | 40.\|8 |
| | S | 22\|423 | | \|\|8332\| | 2225600 | 53.\|7 |
| Subtotal | | 573222 | 3\|848 | \|8\|4270 | 3796000 | 47.79 |
| N.C. Natural | W | \|835786 | 3\|49\|84 | 8006274 | 2\|29\|000 | 37.60 |
| | S | 820953 | | \|0374657 | 30\|74000 | 34.38 |
| Subtotal | | 2656739 | 3\|49\|84 | \|838093\| | 5\|465000 | 35.72 |
| Piedmont | W | 5288292 | \|605299 | \|3\|47642 | 30985200 | 42.43 |
| | S | 2\|\|4200 | | 2\|826742 | 439\|2800 | 49.70 |
| Subtotal | | 7402492 | \|605299 | 34974384 | 74898000 | 46.70 |
| Public Service | W | 2767950 | \|0\|9398 | 8868322 | 2286\|400 | 38.79 |
| | S | \|476966 | | \|760\|933 | 32399600 | 54.33 |
| Subtotal | | 42449\|6 | \|0\|9398 | 26470255 | 5526\|000 | 47.90 |
| United Cities | W | 352046 | 47\|56 | 769964 | \|494900 | 5\|.5\| |
| | S | \|85079 | | \|0472\|2 | 2\|\|8600 | 49.43 |
| Subtotal | | 537\|25 | 47\|56 | \|8\|7\|76 | 36\|3500 | 50.29 |
| Total | W | \|0595873 | 5852885 | 3\|423\|5\| | 78202900 | 40.\|8 |
| | S | 48\|862\| | | 52033865 | \|\|0830600 | 46.95 |
| Grand Total | | \|54\|4494 | 5852885 | 8345706 | \|89033500 | 44.\|5 |

* W - Winter Season November \|6 - April \|5
S - Summer Season April \|6 - November \|5
All figures are MCF excluding last column

DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Rulemaking Proceeding | ) | ORDER ESTABLISHING CURTAILMENT |
| for Curtailment of Gas | ) | PRIORITIES AND REQUIRING |
| Service Due to Gas | ) | CONTINUED CONSERVATION OF |
| Supply Shortage | ) | NATURAL GAS |

BY THE COMMISSION: This proceeding was instituted by the Utilities Commission on November 6, 1973, to establish Rules for curtailment of service to natural gas customers, required by the reduced supplies of natural gas available to the five natural gas distribution companies in North Carolina from Transcontinental Gas Pipeline Corporation (TRANSCO), the only pipeline supplier of natural gas to North Carolina.

A public hearing was held on November 20, 1973, and affidavits, testimony and other evidence were received from numerous parties regarding the adverse effect of gas curtailment on the economy and continued industrial employment in North Carolina. The hearing was recessed, pending the outcome of proceedings in Docket No. RP72-99 before the Federal Power Commission (FPC) relating to the gas supply of Transco and the curtailment priorities which FPC would require Transco to follow. At that time, the FPC was considering two curtailment plans for Transco, the "pro-rata" plan, by which Transco would curtail gas supplied to every gas distribution company it serves an equal percentage amount based on contract demands, and the "467-B" plan, which would require Transco to curtail its gas distribution companies by varying amounts based on a nine priority system. At that time it was estimated that under the pro rata plan, the supplies of gas available to North Carolina gas distribution companies from Transco would be approximately 13% of contract demand volumes. Under the "467-B" plan the curtailment was projected to be approximately 27% less than contract demand.

On December 5, 1973, the Commission issued an Order which adopted an emergency procedure for the allocation of natural gas, required mandatory conservation by all gas customers of 15% of their previous usage and imposed substantial penalties on all persons and firms failing to achieve this level of conservation. The Commission further required the gas distribution companies to file new contracts and rate schedules for "essential human needs" customers. This Order was subsequently modified on December 20, 1973, to temporarily suspend the penalty provisions, since conservation of at least 15% was being voluntarily achieved.

This rate of conservation continued through the entire winter heating season ending on April 15, 1974. The State of North Carolina and this Commission were able to obtain a federal court order which postponed the effective date of an

FPC order which would have required Transco to curtail gas supplies on the basis of the "467-B" plan. In addition, the 1973-1974 winter period was much warmer than normal. These three factors combined to minimize the anticipated adverse impact of curtailment of natural gas on the North Carolina economy.

As a result of a motion by Piedmont Natural Gas Company (Piedmont) on seeking clarification of some of the aforementioned priority categories, the Commission scheduled additional hearings in this Docket for September 4, 1974.

During the intervening winter and summer months, the amount of curtailment by Transco to North Carolina gas distribution companies has grown steadily worse. Curtailment under the pro rata plan is now 31% and is expected to increase further. In addition, the FPC has now concluded its formal hearings in RP 72-99.

On June 18, 1974, the Utilitites Commission issued a Notice of Reduced Natural Gas Supplies for 1974-1975, wherein the Commission noted that under either "467-B" or "pro rata" plan North Carolina would receive substantially less quantities of natural gas than it had received during 1973-1974. The Commission forecasted that 1974-1975 annual curtailment would be 30.91% under the pro rata plan and 40.18% under the "467-B" plan. Under this latter plan many North Carolina industrial natural gas users would be cut off from gas during the entire winter heating season from November 15, 1974, through April 15, 1975. The Commission required each North Carolina natural gas distribution company to notify its industrial and commercial customers of the forecast number of days their gas would be cut off based on normal weather under both the pro rata plan and the "467-B" plan.

On July 31, 1974, the Commission, in announcing the resumed hearing in this docket on September 4, 1974, released a copy of a new Commission plan for curtailment priorities which the Commission would be considering for adoption at the September 4 hearing. The Commission invited affidavits and comments on its proposed plan prior to the hearing. Approximately 45 such affidavits were received. These parties and many more actually appeared at the September 4, 1974, hearing.

Based on the foregoing, the affidavits and exhibits introduced at the hearing and the entire record in this docket, the Commission now finds, determines and concludes as follows:

1. That the serious crisis concerning the shortage of natural gas available to North Carolina gas distribution companies, which has existed for over a year, continues to be a grave threat to North Carolina's industry and economy and to the job security of thousands of wage earners in this State.

2. That a major industrial crisis was avoided last year because of the fortuitous combination of three factors: (a) The actual curtailment experienced was only 16% as contrasted with the 27% that it would have been if federal courts has not suspended implementation of the "467-B" plan, (b) the winter weather was much warmer than normal and (c) natural gas users conserved use of gas by 15%. The absence of any of these factors could have produced industry shutdowns and widespread unemployment.

3. That the anticipated pro rata curtailment for North Carolina gas distribution companies during the coming winter season will, at best, average 27%, which is worse than that which was experienced last year. This year, if the "467-B" plan is placed into effect, it is anticipated that curtailment will average over 40%. Settlement negotiations are currently underway in FPC Docket No. RP72-99, but any settlement reached would probably exceed the 27% level of the present pro rata curtailment.

4. That all gas utilities have filed tariffs for the protection of "human needs" requirements as required by Commission Order dated December 5, 1973. In addition, the Commission has approved tariffs for the protection of industries' essential gas uses-process, and direct fired applications.

5. The Commission's previously announced Revised Rule R6-19.2 is a fair, just, reasonable and equitable method of allocation to retail gas customers in North Carolina such volumes of gas as will be available to gas distribution companies in this State from Transco.

6. That Companies with multi-plant operations within a gas utility's franchised service area should be permitted to shift gas contracts and the maximum daily contracted entitlement from one plant to another if the gas utility system deliverability permits.

7. To the extent that they are not modified or altered herein, the Commission hereby adopts the findings and conclusion made in its Interim Order Establishing Emergency Procedure for Allocation of Natural Gas issued on December 5, 1973.

IT IS, THEREFORE, ORDERED:

1. That, in this period of energy shortage, it is imperative that all natural gas consumers conserve and limit their use to basic and essential purposes. Therefore, the Commission Order of December 5, 1973, requiring a mandatory 15% conservation by all users shall remain in effect until modified upward or downward or abolished by further Commission Order. The suspension of penalty provisions contained in the Commission Order in this Docket dated December 20, 1973, shall remain in effect, but if the 15%

rate of conservation is not achieved, the Commission may reimpose such penalties at any time.

The Commission hereby establishes a special priority category to protect the economy of North Carolina from unemployment due to factory shutdowns caused by lack of natural gas or an alternate fuel, and the Commission will declare an emergency for the service area of any natural gas utility in which factories are closed down for lack of natural gas or alternate fuel and, during said emergency period, the Commission shall reduce the gas available to all customers of said gas utility by calling on all customers to further reduce their space heating thermostat to that degree of temperature necessary to conserve use of gas required to maintain factory employment at the best level which can be maintained consistent with the need for minimum temperatures required to maintain health and safety of customers in the service area of such gas utility. Each natural gas utility in which such an emergency is declared shall have the responsibility of auditing all customers' consumption which appears to be using greater quantities of gas than necessary for heat for such reduced temperature and calling upon such customer to reduce his temperature or notify such customer that his gas will be disconnected for failure to comply with the emergency temperature reduction order.

2. That, to the extent gas is unavailable for any North Carolina natural gas distributing company to supply its customers' requirements and it becomes necessary for such company to curtail its customers, such curtailment shall be made in accordance with Revised Commission Rule R6-19.2 which is attached hereto as Exhibit 1, and which is hereby adopted by this Commission as its Rule of Priorities for Curtailment of Service. The former Rule R6-19.2, adopted by this Commission in Docket No. G-100, Sub 18 on December 5, 1973, is hereby rescinded and cancelled.

3. That to the extent that gas is required for higher priority users due to increased curtailment lower priority customers will be curtailed.

4. (a) That Priority Classes A, B, C, D, E, F, G, H, I, N, O, P AND Q as shown on the attached Exhibit shall be frozen and no new customers whose gas requirement would fall in these categories shall be added by any gas company. Further, existing customers shall not be allowed to add gas-burning equipment whereby gas that is used in such equipment would fall within any of the above designated priority classes.

(b) Customers in Priority Classes A, B, C, D, E, F, G, H, I and J having gas requirements which fall within Priority Classes K, L, and M of Revised Rule R6-19.2 are permitted to shift these volumes into those classes by notifying their gas distribution companies thereof. Such notification shall take place by not later than October 11, 1974. Each gas distribution company shall thereupon report

to the Commission the amount of volumes so shifted and the amount of gas available for each priority class and the number of days of use that customers can expect in each priority class based on normal weather and settlement filing by Transco with the FPC. For the purpose of making such report to the Commission, each gas utility shall use the form contained in Exhibit 2 attached hereto. Such report shall be filed with the Commission on or before October 20, 1974.

(c) Prior gas company approval shall be required for new customer sales or new sales volumes to existing customers in Priority Classes J, K, L, M and R. If any customer, other than those in Priority Classes R and J, purchases gas within several different priority classes, the customer's volumes in each such priority shall be separately metered.

5. All gas which is upgraded or shifted from an A - J priority to a K - M priority upon the customer's request, shall be sold under the gas utility's tariff or rate provisions which apply to the higher priority.

6. That Companies with multi-plant operations within a gas utility's franchised service area be and are hereby permitted to shift gas contracts and the maximum daily contracted entitlement from one plant to another if the gas utility system deliverability permits.

7. That retail customers of a municipality which distributes natural gas and which purchases its gas requirements from a gas utility subject to the jurisdiction of the N.C.U.C. shall be protected in the same manner and to the same extent as the gas utilities' customers are protected. In order to accomplish this requirement each natural gas utility affected shall file appropriate tariff provisions.

8. That each natural gas utility shall send to each of its customers in priority A through Q a copy of this Order. Customers in priorities A through J shall also be sent a copy of the notice attached hereto as Exhibit 3. Further, each gas utility shall advise each of its customers in priorities A through Q the specific category or priority class into which its gas usage falls.

9. That this proceeding shall remain open for further orders of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Exhibit 1

Rule R6-19.2 Priorities for curtailment of service. - (a) In the event that the volumes of natural gas available to any North Carolina gas distribution company are insufficient to supply the demands of all the customers of that company, the company shall curtail gas service to individual customers in accordance with the following order of priorities:

| Priority Class | | Description |
|---|---|---|
| Curtailed First | A. | Interruptible requirements of more than 10,000 MCF per day* |
| | B. | Interruptible requirements of more than 3,000 MCF per day through 10,000 MCF per day* |
| | C. | Interruptible requirements of more than 1,500 MCF per day through 3,000 MCF per day* |
| | D. | Interruptible requirements of more than 300 MCF per day through 1,500 MCF per day* |
| | E. | Interruptible requirements of more than 300 MCF per day* where propane is the only alternate fuel |
| | F. | Firm industrial requirements for boiler fuel use of more than 3,000 MCF per day* |
| | G. | Firm industrial requirements for boiler fuel use of more than 300 MCF per day through 3,000 MCF per day* |
| | H. | Interruptible requirements of more than 50 MCF per day through 300 MCF per day* |
| | I. | Interruptible requirements of more than 50 MCF per day through 300 MCF per day* where propane is the only alternate fuel |
| | J. | Interruptible requirements through 50 MCF per day* |
| | K. | Industrial requirements for non-boiler direct flame process application where oil is the alternate fuel |
| | L. | Industrial requirements for non-boiler direct flame process application where propane (or other gaseous fuels) is the only alternate fuel |

*Calculated by dividing highest billing cycle usage during the period May 1, 1972, through April 30, 1973, by the number of days in the billing cycle.

| Priority Class | | Description |
|---|---|---|
| | M. | Essential human needs requirements of less than 300 MCF on peak day which have alternate fuel capability |
| | N. | Firm industrial non-boiler fuel requirements of more than 300 MCF per day* not in higher priority classes |
| | O. | Firm industrial requirements of more than 300 MCF per day and for feedstock, direct flame process or plant protection* |
| | P. | Firm industrial requirements of more than 50 MCF per day through 300 MCF per day* |
| | Q. | Firm commercial requirements of more than 50 MCF per day,* other than essential human needs requirements |
| Curtailed Last | R. | Residential requirements, essential human needs requirements of less than 300 MCF per day without alternate fuel and firm industrial and commercial requirements of 50 MCF or less per day* |

(b) 1. Gas shall not be considered available on a day by day basis for any interruptible priority class until requirements for emergency gas sales, current demands of higher priority classes and necessary storage for protection of firm service and system integrity are met.

2. Except for emergency gas service, all customers within a priority class must be interrupted completely prior to the interruption of any customer in a higher priority class.

3. In the event that it is not necessary to completely interrupt all customers in a priority class, each customer in that class shall, wherever practical, be curtailed on a pro rata basis for the season (Winter - November 16 through April 15 and Summer - April 16 through November 15).

4. In the event that gas supplies are not sufficient to support requests for emergency gas service from customers, such service shall be curtailed according to the above priorities.

*Calculated by dividing highest billing cycle usage during the period of May 1, 1972, through April 30, 1973, by the number of days in the billing cycle.

Within a priority class emergency gas service shall be supplied on a first-request basis.

(c) Definitions to be used in conjunction with Rule R6-19.2.

1. Boiler Fuel - Is considered to be natural gas used for a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

2. Commercial - Service to customers engaged primarily in the sale of goods or services including institutions and local and federal government agencies for uses other than those involving manufacturing or electric power generation.

3. Direct Flame Process Gas - Is defined as gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics for those customers who have contracted for service under specific rate schedules applicable only to this class of service.

4. Essential Human Needs - Is defined as hospitals, nursing homes, orphanages, prisons, sanitoriums, gas used for water and sewage treatment, boarding schools for gas volumes used for residential purposes, for those customers who have contracted for service under specific rate schedules applicable only to this class of customer.

5. Feedstock Gas - Is defined as natural gas used as a raw material for its chemical properties in creating an end product, including atmospheric generation for those customers who have contracted for service under specific rate schedules applicable only to this class of service.

6. Firm Service - Service from schedules or contracts under which seller is expressly obligated to deliver specific volumes within a given time period and which anticipates no interruptions, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

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

8. Interruptible Service - Service from schedules or contracts under which seller is not expressly obligated to deliver specific volumes within a given time period, and which anticipates and permits interruption on short

notice, or service under schedules or contracts which expressly or impliedly require installation of alternated fuel capability.

9. Plant Protection Gas - Is defined as minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel.

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

EXHIBIT NO. 2

COMPANY_____

ESTIMATED GAS AVAILABLE BY PRIORITIES
FOR PERIOD FROM NOV. 16, 1974 THROUGH APR. 15, 1975 (WINTER)
BASED ON SETTLEMENT FILED BY TRANSCO WITH FPC IN RP72-99

| NCUC Priority Class | No. of Customers | Days in Period | Days Gas Service Available | ESTIMATED Potential Market By Class For Period | MCF Available To Class For Period |
|---|---|---|---|---|---|
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |
| E | | | | | |
| F | | | | | |
| G | | | | | |
| H | | | | | |
| I | | | | | |
| J | | | | | |
| K | | | | | |
| L | | | | | |
| M | | | | | |
| N | | | | | |
| O | | | | | |
| P | | | | | |
| Q | | | | | |
| R | | | | | |

Assumptions used in preparing this report.

1. Normal Weather
2. Settlement Agreement Filed with FPC in RP72-99
3. NCUC System of Priorities and Reflecting All Gas Volumes Shift on October 12, 1974 to Priority K, L, M

EXHIBIT NO. 2-A

COMPANY_____

ESTIMATED GAS AVAILABLE BY PRIORITIES
FOR PERIOD FROM APR. 16, 1975 THROUGH NOV. 15, 1975 (SUMMER)
BASED ON SETTLEMENT FILED BY TRANSCO WITH FPC IN RP72-99

| NCUC Priority Class | No. of Customers | Days in Period | Days Gas Service Available | E S T I M A T E D Potential Market By Class For Period | MCF Available To Class For Period |
|---|---|---|---|---|---|
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |
| E | | | | | |
| F | | | | | |
| G | | | | | |
| H | | | | | |
| I | | | | | |
| J | | | | | |
| K | | | | | |
| L | | | | | |
| M | | | | | |
| N | | | | | |
| O | | | | | |
| P | | | | | |
| Q | | | | | |
| R | | | | | |

Assumptions used in preparing this report:

1. Normal Weather
2. Settlement Agreement Filed with FPC in RP72-99
3. NCUC System of Priorities and Reflecting All Gas Volumes Shifted on October 12, 1974 to Priority K, L, M

EXHIBIT 3

NOTICE

To Each Natural Gas User in Priority Classes A - J

Notice is hereby given that in accordance with the attached order each industrial gas customer purchasing gas in priorities A-J which has gas requirements that fall within K, L, M has until October 11, 1974 to advise its gas utility if it desires to have its high priority gas usage placed in K, L, M in accordance with North Carolina Utilities Commission Order issued in G-100 Sub 18 on September 20, 1974.

You are further advised that your gas usage falls in priority (ies) _____ according to our information. No request to change priority class by customers eligible for such K, L or M priority can be allowed after October 11, 1974, as all gas volumes will then be frozen based on the priorities then assigned.

DOCKET NO. G-100, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Installation of the Uniform System of Accounts Edited and Compiled by the National Association of Regulatory Utility Commissioners (Formerly National Association of Railroad and Utilities Commissioners) for Gas Utilities. | ) ORDER ADOPTING<br>) UNIFORM SYSTEM<br>) OF ACCOUNTS<br>) FOR GAS UTILI-<br>) TIES AS RE-<br>) VISED IN 1972<br>) AND 1973 BY<br>) THE NATIONAL<br>) ASSOCIATION OF<br>) REGULATORY U-<br>) TILITY COMMIS-<br>) SIONERS |

BY THE COMMISSION. On February 22, 1960, the Commission issued an Order in Docket G-100, Sub 1 ordering all gas utilities under the jurisdiction of the North Carolina Utilities Commission to adopt the Uniform System of Accounts for Gas Utilities as adopted by the National Association of Railroad and Utilities Commissioners at its 1958 Annual Convention. The effective date of that order was January 1, 1961. The Uniform System of Accounts for Class A and B Gas Utilities was revised in 1972, and for Class C and D Gas Utilities in 1973 by the National Association of Regulatory Utility Commissioners. The revisions include additional accounts, definitions and instructions which the National Association of Regulatory Utility Commissioners considered necessary to recognize both accounting changes as well as

other changes in the gas industry since 1958. This Commission is of the opinion that these changes should be adopted by all gas utilities under the jurisdiction of this Commission.

IT IS, THEREFORE, ORDERED that Commission Rule R6-70 is hereby amended to read as follows:

> Rule R6-70. Uniform System of Accounts... (a) Except as otherwise provided in Subsection (b) herein, the Uniform System of Accounts for Gas Utilities as revised in 1972 and 1973 by the National Association of Regulatory Utility Commissioners is hereby adopted as the accounting rules of this Commission for gas companies and is prescribed for the use of all gas utilities under the jurisdiction of the North Carolina Utilities Commission, viz:
>
> Uniform System of Accounts for Class A and B Gas Utilities - 1972
>
> Uniform System of Accounts for Class C and D Gas Utilities - 1973
>
> (b) The accounting treatment to be used for Contributions in Aid of Construction is as follows: (Letter Order dated February 5, 1974.)
>
> (1) Contributions in Aid of Construction are revoked from the uniform system of accounts for gas utilities and the balances therein are to be transferred to plant in service and to the related property investment account of plant giving rise to the contribution.
>
> (2) The amounts of contributions in aid of construction which are related to depreciable property which is no longer in service, or cannot be identified or associated with a plant function, shall be credited to Account 108, Accumulated Provision for Depreciation of Utility Plant.
>
> (3) The amounts of contributions in aid of construction which are related to non-depreciable type of property that is no longer in service shall be credited to Account 111, Accumulated Provision for Amortization and Depletion of Utility Plant.
>
> (4) Future contributions in aid of construction shall be credited to the appropriate plant in service account when booked.

(5) Where amounts in contributions in aid of construction relate to non-utility plant the amounts shall be credited to Account 122, Accumulated Provision for Depreciation and Amortization of Non-Utility Property.

(6) When a customer has advanced money for construction and it is recorded in Account 252, Customer Advances for Construction, upon refunding the entire amount to which he is entitled according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to the respective plant account.

ISSUED BY ORDER OF THE COMMISSION.

This 24th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>The Application of United Telephone Company of the Carolinas, Inc. for a Hearing and Order Determining that Toll Settlement Ratio Used in Intrastate Toll Settlements Between Southern Bell Telephone and Telegraph Company and United Should Recognize and Properly Reflect the Relative Cost of Capital of Bell and United for Each Settlement Study Period. | )ORDER<br>)DENYING<br>)ADOP-<br>)TION OF<br>)PRO-<br>)POSED<br>)FINAN-<br>)CIAL<br>)RISK<br>)PLAN |

Heard In: Hearing Room of the Commission, One West Morgan Street, Raleigh, North Carolina on June 19, 20, 21, 1973. Commission Library, One West Morgan Street, Raleigh, North Carolina on September 26, 27, 1973.

Before: Chairman Marvin R. Wooten, presiding, Commissioners Ben E. Roney and Hugh A. Wells.

Appearances: For the Applicant and Intervenor:

James M. Kimzey and
Stephen T. Smith

For:

United Telephone Company of the Carolinas, Inc. and
Carolina Telephone and Telegraph Company

Claude M. Warren and
C. M. Warren, Jr.

For:

United Telephone Company of the Carolinas, Inc. and
Carolina Telephone and Telegraph Company

For the Respondents:

R. C. Howison, Jr.

For:

Southern Bell Telephone and Telegraph Company

John F. Beasley

For:

Southern Bell Telephone and Telegraph Company

Drury B. Thompson

For:

Southern Bell Telephone and Telegraph Company

Ward W. Wueste, Jr.

For:

General Telephone Company of the Southeast

A. Terry Wood

For:

Central Telephone Company

Donald W. Glaves

For:

Central Telephone Company

For the Commission Staff:

Edward B. Hipp, Commission Attorney, North Carolina Utilities Commission, Raleigh, North Carolina 27602

Wilson B. Partin, Assistant Commission Attorney, North Carolina Utilities Commission, Raleigh, North Carolina 27602

BY THE COMMISSION. On October 15, 1971, in Docket No. P-55, Sub 681, Southern Bell Telephone and Telegraph Company (hereinafter "Southern Bell") applied for an increase in rates for intrastate local and toll telephone service in North Carolina. The intrastate toll rate increases applied for were in addition to the increases granted to Southern Bell in Docket No. P-55, Sub 650 and to the remaining telephone companies in Docket No. P-100, Sub 26.

The Commission, on November 8, 1971, in Docket No. P-55, Sub 681, ordered that Southern Bell's application for increased intrastate toll rates be separated from Docket No. P-55, Sub 681 and in a separate proceeding a new docket - Docket No. P-100, Sub 28 made all telephone companies under the jurisdiction of the Commission parties to the proceeding, recognizing that it be in the public interest

that toll rates be uniform among all telephone companies operating in North Carolina. The Commission, on its own motion, set Docket No. P-100, Sub 28 for public hearing on March 21, 1972.

On June 30, 1972 and July 3, 1972, the Commission issued, respectively, its Order Denying Toll Rate Increase and Order Correcting Errors in Docket No. P-100, Sub 28. These orders denied the toll rate increase and among other things, required Southern Bell to renegotiate all costs and division of revenues toll settlement contracts with connecting companies in North Carolina then being settled on a combined local and toll intrastate rate of return to be settled using an intrastate toll only rate of return to become effective January 1, 1973.

By the end of November 1972, all cost and division of revenues toll settlement contracts had been renegotiated in accordance with the Commission's orders except those contracts with United Telephone Company of the Carolinas, Inc. (hereinafter "United") and Carolina Telephone and Telegraph Company (hereinafter "Carolina"). The Commission scheduled a recorded conference to be held on December 11, 1972, for the purpose of determining the status of the renegotiations between Southern Bell and United and between Southern Bell and Carolina. At this conference both United and Carolina explained that their interpretation of the word renegotiate in the Commission's orders included renegotiation of any and all issues that might concern intrastate toll settlement procedures and that as part of the renegotiation they wanted recognition or their greater cost of capital to be used in determining the settlement ratio used in the intrastate toll settlements and that the matter of which rate of return to use - combined local and toll or toll only - was of no great consequence to either of them. Southern Bell was not willing to negotiate this issue of including relative costs of capital in the toll settlement procedures.

At the conclusion of the recorded conference on December 11, 1972, United filed an Application with the Commission seeking a hearing and order which would require incorporating into the intrastate toll settlement process, recognition of United's greater cost of capital. In view of the fact that the existing toll settlement contracts between said parties were not to be renewed as of January 1, 1973, if renegotiation agreements could not be reached, the Commission, by letter of December 21, 1972, requested that intrastate toll settlements between parties be conducted under contract on a cost basis using the intrastate toll only rate of return. This settlement arrangement would be in effect until an order was issued following further considerations and hearings by the Commission on the Application filed by United on December 11, 1972.

On December 27, 1972, Carolina filed its petition for Leave to Intervene in the matter of United's Application.

The Commission allowed such petition by order issued February 1, 1973. Also, on February 1, 1973, the Commission issued its Order of Investigation and the Setting of Hearing in the matter and scheduled a public hearing beginning June 19, 1973.

The following telephone companies making settlements on the cost or division of revenues basis were made parties to the investigation: Carolina Telephone and Telegraph Company, Central Telephone Company, Citizens Telephone Company, Concord Telephone Company, General Telephone Company of the Southeast, Heins Telephone Company, Norfolk and Carolina Telephone and Telegraph Company, North Carolina Telephone Company, Oldtown Telephone Systems, Inc., Thermal Belt Telephone Company, Westco Telephone Company and Western Carolina Telephone Company.

In the same order, the Commission ordered that United and Southern Bell and Carolina and Southern Bell settle their intrastate toll settlements on Southern Bell's earned intrastate toll only rate of return beginning January 1, 1973, and continue to do so until ordered otherwise.

Hearings were held in this matter on June 19, 20, 21, 1973, and on September 26, 27, 1973. Testimony was presented for the Applicant, United, by Mr. Joseph F. Brennan, President of Associated Utility Services, Inc., an independent utility consulting firm specializing in rate of return and financial studies and Mr. Edwin W. Small, President of United Telephone Company of the Carolinas, Inc. Testimony for the Intervenor, Carolina, was presented by Mr. J. F. Havens, who at the time of the hearings, was Vice President of Revenue Requirements and Public Relations, Carolina Telephone and Telegraph Company and is now President of the Company. Respondent Central Telephone Company presented the testimony of Mr. K. L. Pohlman, Secretary-Treasurer of Central Telephone Company. Respondent, Southern Bell Telephone and Telegraph Company, presented testimony of the following witnesses: Mr. Charles H. Garity, Assistant Vice President of Southern Bell Telephone and Telegraph Company; Mr. Robert L. Towles, Jr., Independent Company Relations Manager of Southern Bell Telephone and Telegraph Company; Mr. Robert N. Dean, Assistant Vice President and Assistant Treasurer of Southern Bell Telephone and Telegraph Company, and Mr. Walter W. Sessoms, who was on leave of absence from Southern Bell and is now a financial analyst with the Federal Power Commission. The following other companies who were made party to the investigation filed their response to the Commission's Order of Investigation and the Setting of Hearing of February 1, 1973, by letter, statement or short testimony but did not participate otherwise at the hearing: Citizens Telephone Company, Concord Telephone Company, General Telephone Company of the Southeast, Norfolk and Carolina Telephone and Telegraph Company, North Carolina Telephone Company, Thermal Belt Telephone Company, Westco Telephone Company and Western Carolina Telephone Company.

The Staff of the North Carolina Utilities Commission did not present testimony in this proceeding.

## ISSUES AND ARGUMENTS

This section contains a brief summary of the issues and arguments as presented through the testimonies of the witnesses previously named in this proceeding.

In its Application, United proposed a Financial Risk Plan which would incorporate into the intrastate toll settlement process recognition of the relative cost of capital in determining the settlement ratio used in the intrastate toll settlements. Support for the Plan stemmed from the arguments that the cost of capital to the independent companies is higher than that to Southern Bell and should be recognized in making intrastate toll settlements. Hence, the rate of return element in the intrastate toll settlement process should not be the achieved or earned toll rate of return of Southern Bell. Also, due to the higher capital costs in providing toll facilities, the toll settlement revenues (based on Southern Bell's achieved rate of return on toll) received by the independents is less than the cost of providing toll facilities. Applicant further argued that since Southern Bell has traditionally initiated changes in the levels of the intrastate toll rates subject to approval by the North Carolina Utilities Commission, Southern Bell's cost in providing intrastate toll facilities have included its cost of capital, but that the intrastate toll rates do not account for the cost of capital to the independents since the toll settlements do not include recognition of the independent's higher cost of capital.

Applicant stated that the toll settlement process indirectly recognizes two components of the cost of capital, debt capital and interest free capital, through the treatment of fixed charges and deferred taxes, respectively, and that the third component, equity capital, should be recognized. Thus, the Financial Risk Plan was proposed to recognize this component.

The application of the proposed Financial Risk Plan would require using in the toll settlements an overall rate of return to be applied to each independent's net investment used and useful in rendering intrastate toll service and to be computed using each independent's weighted cost of debt and an equity return tied to Southern Bell's achieved rate of return on equity adjusted to reflect the debt to equity ratio between Southern Bell and the settling independent company. Applicant stated that the intent of the Plan is not to guarantee a rate of return to the independents on their intrastate toll investment base but to provide the same equity component to all participants in the joint venture of rendering intrastate toll service. Applicant recognized that adoption of the Financial Risk Plan would result in a relative larger intrastate toll settlement amount to both United and Carolina and to a majority of the

other companies making toll settlements on a cost or division of revenues basis. Southern Bell's relative portion of the toll settlements and that of the REA financed companies with a high debt component would be reduced.

Respondent, Southern Bell, argued that the intrastate toll settlement methods presently being used have resulted in an equitable and reasonable distribution of toll revenues among the participating companies in the joint venture of rendering intrastate toll service throughout the state of North Carolina and that since the intrastate toll operation is a joint venture it is subject to the same business risk. Thus, there is no measurable difference in overall risk to the participating companies in the toll operation. If intercompany financial risk exists, it is caused by other factors unrelated to the joint venture since the overall risk of the joint toll business provides equal risk to each participant, and the overall cost of capital and rate of return is the same for investments of all companies. Respondent further stated that the intrastate toll rates presently in effect in North Carolina were set using the value of service concept rather than being set based on actual costs of providing the service. Therefore, it is not possible to determine without a cost of service study, whether the present rates are producing revenues sufficient, more than sufficient or less than sufficient to allow the participating companies to recover their total costs in providing intrastate toll service.

Southern Bell criticized the proposed Financial Risk Plan on four (4) points:

1. The Plan assumes that the overall cost of capital is applicable to every separate operation of the company. This ignores the fact that the business risk for the joint venture is the same for all participants.

2. The Plan assumes there are measurable differences in overall cost of capital between the participants in the toll operation. In actuality, there is not a precise way to measure the cost of equity capital. United and Carolina have testified previously to overall cost of capitals which were not significantly different from that allowed to Southern Bell.

3. The Plan assumes that any difference in overall cost of capital can be measured directly through the relationship between the common equity ratio and the cost of equity capital. In reality, investors will demand varying returns on equity depending on the earnings prospects of the firm and the general economic conditions following an increase in debt cost rate. There are other factors that may increase debt cost beyond an increase in debt component - higher debt costs, demand for higher yields due to increased business risk, timing of debt issue, and maturation of low cost issues.

4. The Plan assumes that the intrastate toll settlement ratio is Southern Bell's achieved toll rate of return with the implication that it is not the same as the industry wide toll rate of return. In actuality, the determination of the settlement ratio is no more dependent on Southern Bell's capital structure than that of any other participating company.

FINDINGS OF FACT

1. The rendering of intrastate toll service in North Carolina is a joint venture participated in by all telephone companies in North Carolina charging uniform toll rates approved by this Commission for this service. A fair and equitable method has to be used to divide toll revenues generated by this service among the companies, recognizing their cost in the joint provision of this service. The toll settlements have been conducted relying on the separation procedures as contained in the February 1971 issue of the Separations Manual adopted by the National Association of Regulatory and Utilities Commissioners and the Federal Communications Commission.

2. Through the years, Southern Bell has acted as a clearinghouse for the toll settlements. Negotiated Traffic Agreements between Southern Bell and each of the participating companies have been used to conduct these toll settlements. The Traffic Agreements have not included a specific provision as such for recognition of the relative cost of capital among the participating companies in determining the settlement ratio used in the intrastate toll settlements.

3. Over the years, prior to January 1, 1973, both United and Carolina participated in the toll settlements by means of these negotiated Traffic Agreements.

4. The Financial Risk Plan is not consistent with the accepted financial principle of leverage. Leverage provides an increased return to the equity owner as compensation for the increased financial risk on equity from a higher debt obligation. The Plan would further increase equity return by requiring the weighted cost of equity to remain constant as the debt component of the capitalization increased over and above the automatic increase in equity return through leveraging. The Plan would provide for a minimum cost of capital occurring with a capital structure consisting of 100% equity capital.

5. Due to the joint venture nature of the intrastate toll service, a change in toll settlements to one company would necessarily cause changes in the toll settlements of all the other participating companies. If adopted, the Financial Risk Plan as proposed by United would result in a redistribution of toll revenues among the companies settling with Southern Bell on a cost basis or a division of revenues basis. Some of the companies, including United and Carolina

would receive relatively more revenues while Southern Bell and the high debt financed companies would receive relative less toll revenues. Such a Plan would not affect the companies settling with Southern Bell on a standard contract basis.

6. This matter of intrastate toll settlements is subject by law to the jurisdiction of the North Carolina Utilities Commission as stated in Section 62-44 of the General Statutes of North Carolina and as evidenced by the Commission's fixing of the intrastate toll rates in North Carolina and by the Commission's decision in Orders Denying Toll Rate Increase and Correcting Errors issued previously in this Docket No. P-100, Sub 28 in which the Commission ordered that the intrastate toll settlements be made using Southern Bell's toll only rate of return and not their combined local and toll rate of return effective January 1, 1973.

## CONCLUSIONS

1. The Commission concludes that when it issued its Order Denying Toll Rate Increase and Order Correcting Errors dated June 30, 1972, and July 3, 1972, respectively, in Docket No. P-100, Sub 28, it had intended that the renegotiation of the Traffic Agreements would be directed specifically to the question of changing from a combined local and toll intrastate rate of return to the intrastate toll only rate of return.

2. The Commission concludes that the Financial Risk Plan is not consistent with the principles of finance employed by this Commission in its determination of the minimum cost of capital and is, therefore, inappropriate as a basis upon which to distribute North Carolina intrastate toll revenues.

3. The Commission concludes that the adoption of the proposed Financial Risk Plan will further complicate the intrastate toll settlement procedures and, consequently, further complicate the regulation of this matter.

4. The Commission concludes that the evidence presented on the key issues in this proceeding was sharply contradictory and that the burden of proof to make a change in the present intrastate toll settlement procedures at this time by adopting the Financial Risk Plan was not fully demonstrated by the Applicant.

5. The Commission concludes that the intrastate toll service in North Carolina is possible through the joint undertaking of all the telephone companies in North Carolina and that the present toll settlement procedures are not exact and that inequities may be present in them warranting a general investigation into the total matter of the division of intrastate toll revenues to be initiated in a separate docket to investigate any possible inequities and

not to make any changes to the present toll settlement process until the completion of this investigation.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the adoption of the Applicant's proposed Financial Risk Plan to modify intrastate toll settlement procedures to recognize the relative cost capital in the settlement ratio used in the intrastate toll settlements be denied.

2. That the matter of the recognition of the relative cost of capital to be used in determining the settlement ratio used in intrastate toll settlements be considered, among other aspects of the division of intrastate toll revenues, in a general investigation to be conducted under a separate docket into the matter of the division of intrastate toll revenues among the participating companies in North Carolina.

3. That United Telephone Company of the Carolinas, Inc. and Carolina Telephone and Telegraph Company shall continue to conduct intrastate toll settlements with Southern Bell Telephone and Telegraph Company by renewing the cancelled Traffic Agreements between said parties modified only to reflect using the intrastate toll only rate of return as specified in Commission's Order Denying Toll Rate Increase and Order Correcting Errors issued June 30, 1972 and July 3, 1972, respectively, in Docket No. P-100, Sub 28 to be retroactive to January 1, 1973.

4. That a copy of this Order be sent to all other telephone companies settling intrastate toll revenues with Southern Bell on a cost basis or division of revenues basis.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Investigation of Interconnection of Subscriber-Provided Equipment with the Telephone Network of Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission. | ) SUPPLEMENTAL ORDER AMENDING PROPOSED RULE |

BY THE COMMISSION: Subsequent to its Order of June 29, 1973, in this Docket, the Commission has held public hearings, received motions and comments, and has further considered the duties and responsibilities of this Commission under the laws and statutes of North Carolina to deal with the matters under consideration in this Docket as may be necessary to (1) ". . . provide fair regulation of public utilities in the interest of the public, to promote adequate, economical and efficient utility services to all the citizens and residents of the State, to provide just and reasonable rates and services without unjust discrimination, undue preference or advantages, or unfair or destructive competitive practices. . . ." (North Carolina General Statutes, Chapter 62, Section 2), and (2) ". . . ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed or followed by any or all public utilities . . ." (G. S. 62-43).

In the progress of this Docket, the Commission has carefully considered every aspect of the broad public policy issues involved in this investigation. We are inclined to the view that the overriding concern of the Commission should be the integrity of the public telephone network and its continued availability to the general population at reasonable rates. Competition among suppliers or would-be suppliers of telephone terminal equipment and station apparatus may or may not lend itself to a more dependable network and/or stable telephone rates, but we cannot responsibly respond to our duty under the laws of this State by mere conjecture on this point. We do know that experience has shown that the traditional approach of relying upon certificated public utility telephone entities to supply and be responsible for the great bulk of terminal equipment and station apparatus has resulted in a reliable, efficient, nationwide communications system at costs which have enabled the great majority of our citizens to enjoy its use and benefits.

We recognize that the last two decades have witnessed the development of significant new dimensions of telecommunications in the data field and that the public utility telephone companies have neither traditionally supplied data transmitting and receiving terminal equipment in the same way in which they have supplied station apparatus for voice communications, nor have they demonstrated their superior capability of rendering this type of service, as they have for conventional voice communications. The progress of this Docket and the instant Order will reflect our recognition of this basic distinction of needs and capabilities.

The Commission also recognizes the widespread use of certain specialized customer-owned equipment such as automatic announcement machines and automatic answering and recording devices, and that the public interest would indicate that the continued use of such equipment under

appropriate tariffs with appropriate interface devices would require an exception for this type of equipment. This Order will therefore reflect our recognition of this distinction of customer needs and requirements.

While tending to the view that the certificated utilities should be responsible for furnishing and maintaining all conventional voice communication station apparatus and terminal equipment, we recognize that non-affiliated manufacturers of such equipment have offered and are offering a wide variety of apparently useful devices not offered by the certificated companies. While we tend to the view that an infinite variety of customer offerings is not and should not be the goal of any well managed regulated telephone utility, regulated companies should not be insensitive to changing customer needs and tastes. We will expect, and if necessary require, regulated companies to exert every reasonable effort to avail themselves and their customers of soundly engineered and efficiently manufactured station apparatus and terminal equipment which can be economically acquired, marketed, and maintained, and that regulated companies should not and may not blindly and obstinately rely solely upon affiliated suppliers of such equipment purely out of family loyalty.

The Commission continues its emphasis on the promotion of the availability of adequate and efficient station apparatus and terminal equipment to North Carolina ratepayers and, to that end, proposes to establish a reporting procedure whereby the Commission will be advised monthly by each telephone utility of the applications for such apparatus and equipment which the utility fails or refuses to furnish.

Based upon the evidence, comments, and motions so far received in this Docket, the Commission, in its judgment and discretion, Finds and Concludes that the proposed rule promulgated with the Order of June 29, 1973, should be amended and clarified to express the Commission's declared intent to deal as justly, fairly, reasonably and specifically with the many and diverse facets inherent in the question of whether and to what extent this Commission should, under the laws of this State, allow and direct the interconnection of customer-owned terminal equipment and station apparatus to the telephone network owned and operated by the various public utilities certificated to conduct such business in the State of North Carolina.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the proposed Rule numbered R9-5 and promulgated with the Commission's Order of June 29, 1973, is hereby amended by deleting said Rule in its entirety and substituting in lieu thereof the proposed Rule attached to and made a part of this Order designated as EXHIBIT A TO COMMISSION ORDER OF JUNE 12th, 1974, IN DOCKET NO. P-100, SUB 31.

2. That all subpoenas duces tecum heretofore filed in this Docket are hereby disallowed.

3. That the evidentiary hearing commenced in this docket on October 2, 1973, and recessed by agreement of the parties is hereby scheduled to be resumed on January 7, 1975, at 10:00 A.M., in the Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina.

4. That objections to direct evidence tendered and received into the record at the October 2, 1973, hearing may be made at the resumed hearing, at the time for cross-examination of the witnesses, including motions to strike.

5. That any party desiring to submit supplemental direct testimony prefile this testimony with the Commission and serve a copy of said testimony on all parties of record on or before December 6, 1974.

6. That request to cross-examine any specific witness whose testimony was received into the record at the October 2, 1973, public hearing or who files supplemental testimony on or before December 6, 1974, shall be served on all parties of record and filed with this Commission on or before December 20, 1974.

7. The Commission will establish an appropriate procedure for rebuttal evidence upon motion or notice of any party desiring to offer said evidence.

8. That computers, data transmitting and receiving terminals, fire alarm equipment, burglar alarm equipment, or other non-voice communications equipment not usually offered for service by a telephone company and automatic answering and recording devices and automatic announcement devices may be interconnected with the system of any public utility telephone company operating in this State under duly approved tariffs.

9. That telephone utilities operating in this State may continue to authorize interconnection of telecommunications equipment owned and operated by the following named entities and customers, so long as adequate protection is provided to eliminate potential harm to the telephone network, and said telephone utilities are relieved from all responsibility for service and maintenance of such equipment; executive agencies of the United States and the State of North Carolina; military forces of the United States; law enforcement agencies of the State of North Carolina or any political subdivision in the State; pipeline companies, electric suppliers, railroads, public utility radio common carriers and Western Union.

10. That the above actions shall not apply to direct interstate communications service, and telephone utilities operating in this State may interconnect subscriber-owned or subscriber-provided telecommunications equipment for direct

interstate communications service under such rules as may be prescribed by the Federal Communications Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

EXHIBIT A TO COMMISSION ORDER OF JUNE 12, 1974, IN DOCKET NO. P-100, SUB 31

PROPOSED RULE FOR THE CONNECTION OF SUBSCRIBER OWNED OR PROVIDED TELECOMMUNICATIONS EQUIPMENT

RULE R9-5. Telephone utilities to own, service, and be responsible for certain equipment used in telecommunications service; interconnection of certain subscriber-owned or subscriber-provided equipment prohibited.

(a) From and after June 1, 1975, no telephone public utility doing business in North Carolina shall allow the interconnection of its telecommunications system customer-owned or provided station apparatus of terminal equipment of the following types:

1. PBX and PABX equipment

2. Key and push-button telephone equipment.

3. Main station and extension telephone sets, ringers, bells, gongs, chimes, buzzers, jack equipment and telephone set cords.

(b) Customer-owned or customer-provided equipment of the type described in sub-paragraph (a) above connected to any telephone utility system in this State prior to June 1, 1975, under appropriate interconnection tariffs on file with this Commission may remain in service so long as said equipment is useful to the customer for whom said interconnection was initially provided or any successor customer occupying the same premises upon which said equipment is located.

(c) For the purposes of this Rule, computers, data transmitting and receiving terminals, fire alarm equipment, burglar alarm equipment or other non-voice communications equipment not usually offered for service by a telephone company and automatic answering and recording devices and automatic announcement devices shall not be deemed to be station apparatus or terminal equipment as defined by this Rule, and may be interconnected with the system of any

public utility telephone company operating in this State under duly approved tariffs.

(d) Telephone utilities operating in this State may continue to authorize interconnection of telecommunications equipment owned and operated by the following named entities and customers, so long as adequate protection is provided to eliminate potential harm to the telephone network, and said telephone utilities are relieved from all responsibility for service and maintenance of such equipment; executive agencies of the United States and the State of North Carolina; military forces of the United States; law enforcement agencies of the State of North Carolina or any political subdivision in the State; pipeline companies, electric suppliers, railroads, public utility radio common carriers and Western Union.

(e) This Rule shall not apply to direct interstate communications service, and telephone utilities operating in this State may interconnect subscriber-owned or subscriber-provided telecommunications equipment for direct interstate communications service under such rules as may be prescribed by the Federal Communications Commission.

(f) From and after January 1, 1975, each telephone public utility company operating in North Carolina shall furnish to the Commission a monthly report describing applications for the types of station apparatus and terminal equipment, enumerated in paragraph (a) above, which the utility has failed or refused to furnish.

DOCKET NO. W-100, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Installation of the Uniform System of Accounts Edited and Compiled by the National Association of Regulatory Utility Commissioners (Formerly National Association of Railroad and Utilities Commissioners) for Water Utilities. | )ORDER ADOPTING<br>)UNIFORM SYSTEM<br>)OF ACCOUNTS FOR<br>)WATER UTILITIES<br>)AS REVISED IN<br>)1973 BY THE NA-<br>)TIONAL ASSOCIA-<br>)TION OF REGULA-<br>)TORY UTILITY<br>)COMMISSIONERS |

BY THE COMMISSION. On November 25, 1958, the Commission issued an Order in Docket W-100, Sub 1 ordering all water utilities under the jurisdiction of the North Carolina Utilities Commission with annual gross operating revenues of $10,000 or more derived from sales of water to adopt the Uniform System of Accounts for Water Utilities as adopted by the National Association of Railroad and Utilities Commissioners on April 1, 1957. The effective date of that order was January 1, 1959. The Uniform System of Accounts for Water Utilities was revised in 1973 by the National Association of Regulatory Utility Commissioners. The revisions include additional accounts, definitions and instructions which the National Association of Regulatory Utility Commissioners considered necessary to recognize both accounting changes as well as other changes in the water industry since 1957. This Commission is of the opinion that these changes should be adopted by all water utilities under the jurisdiction of this Commission with annual gross operating revenues of $10,000 or more derived from sales of water.

IT IS, THEREFORE, ORDERED that Commission Rule R7-35 is hereby amended to read as follows:

> Rule R7-35. Uniform System of Accounts. The Uniform System of Accounts for Water Utilities as revised in 1973 by the National Association of Regulatory Utility Commissioners is hereby adopted as the accounting rules of this Commission for water companies and is prescribed for the use of all water utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of $10,000 or more derived from the sales of water.

IT IS FURTHER ORDERED, that those water companies now exempt from this Order shall become subject to said Order when their annual gross operating revenues reach or exceed $10,000.

ISSUED BY ORDER OF THE COMMISSION.

This 24th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 152

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

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| Clark H. Kirkman, Jr., and wife, Eugenia K. Kirkman, 8500 Fox Run, Potomac, Maryland 20854, Complainants | ) |
| v. | ) ORDER |
| Duke Power Company, Charlotte, North Carolina Defendant | ) |

HEARD IN: The Commission Hearing Room, One West Morgan Street, Ruffin Building, Raleigh, North Carolina, on September 19, 1973, at 9:30 A. M.

BEFORE: Chairman Marvin R. Wooten (Presiding), and Commissioner Ben E. Roney. Commissioner Hugh A. Wells to read the record and participate in the decision.

APPEARANCES:

For the Complainants:

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For: Clark H. Kirkman & Wife, Complainants

Robert S. Cahoon, Esq.
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For: Clark H. Kirkman & Wife, Complainants

For the Respondent:

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For the Commission Staff:

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and

Robert Page, Esq.
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BY THE COMMISSION. This matter came on for hearing before Chairman Marvin R. Wooten (Presiding), and Commissioner Ben E. Roney with Commissioner Hugh A. Wells to read the record and participate in the decision on September 19, 1973, on the complaint of Clark H. Kirkman, Jr., and wife, Eugenia K. Kirkman against Duke Power Company.

Kirkman's complaint was filed with the Commission on February 15, 1973, alleging certain wrongful and damaging acts and plans on the part of Duke in connection with the proposed construction of a high-voltage transmission line by Duke across property owned by Kirkman in Pentress Township, Guilford County, North Carolina. The complaint was served on Duke by the Commission's Order of February 21, 1973, in which Order Duke was notified to answer or otherwise plead to the complaint within 20 days of the service of the Order.

On February 23, 1973, Duke filed its Answer to the complaint, setting forth certain defenses therein, and praying that the complaint be dismissed. Duke's answer was served on Kirkman by Commission Order of February 27, 1973.

On March 15, 1973, Kirkman filed Reply to Duke's Answer, wherein they set forth certain further allegations of facts and circumstances, and prayed that the issues raised in the pleadings be set for hearing before the Commission.

On March 20, 1973, Duke filed its Motion to Dismiss for failure to state a cause of action and, in the alternative, that the complaint be dismissed for want of jurisdiction. By its Order of March 27, 1973, the Commission set Duke's Motion to Dismiss for Oral Argument on April 10, 1973. Argument was duly heard before Chairman Wooten (Presiding), and Commissioners McDevitt, Roney and Wells. Duke was represented at the Oral Argument on its Motion to Dismiss by

William I. Ward, Jr., Esquire, of the Charlotte Bar, a member of Duke's Legal Staff. Kirkman was represented at the Oral Argument by Robert S. Cahoon, Esquire, of the Greeensboro Bar.

Upon consideration of the able argument of counsel, the Commission issued its Order of June 12, 1973, denying Duke's Motion to Dismiss and setting the matter for hearing before the Commission. Chairman Wooten dissented from the Order of June 12. On June 18, 1973, Duke filed Exceptions to the Order of June 12, but did not request to be heard on its Exceptions.

By various Orders, the matter was continued and finally set for hearing on September 19, 1973. At the hearing, Kirkman was represented by Mr. Cahoon and by William T. Crisp, Esquire, of the Raleigh Bar. Duke was represented by Mr. Ward and by Daniel T. Fouts, Esquire, of the Greensboro Bar. Kirkman went forward with the evidence, presenting the testimony and exhibits of three witnesses: Mr. Frank A. Jenkins, Vice President, Transmission and Electrical Installations, Duke Power Company; Mr. Clark H. Kirkman, Jr., and Dick Booth, a registered professional engineer of the firm of Booth and Associates of Raleigh.

Jenkins was examined and testified extensively as to the location of Duke's substation facilities in the neighborhood of the Kirkman property; certain other property owned by Duke in the neighborhood; Duke's proposed transmission line, a portion of which would cross the Kirkman property; the nature and terrain of the Kirkman property and property adjacent to it; alternative means of routing the transmission line across or around the Kirkman property; and design principals involved in transmission line construction and location.

Kirkman was examined and testified extensively as to the nature and location of his property; its use for forestation purposes in the past and at present; his plans for future use and development of the property; his attempted negotiations with Duke over the location of the proposed transmission line; the manner in which Duke's planned construction would affect and damage his property; and environmental criteria for the construction of electric transmission lines and facilities.

Booth was examined and testified as to his study of maps and aerial photographs of the Kirkman property and the immediate vicinity; his experience in the design and construction of transmission lines and facilities; his study of Duke's proposed line and its impact on the Kirkman property; and his study of and recommendations as to certain alternative routes for Duke's proposed line.

Kirkman placed into evidence a number of aerial photographs, maps, and plats of the Kirkman property and other property in the neighborhood, showing the present

nature of the property, Duke's proposed line, possible alternative location for Duke's proposed line, and proposed or possible subdivision of the Kirkman property into residential lots and tracts.

Duke presented the testimony of a single witness, Mr. James L. Eskridge, Jr., a Greensboro real estate broker, who testified as to the nature and value of the Kirkman property and its potential for development and as to how these things might be affected by Duke's proposed transmission line construction across or through the Kirkman property.

During the course of the hearing, Duke did not renew its Motion to Dismiss, neither at the close of Kirkman's evidence nor at the close of all the evidence.

Following the hearing, simultaneous briefs were filed by both parties on November 13, 1973.

Based upon the entire record, the Commission makes the following

## FINDINGS OF FACT

1. Complainants are the owners of a certain tract or parcel of real property in Fentress Township, Guilford County, North Carolina, said tract being approximately 102.6 acres in size.

2. Defendant is a duly certificated public utility firm doing business in North Carolina and more particularly in Fentress Township, Guilford County, North Carolina.

3. Duke is proposing and has plans to construct a 230-kilovolt electric transmission line, with supporting structural towers, for a distance of approximately 3,592 lineal feet across the property owned by Complainants in Fentress Township, requiring a right-of-way of 100 feet in width, upon which Duke proposes to place five large steel transmission towers. The segment of line crossing the Kirkman property is a portion of a line from Duke's Belews Creek generating facility in Stokes County, North Carolina, to its Pleasant Garden's substation in Guilford County, North Carolina, the total transmission project being approximately 20 miles in length.

4. The proposed Duke transmission line would cross the Kirkman property in a generally north-south trajectory, generally along the highest elevation of said property.

5. Said line, when constructed, would be clearly visible from any point of orientation on said property and generally throughout the neighborhood.

6. Duke owns certain property in the vicinity of the Kirkman property along which it would be physically possible

to route a large portion of the line proposed across the Kirkman property.

7. Complainants have offered Duke an alternative location along a lower elevation of their property, where, if located, said line would be less visible from a large portion of said property.

8. Said line, if constructed as proposed by Duke, will have a significant visual impact upon persons residing upon or near the Kirkman property. If located in the alternatives proposed by Complainants, said visual impact would be significantly diminished.

9. The record is not clear or conclusive as to the comparable cost of constructing the segment of line in question as proposed by Duke compared to alternatives proposed by Complainants.

10. Of the approximately 20 total miles of right-of-way needed for the construction of the entire line, Duke has acquired the right to use all of the property needed by it in the construction of the line except the portion crossing the Kirkman property.

11. This Commission has not promulgated or established rules or regulations setting forth or dealing with design or construction criteria for use or guidance of public utilities in the planning or construction of electric transmission lines by said public utilities in North Carolina.

Based upon the foregoing Findings of Fact, the Commission makes the following

## CONCLUSIONS

The gravamen of the complaint in this matter is that the Defendant, Duke Power Company, has acted or proposed to act in an unreasonable and arbitrary manner to the detriment and damage of the complainants, and contrary to and in contravention of the laws and statutes of the State. Inherent in the complaint is the question of the jurisdiction of this tribunal to hear the complaint, consider the evidence, and to render a judgment.

The public policy of the State of North Carolina as it pertains to the organization, existence, acts, and activities of public utilities is principally enunciated in Chapter 62 of the General Statutes. The public policy of the State as it relates to the environmental ethic is principally enunciated in Chapter 113-A of the General Statutes. Construed together, we conclude that the acts and activities of public utility firms operating in North Carolina are not free from considerations of environmental criteria and that this tribunal is charged with the judicial responsibility to determine whether or not public utility

firms in this State are operating their various and respective enterprises in a manner compatible with the spirit of the Environmental Policy Act of 1971. Such determinations, however, cannot be properly made in a judicial or regulatory vacuum, but must be achieved in a context of due process for all concerned. This complaint proceedings viewed further in the light of the broad grant of regulatory authority and duty stated in Chapter 62, indicates that the acts and activities of public utilities in North Carolina are generally subject to the review and judgment of this Commission as those acts and activities relate to the furnishing to individual consumers and the public at large of their services which are affected with a public interest, the franchise for which has been granted by the State to the utility. A careful reading of the pertinent provision of Chapter 62 leaves no doubt as to the duty and responsibility of this Commission to exercise its regulatory judgment in a manner which will establish a proper balance between the economic interest of the utility in providing a critical public utility service at a reasonable return and the right of the individual citizen, private or corporate, in the enjoyment of that service at reasonable costs and in a sensible and safe manner. It is therefore basic law in this State that the grant of franchise to a public utility carries with it the requirement of reasonable conduct in the discharge of its business functions. No public utility may, under the cloak of franchise, act arbitrarily and unreasonably in the conduct of its business and in the providing of its service to the public without being answerable to the law or the jurisdiction. Assuming such arbitrary and unreasonable acts on the part of the public utility in the providing of its service to the public or to individual citizens, the proper forum for the consideration of such matters may be either this Commission or the General Court of Justice, depending upon the nature of the complaint and the relief sought in this matter. The nature of this complaint is that the Defendant, Duke Power Company, has acted or proposes to act in an unreasonable and arbitrary manner in the construction of an electric transmission line, the purpose of which is to provide electric service to individual citizens and the public in general in North Carolina, and the relief sought is an order to alter the plans of Duke Power Company for the construction of said line and to require that the proposed transmission line be constructed in a different manner and particularly in a different place. This is the proper forum for the consideration of such a complaint.

Under the present laws and statutes of North Carolina and the Rules and Regulations of this Commission, we conclude that, upon the evidence in this case and the facts found herein, the Defendant, Duke Power Company, has not acted arbitrarily in the location of the transmission line in question. It appears clear and uncontroverted from the record in this matter that the line in question is of such length and size that it would be expected to cross or traverse the property of many persons, including that of the

Complainants, and the record is clear and uncontroverted that Complainants' property is the missing link; that is, all other property rights needed for the construction of a line of approximately 20 miles in length have been acquired by Duke. There is no showing that Duke singled out the property of Complainants for arbitrary routing of the line. The record here reflects an unyielding and intransigent attitude on the part of Duke's officials and agents, but their acts and activities herein considered do not reach the arbitrary level.

Until such time as this Commission properly promulgates and adopts appropriate rules and regulations for the design, construction and location of high-voltage transmission lines by electric utilities in this State, it will be difficult for us to apply our judgment ex post facto to such design and construction so as to conclude in a particular instance that the utility has acted arbitrarily.

We conclude that it is not necessary under the laws of North Carolina for a public utility to obtain from this Commission a Certificate of Public Convenience and Necessity for the construction of a high-voltage electric transmission line, nor is it necessary under the provisions of the Environmental Policy Act of |97| for such a utility to file with any agency of the State of North Carolina an environmental impact statement before undertaking such construction. In so concluding, we enunciate the caveat that such construction is not in any sense to be undertaken at the whim or caprice of a public utility, but is, in the broad regulatory framework set forth in Chapter 62, subject in a proper case to the review and judgment of this Commission. High-voltage transmission lines are very expensive to build and maintain and therefore are first cousins to generating facilities, which facilities are subject to formal, prior certification. Such high-voltage transmission lines make critical demands upon the use of land resources and are therefore to be reasonably built and maintained in keeping with the broad public policy set forth in the Environmental Policy Act of |97|.

Consistent with the foregoing Findings of Fact and Conclusions, it is, therefore,

ORDERED

That the relief prayed for herein is hereby denied, and the complaint of Clark H. Kirkman, Jr., and wife, Eugenia K. Kirkman, is hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 234

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Carolina Power and Light Company for Authority to Adjust Its Electric Rates and Charges ) ORDER APPROVING FOSSIL FUEL CLAUSE AND REVENUE COLLECTED UNDER IT THROUGH SEPTEMBER 30, 1974

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, and the Cities of Wilmington and Asheville, North Carolina

DATE: July 9, 1974, through September 19, 1974

BEFORE: Chairman Marvin R. Wooten, presiding, Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

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For the Intervenors:

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For the Commission Staff:

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BY THE COMMISSION. This matter is before the Commission upon the Application of Carolina Power and Light Company (hereinafter referred to as "CP&L") filed with the Commission on January 25, 1974, for authority to adjust its retail electric rates and charges by the addition of a fossil fuel adjustment clause. By Commission Order dated February 5, 1974, the Commission authorized and permitted CP&L to place into effect an interim fossil fuel cost adjustment clause. The Commission further consolidated Docket E-2, Sub 234 with Docket E-2, Sub 229 and ordered that evidence heretofore presented in this matter be subject to cross-examination and further review before final disposition as part of Docket E-2, Sub 229.

By Order dated March 3, 1974, the Commission modified its Order of February 5, 1974, to provide for an undertaking for refund pending final determination of all revenue collected under the fossil fuel adjustment clause.

The Commission recognized the Notice of Intervention of the Attorney General in Docket E-2, Sub 229 to which E-2, Sub 234 was consolidated and allowed Petitions to Intervene in both dockets by the North Carolina American Federation of Labor and Congress of Industrial Organizations (A.F.L.-

C.I.O.); North Carolina Textile Manufacturers Association, Inc.; North Carolina Consumer Council, Inc.; United States of America, Department of the Navy, Atlantic Division, Naval Facilities Engineering Command; The City of Asheville; Southern Tri-County Ginners Association; and Ball Corporation.

On March 18, 1974, the City of Asheville filed an application for leave to withdraw as an Intervenor. By Commission Order dated March 25, 1974, the Commission allowed the Application of the City of Asheville to withdraw as an Intervenor.

The Attorney General appealed the Commission's Order of February 5, 1974, authorizing CP&L to implement a fossil fuel adjustment clause. The Court of Appeals allowed a Motion to dismiss the appeal from the Order and subsequent efforts by the Attorney General to obtain review in the Supreme Court by appeal and by certiorari were unsuccessful. File Number 74|OUC 539

On June 12, 1974, the Commission issued an Order requiring publication of the final Notice setting the case for public hearing.

The Commission held public hearings for nineteen days beginning on July 9, 1974, and going through September 19, 1974, in Raleigh, Wilmington and Asheville.

Briefs were filed in this proceeding on October 31, 1974.

At the public hearings, the Commission received the pre-filed written testimony of witnesses of the Applicant, the Staff and the Intervenors, and each witness was tendered for cross-examination and the transcript will show a full and ample right of all parties to introduce all relevant evidence and exhibits and to cross-examine all proposed evidence and exhibits of all other parties.

With respect to fossil fuel adjustment clause, CP&L offered the testimony and exhibits of the following witnesses: Shearon Harris, Chairman of the Board, President and Chief Executive Officer of CP&L, testifying on the uncertainties created by the energy crisis and the need for a fuel clause; Bruce C. Netschert, Economic Consultant, testifying on the price outlook for fossil fuel for CP&L, and the management of its fuel purchases under recent market conditions; Edwin E. Utley, Vice President of the Bulk Power Supply Department of CP&L, testifying on fuel purchasing practices, the recent erratic market conditions that exist in the fossil fuel market; and Samuel Behrends, Jr., Vice President and Director of Rates and Regulations for CP&L, testifying on the advantages and disadvantages of the proposed fuel clause.

The N.C. Textile Manufacturers Association, Inc., offered the testimony of Dr. Charles E. Olson, Professor of Public

Utility Economics at the University of Maryland, testifying on the appropriateness of the use of a fossil fuel clause.

The Commission Staff offered the testimony and exhibits of Mr. Andrew W. Williams, Chief of the Electrical Section in the Engineering Division, as to the advantages and disadvantages of automatic adjustment clauses and as to the relative effectiveness of the proposed automatic fossil fuel cost adjustment clause.

As a result of the Commission's continuing surveillance program of the operation of the fossil fuel clause in effect on an interim basis, the Commission on September 30, 1974, directed its Staff to broaden the scope of its monthly investigations into the operation of CP&L's clause and to quantify reasons for the differences in the monthly surcharges of CP&L, Duke and VEPCO. In addition, the Staff was directed to investigate the fuel purchasing practices and policies of each utility.

By further Commission Order issued November 27, 1974, the Commission set further hearings in this docket for January 30, 1975, and separated it from Docket E-2, Sub 229 for decision and further hearings, and ordered that the record of the consolidated hearings be made a part of the record in both dockets.

By a separate Commission Order dated November 27, 1974, the Commission merged Docket E-2, Sub 247, a Complaint by the Attorney General, into this docket (E-2, Sub 234) for investigation, and further hearings, and final decision.

## ISSUES

Rates charged by electric utilities are a composite of three distinct charges: demand, energy, and customer charges. Normally fuel and fuel related cost are recovered in the energy portion of the rates. Basic electric rates are based on many factors and these basic rates are expected to remain in effect over a period of time. By the very nature of a rate application case, it takes many months to change these basic rates. Each case is bottomed in part on an assumed price of fuel, for, to a large extent, fuel is the raw material of electricity. So when the price of this fuel fluctuates rapidly and spirals upward, it destroys one of the primary foundation stones of the basic rates. This produces a time lag for the utility company whose rates were based on a much lower fuel price, and whose basic rates cannot be changed except by a time-consuming process. One means of adjusting rates for rapidly changing fuel costs in a period of severe fuel market instability is to have a surcharge placed upon the basic rates to reflect the true and rapidly changing fuel costs not reflected in the basic rates. This same fuel adjustment will reduce the consumer's total bill (Basic rate plus adjustment for fuel) if and when the price of fuel is less than that assumed in the basic rates. The surcharge under consideration here is calculated

by subtracting the established base cost of fossil fuel reflected in the fossil fuel adjustment formula from the actual monthly cost of fossil fuel burned in the generation of electricity. Ideally, the base cost of fossil fuel reflected in the fuel adjustment formula equals the base cost of fossil fuel recovered in the energy portion of the rates. The total dollar increase in fossil fuel is divided by total monthly sales to yield a dollar per KWH factor which is applied to customers' bills in the second month following the generating month. In effect, the ratepayer would pay the amount by which current costs for fossil fuel exceed the base cost of fossil fuel in the fuel clause, corresponding proportionately to the KWH the ratepayer consumes. The Commission monitors the operation of the formula and monthly charges to protect the consumer against overcharges.

## FINDINGS OF FACT

1. The largest single item of expense for CP&L in 1973 was fossil fuel used for electric generation. During the test year, 1973, CP&L spent approximately 106.2 million dollars for fuel for generation of power for an increase of seven times over the 1960 expenditure of 13.9 million dollars.

2. CP&L used approximately 7.8 million tons of fossil fuel in the generation of electricity during the test year 1973.

3. CP&L's fossil fuel consumption for 1973 was approximately 7.8 million tons or an increase of approximately 16.4 percent over the 6.7 million tons consumed during the calendar year 1972. The average price of coal (the major fossil fuel consumed) increased from 46.79 cents per million Btu in January, 1973, to 92.5 cents per million Btu in June, 1974, or approximately a 100 percent increase in burned coal cost in approximately one and a half (1 1/2) years. Oil increased from 49.16 cents per million Btu in January, 1973, to 176.84 cents per million Btu in March, 1974, for an increase of over 350 percent. Gas experienced much smaller increases in cost from 50.52 cents per million Btu in January, 1973, to 58.15 cents per million Btu in March, 1974. Total burned fossil fuel cost increased from 47.80 cents per million Btu in January, 1973, to 78.25 cents per million Btu in March, 1974, for an increase of over 50 percent. These sudden and drastic increases in the cost of fossil fuel used in electricity generation have resulted in large increases in the cost of producing electric power. Such increases cannot be recovered in CP&L's rate design without an automatic adjustment for fuel costs without further deterioration of earnings before general rate cases can be filed properly noticed and heard under the procedure for general rate cases.

4. The demand for coal (CP&L's predominant fuel) continually increases, while the production of coal appears

to be leveling off or decreasing. The electric utility industry is the single largest consumer of coal in the nation. The Commission takes judicial notice of the coal industry estimates of a total consumption of coal of 659 million tons, of which 435 million will be consumed by electric utilities.

5. CP&L has been unable to earn the return on its common stock equity found to be fair and reasonable by this Commission. This shortfall in earnings has been caused, in part, by the sharp rise in the cost of fossil fuel. A continuing shortfall in earnings could result in higher rates to the customer and possibly jeopardize service.

6. At last count 196 privately owned electric utilities in 43 states had fuel adjustment clauses in operation. To a large extent coal, oil and gas are burned in the same plant facilities, and thus, a reasonable adjustment clause should include all fossil fuels. A fossil fuel clause would allow the pass-through of the increased cost of fuel in the monthly electric bill in an amount to reflect no more than the actual increase in the cost of fossil fuel over the base cost of the fossil fuel clause. Such a fuel clause must be administered so as not to increase the rate of return to CP&L. The clause constitutes only a pass-through of the expense incurred by CP&L in the production of each kilowatt hour of electricity in the form of a direct surcharge for each kilowatt hour consumed.

7. A "KWH" type of fuel clause, as opposed to a "Btu" type clause, adjusts for improvements in generation efficiency and appropriately passes any savings to the ratepayer.

8. A reasonable base cost for CP&L's fossil fuel cost adjustment clause amounts to .00513 cents per kilowatt hour, which was the cost of fossil fuel for the month of June, 1973, using the average heat rate for the twelve (12) months ending June 30, 1973. This base cost is derived from the costs of fossil fuels shown on monthly reports filed with the Commission.

9. The fossil fuel cost adjustment factor applied to bills rendered in September, 1974, was computed based on July, 1974, burned cost of fossil fuel. All of which fossil fuel was purchased prior to July 31, 1974.

10. In view of the circumstances surrounding the fossil fuel market, the fossil fuel adjustment clause is a reasonable method by which CP&L can recover a part of its reasonable operating expenses.

## CONCLUSIONS

The Commission concludes from all of the evidence in this proceeding that it is necessary and essential and in the public interest to approve the revenues collected by CP&L

under its fossil fuel cost adjustment clause from bills rendered through September 30, 1974. The adjustment factors used on bills rendered through September 30, 1974, are based on fossil fuel (coal primarily) purchased and burned prior to July 31, 1974. Failure of the Commission to approve revenues of the magnitude involved would seriously impair the Company's ability to earn the return set by the Commission as just and reasonable.

The Commission also concludes that the cost of coal and oil continue to spiral upward exceeding the estimates projected by the Company.

In this and other recent dockets involving CP&L and other electric utilities operating in North Carolina, this Commission has heard and considered voluminous evidence on the supply and price of coal and on the procurement practices of the particular utilities. Additionally, the Commission, through various conferences, contacts, and correspondence with the Federal Power Commission and the Federal Energy Administration, has kept itself informed as to continuing developments relating to the supply and price of coal, as well as other fossil fuels used in the generation of electricity.

Beginning in 1970, coal prices began to move sharply upward from pre-1970 levels. Expressed in price units per million Btu (burned cost), the unit prices moved from a range of 26 cents to 29 cents per million Btu to a range of 41 cents to 45 cents per million Btu by the end of 1971 or early 1972, at which levels prices became stable until the last quarter of 1973.

With the advent of the petroleum shortage of the fall and winter of 1973, several circumstances combined to result in rapid and sharp rises in the price of coal. At that time, although coal was not in short supply, it was not in abundant supply. There was apparently a sufficient supply of coal for the use of those electric utilities in North Carolina and other southeastern states who depend primarily on coal for generation. The Federal Energy Administration decided that one means of alleviating the petroleum shortage would be for Eastern Seaboard electric utilities who had stopped using coal but still had coal-burning capacity to switch back to coal (where possible) for the 1973-74 winter season. Upon learning of the position and actions of the FEA in this regard, this Commission, in a meeting with FEA officials at the Federal Power Commission offices in Washington in December, 1973, urged the FEA officials not to pursue their intended actions to bring additional demands upon the coal market because we were convinced that there was not enough coal to allow for such additional demands without resulting in an imbalance of supply and demand, with the result that prices would inevitably be forced upward. We also called to their attention that coal hopper cars were in short supply, and that significant increases in coal shipments to northeastern utilities would cause delivery

problems for utilities in North Carolina and other southeastern states. We reinforced these views through correspondence with the FEA and the FPC. Our suggestions and warnings were ignored.

During the winter of 1973-74, we contacted all members of the North Carolina congressional delegation, calling their attention to the potential problems related to FEA policy, and although the members of the delegation responded with similar pleas to the FEA, their suggestions and pleas were substantially ignored.

From December of 1973 forward, coal became increasingly hard to obtain. Contract deliveries began to lag; Btu content of delivered coal deteriorated; hopper cars became in short supply; and spot coal became progressively harder to buy and more and more expensive. To sum up, the price of spot coal of acceptable quality and Btu content went from a range of $8.00 to $12.00 per ton in the fall of 1973 to $18.00 to $23.00 per ton in early 1974 to $25.00 to $30.00 per ton in the spring of 1974 to $35.00 to $45.00 per ton in the summer of 1974.

It is clear to us that these rapid price increases in spot coal, reaching almost 400 percent within less than a year, were not completely cost related but resulted in large measure from coal producers and sellers taking advantage of a crisis of supply of fossil fuels available to the American people to gain unprecedented and excessive profits for themselves.

These market forces to which we have alluded and with which CP&L has had to deal are beyond the ability of either this Commission or CP&L acting alone to control. Under these adverse and unfortunate circumstances, we are compelled to allow CP&L to recoup these great increases in fossil fuel cost in a just and reasonably expeditious and orderly manner, for to do otherwise would imperil CP&L's ability to operate and provide service.

The Commission further concludes that the substantial increase in the cost of fossil fuel has contributed to the shortfall in earnings experienced by CP&L.

The Commission concludes that savings resulting from improvements in generation efficiency will automatically be passed on to the customers in the operation of the fossil fuel clause.

During 1973 CP&L incurred a cost of fossil fuel significantly in excess of that recovered by CP&L in the energy portion of the rates charged to its customers. In a fuel market in which there exists steadily increasing prices, CP&L will continually experience a shortfall in earnings in that rates designed without an adjustment clause will not permit CP&L to recover the cost it incurs in purchasing fossil fuel. In light of these circumstances, a

fossil fuel adjustment clause is a just and reasonable method of recovering the costs CP&L incurs in its purchase of fuels.

The Commission concludes that the cost of fossil fuel incurred by CP&L is a reasonable operating expense to the extent that CP&L exercises sound management practices in negotiating with suppliers and to the extent that CP&L pays a reasonable price for the fuels purchased.

The Commission concludes that a fossil fuel adjustment clause is a part of the rate to be fixed by the Commission pursuant to G.S. 62-133. The Commission further concludes that G.S. 62-133(b) (5) directs the Commission to fix rates to be charged as will earn in addition to reasonable operating expenses the rate of return on the fair value of the property which produces a fair profit. Thus, the Commission concludes that for the purpose of approving a fossil fuel adjustment clause, the Commission should determine whether the Company's operating expenses are reasonable in that the clause will not increase CP&L's rate of return, but will merely slow attrition of the rate of return. The rate of return on the fair value of the property used and useful in providing service will be determined in the general rate case, E-2, Sub 234, and which has been separated from this docket for decision.

The Commission concludes that its system of monitoring the operation of the fossil fuel clause will insure that CP&L acts in accordance with sound management practices in its negotiations, as well as protect the ratepayers of North Carolina from CP&L recovering more through the fossil fuel clause than its reasonable operating expenses as they relate to cost of fossil fuel increases above the base cost in the fossil fuel clause.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the fossil fuel adjustment clause set forth in the Company's application filed on January 25, 1974, and approved on an interim basis by Commission Order of February 5, 1974, is hereby approved on the basis herein set forth. All revenues collected thereunder from bills rendered through September 30, 1974, be, and the same hereby are, approved.

2. That the Commission shall continue its investigation and proceed with the hearings scheduled for January 30, 1975, into the application of the clause and the fossil fuel purchasing procedures and policies of CP&L to the extent that they affect the fossil fuel adjustment factors applied to bills rendered after September 30, 1974.

3. That the undertaking for refund required by Commission Order dated March 13, 1974, be, and the same hereby is, discharged and cancelled with respect to all

revenues collected under CP&L's fossil fuel clause on bills rendered through September 30, 1974.

4. That CP&L shall continue to file with the Commission monthly reports on the amount of the fuel cost adjustment factor and the factors and computations used in its derivation. This form is to be expanded to include all items shown in the form attached as Appendix "A."

ISSUED BY ORDER OF THE COMMISSION.

This 19th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Commissioner Wells concurs with result only.

APPENDIX "A"

CAROLINA POWER & LIGHT COMPANY

FOSSIL FUEL ADJUSTMENT CLAUSE

MONTHLY REPORT

Date:_____

TO: North Carolina Utilities Commission

The Fossil Fuel Adjustment Clause factor applicable to North Carolina retail sales billed in the month of _____, 19__, is $_____ per KWH, based on fossil fuel expense, generation and total sales in the month of _____, 19__, computed as follows:

| | | |
|---|---|---|
| 1. | Total Cost of Fossil Fuel Burned | $_____ |
| 2. | Base Cost ($0.00513 x Fossil Fuel Generation of _____ KWH) | $_____ |
| 3. | Difference (1. - 2.) | $_____ |
| 4. | Total System Sales - KWH | _____ |
| 5. | Factor Before State Taxes (3. ÷ 4.) | $_____ |
| 6. | Tax Factor | _____ |
| 7. | Adjustment Factor (5. ÷ 6.) | $_____ |
| 8. | The estimated generation mix for the current billing month (% Fossil, % Nuclear) | _____ |

9. The generation mix for the second month preceding the current billing month (% Fossil, % Nuclear) _____

10. The fossil fuel fired generating plant efficiency, the "heat rate," i.e., the number of Btu which must be consumed to produce one KWH of electric energy. _____

11. The average heat content of coal expressed in Btu per pound. _____

12. Amount billed under Fossil Fuel Adjustment Clause Factor applicable to North Carolina retail sales month of _____, 19__. $_____

13. Coal received during the month of _____

| | Percent | ¢/m Btu |
|---|---|---|
| Contract | _____ | _____ |
| Spot | _____ | _____ |

DOCKET E-2, SUB 234

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power and Light ) ORDER ALLOWING
Company for Authority to Adjust its ) FOSSIL FUEL
Electric Rates and Charges. ) ADJUSTMENT CLAUSE

BY THE COMMISSION. On January 25, 1974, Carolina Power and Light Company (CP&L) filed with the North Carolina Utilities Commission an application for authority to adjust its retail electric rates and charges by the addition of a fossil fuel adjustment clause to be rendered on monthly bills on and after March 1, 1974.

The requested fossil fuel adjustment clause is intended to charge (or credit) each kilowatt-hour sold with the proper share of the cost of fossil fuel which is above (or below) the established base cost. The base cost in the requested clause is 4.81 mills/KWH. The base cost was computed from the heat rate for fossil generation and the actual cost of fossil fuel burned by CP&L during the twelve months ending June 30, 1973. The clause is a "KWH" or "100% efficiency" type clause which automatically adjusts for improvements in efficiency and for energy supplied by other sources.

CP&L included in its application detailed explanations of conditions and occurences supporting its requested addition of a fossil fuel clause to its tariffs. In addition, CP&L provided the affidavits of Mr. Samuel Behrends, Jr., Vice President and Director of Rates and Regulations, and Mr. Edwin E. Utley, its Vice President of Bulk Power Supply,

offering further support to its request for a fossil fuel cost adjustment clause. The affidavits of Mr. Behrends and Mr. Utley, respectively, describe the operation of the proposed fuel clause and the instabilities and increasing costs in the fossil fuel market.

From the verified application and the affidavits offered in this docket and the entire record in the matter, and subject to further evidence as may be presented at a later date, the Commission makes the following

FINDINGS OF FACT

(1) That CP&L is a public utility corporation organized and existing under the laws of the State of North Carolina, and subject to the jurisdiction of this Commission.

(2) That CP&L is engaged in the business of developing, generating, transmitting, distributing and selling electric power and energy to the general public within the State of North Carolina, with its principal office and place of business in Raleigh, North Carolina.

(3) That in order to obtain the necessary capital to finance the generating capacity which CP&L reasonably anticipates, it must issue and sell securities in large amounts which must come from outside financing, which comes at a time when interest rates and cost of labor, materials and equipment are at or near their all-time high.

(4) That the fossil fuel market, particularly the coal industry in Districts 7 and 8, is currently in an unstable condition, and is likely to remain unstable for some time, primarily because of rapidly increasing production costs and competition for available supply.

(5) That CP&L's current coal inventories have fallen well below the desirable level of a 70- to 80-day supply.

(6) That CP&L's financial condition is not sufficient to enable it to absorb rapid large increases in its fuel costs without severe economic dislocations and impairment in CP&L's ability to continue to provide adequate and reasonably priced electric service in the future.

(7) That a fuel cost adjustment clause is a viable means to enable CP&L to help protect its financial integrity during a period of a rapidly fluctuating fuel market.

(8) That the "KWH" or "100% efficiency" type clause, as filed by CP&L is the most appropriate form of fuel cost adjustment clause.

(9) That this fossil fuel clause is designed to return to CP&L only increased expenditures for fossil fuel and will not result in any increase in rates of return previously approved by the Commission in Docket E-2, Sub 229.

(10) That the proper base cost for this clause should be calculated using fuel costs for the end of the interim test period in Docket E-2, Sub 229 (month of June 1973) and the average heat rate for fossil generation for this test period, i.e., 51.78¢/MBTU X 9899 BTU/KWH = 5.13 Mills/KWH.

(11) That this Docket E-2, Sub 234 can be appropriately consolidated with CP&L's pending rate increase Docket E-2, Sub 229 to provide opportunity for consideration of this matter concomitant with all of CP&L's electric rates.

## CONCLUSIONS

The current disturbances in the coal market, resulting in large part from the energy crisis, the increasing prices of all forms of energy and CP&L's present financial condition lead this Commission to the conclusion that CP&L has shown good cause in writing and through affidavits and exhibits, reduced to writing, which justifies the approval of the requested fossil fuel cost adjustment clause. The requested fossil fuel clause is the most appropriate form of automatic fuel adjustment clause because it is the "KWH" or "100% efficiency" type which automatically adjusts for improvements in generation efficiency and generation by alternate sources. Furthermore, a fuel clause can be consistent with proper rate designs as it applies the increased cost of energy directly to the consumer using that energy. In the design of its proposed clause, CP&L used the actual fossil fuel costs for the twelve months ending June 30, 1973, to determine the base cost (4.81 Mills/KWH). The proper base cost for the clause, consistent with Commission actions in the interim rate increase proceeding, would be calculated using fuel costs for the end of the test period (month of June, 1973) and the average interim test year heat rate for fossil fueled generation, i.e., 51.78¢/MBTU X 9899 BTU/KWH = 5.13 Mills/KWH. This fossil fuel cost adjustment clause will only return to CP&L increased expenditures for fossil fuel burned in the generation of electricity and should help stabilize but not increase the rates of return earned by CP&L; therefore, the Commission is of the opinion that the fossil fuel clause should be approved. However, recognizing the fact that there has been no hearing and no opportunity for complaints, testimony or cross-examination, the Commission deems it appropriate to consolidate this Docket (E-2, Sub 234) with the pending rate increase Docket (E-2, Sub 229) to afford opportunity for further review and final disposition of a fuel cost clause as a part of the consideration of all rates of CP&L.

IT IS, THEREFORE, ORDERED:

1. That effective on service rendered on and after February 6, 1974, with respect to fossil fuel burned on and after December 1, 1973, the Applicant, Carolina Power and Light Company, is authorized and permitted to put into effect a fossil fuel cost adjustment clause of the type attached to its application as Exhibit B, Rider No. 32,

altered to reflect a base cost of $.00513/KWH instead of the requested base cost of $.00481/KWH.

2. That Carolina Power and Light Company will report to the Commission on a monthly basis the amount of the fuel cost adjustment and the factors and computations used in its derivation.

3. That Docket E-2, Sub 234 is hereby consolidated with Docket E-2, Sub 229 and all evidence heretofore presented in this matter is subject to cross-examination and further review before final disposition as a part of Docket E-2, Sub 229.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 234

WELLS, COMMISSIONER, DISSENTING. In my dissent in CP&L's interim increase request (Docket No. E-2, Sub 229), I pointed out that CP&L's present rate structure apparently allows it to sell large amounts of power at low discriminatory rates to certain industrial customers, and that therefore an across-the-board interim increase would work further inequities, shifting the burden unfairly to the residential consumer. To make bad matters worse, the type of fuel clause granted by the majority in the Order is a "one hundred percent recovery" clause, which means that the power company will get back all its cost, no matter how high, leaving little or no incentive for them to attempt to achieve the lowest possible fuel cost and best generation mix. Under these circumstances, I must dissent from the majority Order.

I would also like to make it abundantly clear that I do not accept fuel adjustment clauses as an acceptable tool or device for setting rates for electric utilities in this State, and it is only because of the very unusual, emergency circumstances that we now find ourselves in that I voted for the principle of such a clause for Duke Power Company and Virginia Electric Power Company requests. There is no question but that the coal and oil markets are out of control of the American people and in the control of the giants of the petroleum industry who own both coal and oil reserves in the United States. The American consumer is getting taken to the cleaners in a most unholy fashion by the petroleum giants, and now, as a result of their manipulations of the market, coal and oil prices to electric companies are going to send electric bills out the ceiling.

I am sure the petroleum giants love fuel adjustment clauses, because they then can set the price of coal and oil where they want it, collect it from the electric companies, who will then automatically get it back from their customers. I do not see much evidence that the electric companies are doing a great deal about the mess, except to come running to this and other Commissions and cry out for more money to keep their stockholders happy, while everybody else is taking it on the chin. I would like to see some of the executives of Carolina Power and Light Company, Duke Power Company and Virginia Electric and Power Company speaking forth in righteous indignation about what's happening to their customers in contrast to their constant sad refrain of what might happen to their stockholders.

Hugh A. Wells
Commissioner

DOCKET E-7, Sub 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Duke Power Company | ) | ORDER APPROVING |
| for Authority to adjust Its Electric | ) | FOSSIL FUEL |
| Rates and Charges | ) | ADJUSTMENT CLAUSE |

BY THE COMMISSION. This matter is before the North Carolina Utilities Commission upon application filed November 30, 1973, by Duke Power Company, Charlotte, North Carolina, (hereinafter referred to as "Duke") for authority to adjust its electric rates and charges by the implementation of an automatic coal adjustment clause. By order dated December 19, 1973, the Commission allowed the applicant, Duke Power Company, to put into effect the entire adjustment clause applied for. The Order also consolidated this Docket with Docket E-7, Sub 159, an application by Duke Power Company for authority to adjust and increase its electric rates and charges, and specifically stated that all evidence presented in this matter would be subject to cross-examination and further review before final disposition.

Public hearings commenced on May 28, 1974, at which time the following appearances were entered:

APPEARANCES:

For the Applicant:

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Clarence W. Walker

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For the Protestants:

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For the Intervenors:

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For the Commission Staff:

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John R. Molm
Associate Commission Attorney
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At their request, the above parties of record were given until August 23, 1974, to file briefs.

Petitions to Intervene allowed by the Commission were filed by Great Lakes Carbon Corporation; The North Carolina Public Interest Research Group; North Carolina Consumers Council, Inc.; The North Carolina AFL-CIO; Chemstrand Research Center, Inc.; The Senior Citizens Clubs of Winston-Salem; The Durham Welfare Rights Steering Committee; Carolina Action; R. J. Reynolds Tobacco Company; and Duke University. The Attorney General of North Carolina gave notice of intervention which was recognized by the Commission.

## WITNESSES

With respect to the coal cost adjustment clause, Duke offered the testimony and exhibits of the following witnesses: Mr. Robert E. Frazer, Vice President-Finance of Duke Power Company, as to the financing program of Duke Power Company; Mr. Wallace W. Carpenter, Vice President of Consulting Services for Ebasco Services, Inc., Consultant, as to the relative advantages and disadvantages of the clause to the company and the nationwide trend of use of fuel clause principle in the electric industry; Mr. B. B. Parker, Executive Vice President and General Manager, Duke Power Company, as to the current situation that Duke faces with respect to obtaining an adequate supply of coal to meet its load requirements, to show the current situation in the coal field with respect to supply and demand, together with price; Mr. M. T. Hatley, Manager - Rate Department, Duke Power Company, and Mr. Carl Horne, Jr., President and Chief Executive Officer of Duke Power Company, as to the operation of the coal adjustment clause.

The Attorney General offered the testimony and exhibits of Mr. Paul Fahey, Procurement Consultant, as to the cost of coal during the calendar year 1973.

The Commission staff offered the testimony and exhibits of Mr. Andrew W. Williams, Chief of the Electric Section in the Engineering Division, as to the advantages and disadvantages of automatic adjustment clauses and as to the relative effectiveness of the proposed automatic coal cost adjustment clause.

## INTRODUCTION

Rates charged by electric utilities are a composite of three distinct charges: demand, energy and customer charges. Normally, fuel (including coal) and fuel related costs are recovered in the energy portion of the rates. Basic electric rates are based on many factors and these basic rates are expected to remain in effect over a period of time. By the very nature of a rate application case, it takes many months to change these basic rates. Each case is bottomed in part on an assumed price of fuel, for, to a large extent, fuel is the raw material of electricity. So when the price of this fuel fluctuates rapidly and spirals upward, it destroys one of the primary foundation stones of the basic rates. This is unfair to the utility company whose rates were based on a much lower fuel price, and whose basic rates cannot be changed except by a time-consuming process. Thus, to be fair, the basic rates must receive a surcharge to reflect the true and rapidly changing fuel costs not reflected in the basic rates. This same fuel adjustment will reduce the consumers' total bill (basic rate plus adjustment for fuel) if and when the price of fuel is less than that assumed in the basic rates. This surcharge under consideration here is calculated by subtracting the established base cost of coal reflected in the coal adjustment formula from the actual monthly cost of coal burned in the generation of electricity. Ideally, the base cost of coal reflected in the fuel adjustment formula equals the cost of coal recovered in the energy portion of the rates. The total dollar increase in coal cost is divided by total monthly sales to yield a $/KWH factor which is applied to customers' bills in the second month following the generating month. In effect, the ratepayer would pay the amount by which current costs for coal exceed the base cost of coal in the fuel clause, corresponding proportionately to the KWH the ratepayer consumes.

## FINDINGS OF FACT

1. The largest single item of expense for Duke in 1973 was fuel used for electric generation of which coal is the largest single item. During the test year, 1973, Duke spent approximately 104.6 million dollars for coal used in electric generation.

2. Duke estimates its use of coal to be approximately 13 million tons in the generation of electricity during 1974.

3. Duke's coal consumption for 1973 exceeded the consumption for 1972 by two (2%) percent. The cost of coal "as burned" for 1973, however, exceeded the cost of coal for 1972 by nine (9%) percent. The average price of coal increased from $10.35/ton to $11.26/ton, or from 43.94 cents per million Btu to 47.27 cents per million Btu.

The monthly costs of coal "as burned" increased from 45.04 cents in January, 1973, to 52.56 cents in December, 1973, an increase of 17 percent. Coal received for the same period increased by 25 percent. The cost of coal "as burned" in March, 1974, was 76.90 cents, an increase of 46 percent over that in December, 1973.

Coal as purchased for April, 1974, was 90.16 cents, an increase of 60 percent over December, 1973. Duke had projected an annual cost for 1974 of 77.7 cents with a monthly cost for April, 1974, of 88.6 cents. These sudden and drastic increases in the cost of coal used in steam electric generating stations have resulted in large increases in the cost of producing electric power. Such increases cannot be recovered in Duke's rate design without automatic adjustment for fuel costs without further deterioration of earnings before general rate cases can be filed, properly noticed and heard under the procedure for general rate cases.

4. The demand for coal continually increases, while the production of coal decreases. The electric utility industry is the single largest consumer of coal in the nation. The coal industry estimates a total consumption of coal of 659 million tons, of which 435 million will be consumed by the electric utilities. The drop in the production of coal appears to stem, in part, from certain laws and regulations. Duke has secured its coal at relatively favorable prices.

5. Duke has been unable to earn the return on its common stock equity found to be fair and reasonable by this Commission. This shortfall in earnings has been caused, in part, by the sharp rise in the cost of fuel. A continuing shortfall in earnings could result in higher rates to the customer and possibly jeopardize service. The higher rates to the customers would be engendered by an increased annual cost of funds raised to finance the plant facilities.

6. At present 194 electric utilities in 43 states have fuel adjustment clauses applicable to some class of service. To a large extent, coal, oil and gas are burned in the same plant facilities, and thus, a reasonable adjustment clause should include all fossil fuels. A fossil fuel clause would allow the pass-through of the increased cost of fuel in the monthly electric bill in an amount to reflect no more than the actual increase in the cost of fossil fuel over the base cost of the fossil fuel clause. Such a fuel clause must be

administered so as not to increase the rate of return to Duke. The clause constitutes only a pass-through of the expense incurred by Duke in the production of each kilowatt hour of electricity in the form of a direct surcharge for each kilowatt hour consumed.

7. A "KWH" type of fuel clause, as opposed to a "Btu" type clause, adjusts for improvements in generation efficiency and appropriately passes any savings to the ratepayer.

8. A reasonable base cost in a fossil fuel cost adjustment clause amounts to 0.5039 cents per kilowatt hour, which was the cost of fossil fuel for the month of October, 1973, using the average heat rate for the year 1973. This base cost is derived from the costs of fossil fuels shown on monthly reports filed with the Commission and is consistent with the level of rates approved by the Commission in Docket No. G-7, Sub 159.

9. In view of the circumstances surrounding the coal and substitute fossil fuel market, the fossil fuel adjustment clause is a reasonable method by which Duke can recover a part of its reasonable operating expenses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1.

The Exhibit 1, Page 2 of Mr. Stimart, Treasurer of Duke Power Company and the testimony of Mr. Robert E. Frazer, Vice President of Finance, Duke Power Company, indicated the substantial expense that Duke incurs for fuel used in electric generation. Mr. Frazer testified that Duke was experiencing a phenomenal rise in the cost of fuels, the most significant of which, he testified, was coal. He stated that coal costs in 1973 amounted to $166 million, or 34 percent of total operating expenses. Based upon the ratio of total company to company allocated to North Carolina retail, the Commission computed the amount expended on coal used as fuel in electric generation for North Carolina retail customers.

The Commission concludes that price fluctuations in an item of expense of this magnitude could seriously impair the company's ability to earn the return set by the Commission as reasonable and fair.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2.

Mr. B. B. Parker, Executive Vice President and General Manager of Duke Power Company, estimated that Duke's coal consumption for 1974 would be 13.0 million tons. He added that this estimate was subject to conservation measures, weather conditions and the operation of nuclear units. The Commission is of the belief that this estimate is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3.

Mr. B. B. Parker, Executive Vice President and General Manager of Duke and Mr. Paul Pahey, a Coal Procurement Consultant, appearing on behalf of the Attorney General of North Carolina, testified with respect to the increases in both the cost of coal "as burned" and the cost of coal as purchased in the years 1973 and 1974. These measurements of the cost of coal have increased substantially. Aside from these observable facts, Duke's projections were consistently understated.

The Commission concludes that the cost of coal continues to spiral upward exceeding the estimated increases projected by the company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4.

In this and other recent dockets involving Duke Power Company and other electric utilities operating in North Carolina, this Commission has heard and considered voluminous evidence on the supply and price of coal and on the procurement practices of the particular utilities. Additionally, the Commission, through various conferences, contacts, and correspondence with the Federal Power Commission and the Federal Energy Administration, has kept itself informed as to continuing developments relating to the supply and price of coal, as well as other fossil fuels used in the generation of electricity.

Beginning in 1970, coal prices began to move sharply upward from pre-1970 levels. Expressed in price units per million Btu (burned cost), the unit prices moved from a range of 26 cents to 29 cents per million Btu to a range of 41 cents to 45 cents per million Btu by the end of 1971 or early 1972, at which levels prices became stable until the last quarter of 1973.

With the advent of the petroleum shortage of the fall and winter of 1973, several circumstances combined tc result in rapid and sharp rises in the price of coal. At that time, although coal was not in short supply, it was not in abundant supply. There was apparently a sufficient supply of coal for the use of those electric utilities in North Carolina and other southeastern states who depend primarily on coal for generation. The Federal Energy Administration decided that one means of alleviating the petroleum shortage would be for Eastern Seaboard electric utilities who had stopped using coal but still had coal-burning capacity to switch back to coal (where possible) for the 1973-74 winter season. Upon learning of the position and actions of the FEA in this regard, this Commission, in a meeting with FEA officials at the Federal Power Commission offices in Washington in December 1973 urged the FEA officials not to pursue their intended actions to bring additional demands upon the coal market because we were convinced that there was not enough coal to allow for such additional demands

without resulting in an imbalance of supply and demand, with the result that prices would inevitably be forced upward. We also called to their attention that coal hopper cars were in short supply, and that significant increases in coal shipments to northeastern utilities would cause delivery problems for utilities in North Carolina and other southeastern states. We reinforced these views through correspondence with the FEA and the FPC. Our suggestions and warnings were ignored.

During the winter of 1973-74, we contacted all members of the North Carolina congressional delegation, calling their attention to the potential problems related to FEA policy, and although the members of the delegation responded with similar pleas to the FEA, their suggestions and pleas were substantially ignored.

From December of 1973 forward, coal became increasingly hard to obtain. Contract deliveries began to lag; Btu content of delivered coal deteriorated; hopper cars became in short supply; and spot coal became progessively harder to buy and more and more expensive. To sum up, the price of spot coal of acceptable quality and Btu content went from a range of $8.00 to $12.00 per ton in the fall of 1973 to $18.00 to $23.00 per ton in early 1974 to $25.00 to $30.00 per ton in the spring of 1974 to $35.00 to $45.00 per ton in the summer of 1974.

It is clear to us that these rapid price increases in spot coal, reaching almost 400 percent within less than a year, were not, completely cost related but resulted in large measure from coal producers and sellers taking advantage of a crisis of supply of fossil fuels available to the American people to gain unprecedented and unconscionable profits for themselves. In this Docket, Mr. Paul Fahey, a consultant employed by the Attorney General who has had vast experience in coal procurement for TVA and other electric utilities, testified that in his opinion, the major cause of these unprecedented rapid increases in the prices of coal was the greed of the mine operators.

Mr. Fahey also testified that Duke has purchased operating coal mines, leased coal reserves which are being mined by others for Duke's account, and assisted in financing new mining operations. He further testified that Duke has been vigorous in its efforts to secure performance by contractors and that Duke had been able to buy coal at favorable prices relative to prices being paid by the utility industry in general. The Commission concludes that Duke has been reasonable and successful in its efforts to secure coal at favorable prices.

The record in this Docket shows and we concluded that Duke has been reasonably diligent in its coal procurement program and practices and that, comparatively speaking, it has obtained what might be called favorable results, considering the altogether unfavorable condition of the coal market

since the fall of 1973. These market forces to which we have alluded and with which Duke has had to deal are beyond the ability of either this Commission or Duke Power Company acting alone to control. Under these adverse and unfortunate circumstances, we are compelled to allow Duke to recoup such great increases in coal cost in a reasonably expeditious and orderly manner, for to do otherwise would imperil Duke's very existence.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO 5.

Mr. Robert E. Frazer, Vice President-Finance, Duke Power Company, testified that the main reason Duke was unable to earn the 12 percent return granted in E-7, Sub 145, was the sharp rise in fuel without a fuel adjustment clause. He further stated that a fuel clause would have kept revenues more in line with fuel costs.

Mr. Frazer testified that the most serious financial problem facing Duke was its inability to earn the return on its common stock found to be fair and reasonable by the Commission. This shortfall, he stated, led to a deterioration in the company's mortgage bond rating, an inability to sell these bonds and resulted in inequity to the Duke stockholders.

As an example of increased annual costs, Mr. Frazer testified that when the investor's return is insufficient, bond and preferred stock issues will have to be sold at higher interest rates.

Mr. Wallace W. Carpenter, Vice President of Consulting Services for Ebasco Services, Inc., appearing on behalf of Duke, testified that the proposed coal adjustment clause would prevent further deterioration in the company's earnings.

The Commission concludes that the substantial increase in the cost of coal has contributed to the shortfall in earnings experienced by Duke.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6.

Mr. Carpenter testified that acceptance of fuel clauses in forty-three (43) states is evidence of their desirability. He further testified that in five of the seven states which do not have such clauses, generation is primarily hydro and such adjustments are not required. The exhibits presented by Mr. Carpenter indicated each electric utility that had a fuel clause and which class of customers were subject to its provisions.

Mr. Horn stated in his affidavit that North Carolina is the only jurisdiction east of the Mississippi which currently does not allow fuel adjustment clauses in the rates of electric utilities. The Commission concludes that

a coal clause is an appropriate and well recognized method of recovering increased fuel costs.

Mr. Andrew W. Williams, Chief of the Electric Section in the Engineering Division of the North Carolina Utilities Commission, testified that an automatic fossil fuel cost adjustment clause is more appropriate than an automatic coal cost adjustment clause because it is more representative of actual conditions. He further testified that a fossil fuel adjustment clause will more accurately pass along energy costs to energy users and will closely maintain the proper proportion of energy costs to other costs in overall rates. Mr. Williams further testified that constant surveillance by the Commission will maintain its regulatory prerogatives and prevent Duke from earning any monies in excess of monies spent for increases in fuel costs.

The Commission concludes that a coal cost adjustment clause is insufficient in that such clause does not account for increases or decreases in costs in other fossil fuels, i.e., oil and gas. The Commission concludes that a fossil fuel clause, i.e., a clause that would account for increases and decreases in costs of oil and gas, as well as in costs of coal, is more appropriate. The Commission concludes further that a monthly monitoring of fuel costs and resulting fuel adjustment factors will limit the possibility of Duke achieving earnings beyond a fair rate of return and will keep the Commission cognizant of the effect of the fuel clause on the ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7.

Mr. Williams testified that the clause in question is a "KWH" or "variable efficiency" type clause as opposed to a "Btu" or "fixed efficiency" type of clause and that a variable efficiency type clause is designed to compensate for improvements in production efficiency and changes in generation mix.

The Commission concludes that savings resulting from improvements in generation efficiency will automatically be passed on to the customers in the operation of the fossil fuel clause.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8.

On December 19, 1973, the Commission approved, on an interim basis, a coal cost adjustment clause reflecting a base cost computed on fuel information statistics for the month of October, 1973. This information was the most recent data available at the time of the application for the clause. The coal clause has automatically adjusted for increases in coal costs since its implementation. In its consideration of appropriate rate levels and rate designs in Docket No. E-7, Sub 159, the Commission recognized the October, 1973 base cost of the coal clause. Since increases in costs of coal are currently being recovered by a clause

based on October, 1973 costs and since the Commission considered this base cost in the determination of rates in Docket E-7, Sub 159, the automatic fossil fuel cost adjustment clause, being approved herein, should reflect a base cost computed on the related October, 1973, generating statistics. The Commission takes judicial notice of monthly reports filed with this Commission by Duke Power Company that pertain to the cost of all fossil fuels. Appropriate computations from these statistics yield a base cost for the fossil fuel clause of 0.5039 cents per kilowatt hour.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9.

During 1973 Duke incurred a cost of coal significantly in excess of that recovered by Duke in the energy portion of the rates charged to its customers. In a fuel market in which there exists steadily increasing prices, Duke will continually experience a shortfall in earnings in that rates designed without an adjustment clause will not permit Duke to recover the cost it incurs in purchasing fossil fuel. In light of these circumstances, a fossil fuel adjustment clause is a reasonable method of recovering the costs Duke incurs in its purchase of fuels.

The Commission concludes that the cost of fossil fuel incurred by Duke is a reasonable operating expense to the extent that Duke acts in good faith in negotiating with suppliers and to the extent that Duke pays a fair and reasonable price for the fuels purchased.

The Commission concludes that a fossil fuel adjustment clause is a part of the rate to be fixed by the Commission pursuant to G. S. 62-133. The Commission further concludes that G. S. 62-133(b)(5) directs the Commission to fix rates to be charged as will earn in addition to reasonable operating expenses the rate of return on the fair value of the property which produces a fair profit. Thus, the Commission concludes that for the purpose of approving a fossil fuel adjustment clause, the Commission need only determine whether the company's operating expenses are reasonable in that the clause will not increase Duke's rate of return, but will merely slow attrition of the rate of return. The rate of return on the fair value of the property used and useful in providing service has been determined in the general rate case, E-7, Sub 159, consolidated for hearing with this docket, E-7, Sub 161.

The Commission concludes that a system of monitoring the operating of the fossil fuel clause will insure that Duke acts in good faith in its negotiations, as well as protect the ratepayers of North Carolina from Duke recovering more through the fossil fuel clause than its reasonable operating expenses as they relate to cost of fossil fuels increase above the base cost in the fossil fuel clause.

IT IS, THEREFORE, ORDERED, AS FOLLOWS:

1. That the fossil fuel adjustment clause set forth in Appendix No. 1 be, and hereby is, effective on November 1, 1974, and shall be implemented in the manner set forth in Appendix No. 2.

2. That the Order of December 19, 1973, approving the coal adjustment clause be, and hereby is, to remain in effect until November 1, 1974.

3. That Duke shall file with the Commission monthly a complete Fossil Fuel Adjustment Clause Memorandum as set forth in Appendix No. 2.

4. That the Motion of Attorney General filed on September 17, 1974, with its Notice of Appeal therein, praying that the Commission reconsider or rescind the Order Approving Revenues Collected Under Coal Adjustment Clause issued September 10, 1974, is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.

This 10th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX NO. 1

FOSSIL FUEL ADJUSTMENT CLAUSE

Applicability

This clause is applicable to and is a part of all the Company's North Carolina retail electric rate schedules.

Adjustment of Bill

Current monthly bills shall be increased or decreased, per kilowatt hour billed, by an amount, (a. below), to the nearest one ten thousandths of a cent, determined by use of the equation:

$$a = \frac{(b-c)\,e \times 100}{d}$$

where

a = Amount of the adjustment to current monthly bills, in cents per Kwh.

b = Total cost of fossil fuel burned in the Company's own fossil fuel fired generating stations during the

second month preceding the current billing month, in dollars.

c = Base cost of fossil fuel obtained by multiplying the net Kwh generated in the Company's own fossil fuel fired generating stations during the second month preceding the current billing month, by .005039 in dollars.

d = Total sales of energy during the second month preceding the current billing month, in Kwh.

e = Adjustment for revenue-related taxes = 1.0638

If the adjustment is a charge, it shall be added to the minimum monthly bill stated in the Company's rate schedules, but if it is a credit it shall not be subtracted from such minimum monthly bill.

Effective on bills rendered on and after November 1, 1974. NCUC Docket E-7, Sub 161

APPENDIX NO. 2

MEMORANDUM: FOSSIL FUEL ADJUSTMENT CLAUSE

The Coal Cost Adjustment Clause, applicable to sales billed on the Company's retail rate schedules, for the month of _____, 19__, will be _____ cents per KWH, based on statistics for the month of _____, 19__, computed as follows:

1. Total cost of fossil fuel burned during the second month preceding the current billing month $_____

2. Base cost of fossil fuel ($.005039/KWH X fossil fuel generation of _____KWH) $_____

3. Difference between total cost of fossil fuel and base cost of fossil fuel (Line 1 less Line 2) $_____

4. Constant tax adjustment of 1.0638 X Line 3 $_____

5. Total system sales KWH $_____

6. Amount of fossil fuel adjustment (to nearest one ten thousandths of a cent) (line 4 ÷ Line 5 X 100) _____

7. The generation mix for the current billing month (% Fossil, % Nuclear) _____

8. The generation mix for the second month

preceding the current billing month. (% Fossil, % Nuclear) _____

9. The fossil fuel fired generating plant efficiency, the "heat rate," i.e., the number of Btu which must be consumed to produce one KWH of electric energy. _____

10. The average heat content of coal expressed in Btu per pound. _____

11. Amount billed under Fossil Fuel Adjustment Clause Factor applicable to North Carolina retail sales month of _____, 19__. $_____

12. Coal received during the month of _____

| | Percent | ¢/m Btu |
|---|---|---|
| Contract | _____ | _____ |
| Spot | _____ | _____ |

DOCKET NO. E-7, SUB 161

WELLS, COMMISSIONER, DISSENTING IN PART. I have reluctantly come to recognize that fuel adjustment clauses are a necessary evil in today's regulatory world. It is my firm conviction that for many years, other regulatory commissions throughout the United States have taken the easy road by allowing automatic adjustments in electric rates by way of automatic fuel adjustment clauses; and that the history of their having done so for many years has substantially contributed to the severity of the fuel price problem which we now face.

This Commission has resisted such clauses up until the very recent past, but the electric utilities doing business in North Carolina are now paying such outrageous prices for coal and oil that if we do not give them some such relief, they would simply go broke. So I am willing to go most of the way, but not all the way with them, for the time being, until the coal and oil price situation resumes some degree of sanity.

I therefore agree for the time being to the use of a fossil fuel adjustment clause for Duke, but in order that all possible pressure may be upon Duke to do the best possible job in fuel procurement and use, I do not agree that they should get a 100% automatic recovery of fossil fuel cost, no matter what it is or how high it may go. I therefore vote for an 85% recovery provision, in order that Duke would always have that additional incentive to strive for and insist upon the best deals it can possibly obtain in its procurement of coal and oil and would always use the most efficient generation mix in order to mitigate its fuel cost.

Hugh A. Wells
Commissioner

DOCKET NO. E-39, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of the University of North Carolina at Chapel Hill, University Service Plants, for Approval of Purchased Power Cost Adjustment Clause in Its Electric Rates and Charges | ) | ORDER APPROVING PURCHASED POWER COST ADJUSTMENT CLAUSE |

BY THE COMMISSION. On March 5, 1974, The University of North Carolina at Chapel Hill, University Service Plants, hereinafter referred to as "The University Service Plants", filed an application seeking authority to increase its electric rates and charges for metered service to residential and commercial customers in its service area to recover increases in the wholesale price of electric power purchased from its supplier, Duke Power Company, (hereinafter referred to as "Duke"). Duke, in accordance with a filing with the Federal Power Commission (Docket No. E-7994), has increased its rates to The University Service Plants through the application of a fuel adjustment clause and a general rate increase.

In its order issued on May 24, 1972, in Docket No. E-39, Sub 1, the Commission authorized The University Service Plants to increase its rates in accordance with the general increase in its cost of wholesale energy. In that proceeding The University Service Plants did not seek at that time to pass on to its customers the increased cost of purchased power attributable to Duke's wholesale fuel adjustment clause. In the application in this proceeding, The University Service Plants now seeks an increase in its rates for metered service in the form of a monthly purchased power adjustment surcharge on each customer billing computed according to individual customer usage of energy on a kilowatt-hour basis. The additional cost per kilowatt-hour is proposed to be equal to the increased cost of wholesale energy per kilowatt-hour from The University Service Plants' supplier, Duke, adjusted to include the cost of energy losses in The University Service Plants electrical distribution system.

The University Service Plants seeks to apply this adjustment to its total kilowatt-hour sales, although it generates a continuously decreasing proportion of its requirements. The Applicant contends in its application, however, and includes supporting exhibits therein, that The University Service Plants' own contemporary increase in fuel costs of generation would be only partially recovered by the application of the purchased power cost adjustment to its generated kilowatt-hours.

Based upon the application as filed and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

1. Applicant, The University of North Carolina at Chapel Hill, University Service Plants, by act of the 1971 General Assembly, Chapter 634, 1971 Session Laws, the "University Enterprises" defined in G.S. 116-41.1(9) were placed under the jurisdiction of the North Carolina Utilities Commission with respect to rates or service charges, effective January 1, 1973.

2. That the 1971 General Assembly passed on Act (Chapter 723, Session Laws of 1971) which provided for appointment by the Governor of a Special Commission to study the feasibility of retaining or selling or otherwise disposing of the telephone, electric, water and sewer utility systems owned by the Applicant and to make reports and recommendations with regard thereto to the Board of Trustees of The University of North Carolina, now redesignated as the Board of Governors of The University of North Carolina. This Act creating the Special Study Commission further empowers said Commission, in consultation with the officials of the University of North Carolina at Chapel Hill, to actually negotiate for and effect the terms of any sale or other disposition of any of such utilities which is recommended to and approved by the Board of Trustees (Board of Governors). The Special Study Commission was duly appointed by the Governor on November 30, 1971, and the Commission thereupon entered into and completed its study and submitted its final report and recommendations to the Board of Governors on August 3, 1972, and within the period of time specified for the completion of said study and submitted to the Board of Governors by the Study Commission with respect to each of the utilities involved and included the recommendation that the Applicant sell its off-campus electrical system.

3. That the University Service Plants pursuant to the approval of its final report and recommendations made to the Board of Governors, and upon authority of said Board of Governors and the Board of Trustees of the Applicant, the Special Study Commission, in conjunction with the officials of the Applicant, is in the process of moving forward with preparations for the sale of Applicant's off-campus electric utility system and facilities, which process has and will include further extensive effort in the development of bid documents and negotiation with prospective purchasers and the ultimate consummation of the sale of said system and facilities.

4. Applicant has experienced an increase in wholesale cost of energy purchased from its supplier, Duke Power Company. The Federal Power Commission has allowed the new wholesale rate schedule including a KWH fuel clause in FPC

Docket No. E-7994 to become effective April 26, 1973, under bond pending a final decision.

5. That the ratio of net operating income for return under the present rates as applied to net investment in electric utility plant in service will be unaffected after giving consideration to the proposed purchased power cost adjustment and increased cost of power.

6. To require the Applicant to absorb the increases in wholesale energy cost imposed upon it by its supplier, Duke Power Company, approved by the Federal Power Commission in FPC Docket No. E-7994, under bond pending final decision, would result in the Applicant's being required to operate at a diminished rate of return.

7. That the figure of .142 cents per kilowatt hour shown in exhibit II of the Application, is an accurate estimate of The University Service Plants' own contemporary increase in fuel cost for generation during the period Duke's wholesale fuel adjustment clause has been in operation.

Whereupon the Commission reaches the following

## CONCLUSIONS

The Commission concludes that to require The University Service Plants to absorb the increase in its cost of purchased power from its supplier, Duke Power Company, as approved under bond in FPC Docket No. E-7994 may seriously impair the succesful negotiation of the sale of its off-campus electric system to the end that the investment of the taxpayers of North Carolina in this system will not be fully and adequately protected and that fair and appropriate compensation will not be received for the system.

That without additional revenues to offset the added expense in purchased power resulting from Duke's wholesale fuel adjustment clause, its ability to efficiently and effectively conduct the operations of its electrical system to the public may further hinder the sale of its electrical properties.

That the Applicant is not seeking a general increase in its rates and charges for revenue purposes or to increase its present level of earnings or rate of return now earned by it on its investments.

That upon sale of the system, rates in effect under new ownership, if within the jurisdiction of this Commission, will require approval when submitted to the Commission.

That setting this matter for public hearing would place an additional burden upon The University Service Plants over and above that of the selling of such property and could extend the time for such sale.

The Commission further concludes after review and analysis of the data filed by the University Service Plants in this docket that the filing will not result in an increase in the Company's rates of return; that the application of Duke's wholesale fuel adjustment factor, increased by an appropriate loss factor, to The University Service Plants generated kilowatt-hours is conservative in that it will not fully recover The University's Service Plants' own increased cost of generation; and that the pass-on of the wholesale increased cost of purchased power to the University Service Plants' total metered sales should therefore be allowed.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by The University Service Plants that seeks solely to recover increases in the cost of purchased power to it from its supplier as approved by the Federal Power Commission should be permitted to become effective without hearing.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application of The University Service Plants to increase its rates and charges in the form of a purchased power cost adjustment clause for all classes of metered service as filed in this docket, be, and the same hereby is, approved to become effective on service rendered on or after March 27, 1974.

2. That in the event there is any reduction in wholesale cost pursuant to any action of the Federal Power Commission wholly or partially denying the Duke Power Company request pending in FPC Docket No. E-7994, The University Service Plants be, and hereby is, ordered to file tariffs immediately reducing its rates accordingly.

3. That The University Service Plants be, and hereby is, ordered to pass on to its customers with interest of 6% per year any refunds received from Duke Power Company pursuant to action of the Federal Power Commission.

4. That The University Service Plants shall keep its books and records of all amounts collected pursuant to the increase approved herein in such form and manner as they may be audited by representatives and agents of the Utilities Commission and properly accounted for under this Order.

5. That The University Service Plants shall duly report to the Commission all amounts collected pursuant to the increase approved herein and the additional amount expended for purchased power by monthly reports filed with the Commission within fifteen (15) days after the end of each calendar month during which said increases are collected.

6. That the Notice attached as Appendix "A" be mailed to all customers along with the next bill advising them of the actions taken herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

NOTICE

Upon Application of the University of North Carolina at Chapel Hill, University Service Plants, in Docket E-39, Sub 2, the North Carolina Utilities Commission approved a rate increase in the form of a purchased power cost adjustment clause on bills for metered electric service sold on or after March 27, 1974. This increase allows The University Service Plants to recover the increase in the cost of purchased power attributable to the wholesale fuel adjustment clause of Duke Power Company which was approved under bond, pending final decision by the Federal Power Commission in Docket No. E-7994. The increase is subject to refund, with interest of 6% per year in the event the Federal Power Commission in its final decision wholly or partially disapproves the Duke Power Company wholesale increase.

DOCKET NO. E-22, SUB 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Application by Virginia Electric and Power Company for Authority to Adjust and Increase its Electric Rates and Charges | ) SUPPLEMENT TO AUTOMATIC FUEL CLAUSE ORDERING PROVISION TO ENSURE PROPER ACCOUNTING TREATMENT OF BULK POWER TRANSFERS |

BY THE COMMISSION: On February 8, 1974, this Commission allowed Virginia Electric and Power Company authority to implement an automatic fuel cost adjustment clause. The allowed clause permits the company to adjust its rates monthly by a specific formula related to the variance of current fuel costs from an established base fuel cost. In addition, the Commission is cognizant of policies and requests by certain federal agencies encouraging interchange conservation energy to the energy-short Northeast. The Commission supports and encourages the cooperative spirit of the "coal-by-wire" plans, but recognizes a potential adverse

impact on the electric ratepayers of North Carolina from an interaction of supplying bulk electric energy and the automatic fuel cost adjustment clause. The generation of electric energy for bulk interchange will require increased consumption of primary fuels by the supplying utilities. In the present fuels market with its rapidly increasing prices, increased consumption of fuels attributable to bulk interchange of conservation energy could result in an escalation of the average fuel cost experienced by a utility above the average cost which would normally occur from domestic demands. With the automatic fuel clause in effect, this increased cost would be passed directly to the retail electric consumer.

It is very unlikely that any bulk transfers of conservation energy will be made from this region in the near future due to the dislocations and limited supply conditions in the coal market. However, over the longer term, with an improvement in the coal market, bulk transfers of electrical energy from utilities operating in North Carolina to energy short regions is probable.

It is the opinion of this Commission that special accounting procedures should be established to prevent any adverse impact on the electric ratepayers of North Carolina that could result from the interchange of conservation energy and its interaction with the automatic fuel cost clause now in effect.

IT IS, THEREFORE, ORDERED

(1) That Virginia Electric and Power Company establish appropriate accounting procedures to separate fuel expenses resulting from generation of conservation energy for coal-by-wire interchange from fuel expenses resulting from generation of electrical energy for domestic supply. The procedures should be designed so that the average system fuel cost used in the computation of the monthly fuel adjustment factor for retail consumers will not be increased above levels that would be experienced without bulk interchange of conservation energy.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-38, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Crisp Power Company, Inc., for an Adjustment of Its Rates and Charges ) ORDER APPROVING RATES AND PURCHASED POWER COST ADJUSTMENT FACTOR

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina

DATE: November 13, 1974

BEFORE: Chairman Marvin R. Wooten, presiding, Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For Applicant:

George A. Goodwyn
Fountain & Goodwyn
P. O. Box 615
Tarboro, North Carolina 27886

For the Commission Staff:

Jerry B. Fruitt, Associate Commission Attorney
Lee W. Movius, Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION. On March 27, 1974, Crisp Power Company, Inc. ("Crisp") filed an Application with the Commission seeking authority to increase electrical rates and charges to residential and commercial customers in its service area in Edgecombe County rural townships 8, 9 and 10, effective April 15, 1974, by an overall increase of 20.17 percent which would produce approximately $7520 of additional revenue based on a test year ending December 31, 1973. By Order dated April 10, 1974, the Commission, declaring the application a general rate case, suspended the proposed rate increases pursuant to G.S. 62-134, authorized Crisp to put into effect, subject to refund, an interim across-the-board increase of 13 percent, and set the matter for hearing at 10:00 a.m. on November 13, 1974, in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina. On April 19, 1974, Crisp moved to amend its application so as to request authority to apply a Purchased Power Cost Adjustment Clause to its KWH sales; by Order dated May 2, 1974, the Commission granted Crisp's motion to amend its application but suspended application of the Purchased Power Costs Adjustment Clause pursuant to G.S. 62-134, subject to investigation and hearing in conjunction with the original application. On

May 17, 1974, Crisp moved the Commission to allow immediate implementation of the proposed Purchase Power Cost Adjustment Clause and filed an Undertaking in conjunction therewith; by Order dated May 30, 1974, the Commission granted said motion subject to the provisions of the Undertaking. By Motion filed October 9, 1974, Crisp moved the Commission to allow Crisp to present its expert direct testimony on the date of the hearing and to adopt, where appropriate, portions of the testimony of the Commission Staff; by Order dated October 14, 1974, the Commission granted said motion.

At the November 13, 1974, public hearing, Crisp offered the testimony of its Vice President and Director Joseph E. Eagles, testifying on service, maintenance and financial condition, and the testimony of Willis S. Hardesty, C.P.A., testifying on fair value, accounting and the cost of purchased power. The Commission Staff offered the testimony of J. Reed Bumgarner, staff electrical engineer, on distribution facilities and electrical service, and the testimony of William W. Winters, C.P.A., on original cost net investment, revenues and expenses, and rate of return. At the close of the hearing, Crisp adopted the testimony of the Commission Staff except as contradicted by Witnesses Eagles and Hardesty. There were no intervenors, protestants, or public witnesses in the proceeding.

Based on competent evidence adduced at the hearing, the Commission makes the following:

## FINDINGS OF FACT

1. Applicant Crisp Power Company is a duly organized public utility, subject to the jurisdiction of the North Carolina Utilities Commission, providing electric utility service to approximately 200 residential and business customers in Edgecombe County, North Carolina, rural townships 8, 9 and 10.

2. Crisp, which has no electric generating capacity, purchases all its electricity from Edgecombe-Martin Electric Membership Corporation ("Edgecombe-Martin") which in turn purchases its electricity on a wholesale basis from Virginia Electric and Power Company ("VEPCO"). In calendar year 1973, the test period used by both Crisp and the Commission Staff in this rate-making proceeding, Crisp paid Edgecombe-Martin $19,072.00 for 1,317,330 KWH, an average cost of .01448 per KWH. In calendar year 1972, Crisp purchased 1,106,460 KWH for $13,790.00, an average cost of .01246 per KWH. In 1974, the average cost per KWH paid by Crisp has and will continue to exceed 1973 and 1972 averages. This increasing cost per KWH Crisp pays to Edgecombe-Martin reflects the similarly increasing amounts Edgecombe-Martin must pay VEPCO, its electric supplier. The increasing price VEPCO charges its wholesale customers is occasioned by VEPCO's wholesale electricity rates in combination with the Automatic Possil Fuel Cost Adjustment Clause VEPCO applies

to its wholesale electricity sales. There is little likelihood that Crisp's increased cost of purchased electricity will decrease in the foreseeable future.

3. Crisp's immediate electric supplier, Edgecombe-Martin, is an Electric Membership Corporation and as such, a non-profit organization. Each year Edgecombe-Martin refunds to its member-customers, including Crisp, on a pro rata basis, whatever amounts it has collected in excess of its expenses. These refunds, however, do not initially take the form of an actual cash distribution; rather, Edgecombe-Martin enters on its books capital credits for each member in an amount equal to the member's refund. Between 1937 and 1973, Edgecombe-Martin allocated to Crisp on its books capital credits totaling $28,374.00. This sum includes $1,386 capital credits for Crisp's 1973 electricity purchases of $19,072.00. Between 1960 and 1968, Crisp received cash distributions totaling $6,921.00 for all capital credits accumulated between 1937 and 1956. The $21,453.00 capital credits accumulated between 1957 and 1973, however, remain undistributed. Actual cash distribution of capital credits is conditioned upon (1) Edgecombe-Martin satisfying guidelines, issued by the Rural Electrification Administration of the United States Department of Agriculture, which require that Edgecombe-Martin's equity equal or exceed 40 percent of its total assets both before and after distribution, and (2) decision by Edgecombe-Martin's Board of Directors to retire capital credits by cash distribution. At present, Edgecombe-Martin has no specific plans to distribute capital credits. When further cash distributions are made, however, it will be for capital credits accumulated in 1957, and capital credits accumulated in 1973 for 1973 electricity purchases will not be distributed until all capital credits for the preceding years have been successively retired. Based on these factors, the Commission finds that the $1,386 1973 capital credits refund Edgecombe-Martin has allocated to Crisp's account should not be deducted from Crisp's test year purchased power expenses.

4. For this rate-making proceeding, Crisp has incurred accounting and legal expenses totaling $1500.00. This sum should be amortized over a three-year period and will be included in the test period as a $500.00 expense.

5. Crisp presently has three directors, paying each an annual fee of $1500.00, and employs a general manager at a $3,300.00 annual salary. While the manager's salary constitutes a reasonable expense, the Commission finds that for an electric utility as small as Crisp, annual director's fees totaling $4500.00 are excessive. Crisp has failed to present evidence indicating otherwise. The Commission finds that the $1500 annual Director's fee paid to Joseph E. Eagles should be disallowed. Accordingly, for purposes of ascertaining Crisp's test year expenses, directors' fees will be expensed at $3000, which the Commission finds reasonable, rather than $4500.

6. The uncontradicted evidence indicates that the original cost of Crisp's electric plant is $41,687, that, after deductions of $19,116 for accumulated depreciation and $1,105 for customer deposits, net investment in plant is $21,466, and that with the addition of a $1,536 Allowance for Working Capital, Crisp's original cost net investment totals $23,002. Crisp's evidence as to the replacement cost of its property, however, is less persuasive. Testifying for Crisp, Witness Hardesty derived a fair value of $34,910 by applying the Consumers Price Index to electric plant used and useful. By this method, however, Hardesty failed to consider what the replacement cost of Crisp's facilities would be using present day technology and offered no evidence why this factor should not be considered. The Commission finds that Crisp has failed to satisfy its burden of proof as to the replacement cost of its property used and useful. Therefore, the Commission will use Crisp's original cost net investment of $23,002 as the fair value of its properties used and useful.

7. The Commission finds that Crisp's test year net operating loss under present rates is $593. Crisp seeks permission to generate $7,519 additional gross operating revenues yielding additional net income of $5,182 (1) by increasing the monthly minimum charge from $1.50 to $3.00 and (2) by raising monthly commercial and residential rates by 25 percent on all electric consumption in excess of 30 KWH. These proffered rates, however, would result in an excessive return on fair value; Crisp's proposed rates would generate $5775 net operating income ($593 plus $5182), a 25.11 percent return on Crisp's fair value of $23,002. The Commission finds that 14 percent constitutes a just and reasonable rate of return on the fair value of Crisp's properties used and useful. As seen below, additional gross operating revenues of $3812 will yield additional net operating income of $2627 and a total net operating income of $3220 ($593 plus $2627), a 14 percent return on $23,002 fair value.

CRISP POWER COMPANY, INC.
DOCKET NO. E-38, SUB 4
STATEMENT OF RETURN

| | Present Rates | Approved Increase | After Approved Increase |
|---|---|---|---|
| Net Operating Revenue | $37,276 | $3,812 | $41,088 |
| Operating Expenses: | | | |
| Operating expenses | 28,235 | | 28,235 |
| Maintenance expense | 3,812 | | 3,812 |
| Depreciation expense | 1,166 | | 1,166 |
| Taxes other than income | 3,327 | 229 | 3,556 |
| Federal and state income taxes | 10 | 956 | 966 |
| Investment tax credit adjustment (net) | 133 | | 133 |
| Total operating expenses | 36,683 | 1,185 | 37,868 |
| Net Operating Income | $ 593 | $2,627 | $ 3,220 |
| Investment in Electric Plant: | | | |
| Electric plant in service | $41,687 | $ | $41,687 |
| Deductions: | | | |
| Accumulated depreciation | 19,116 | | 19,116 |
| Customer deposits | 1,105 | | 1,105 |
| Total deductions | 20,221 | | 20,221 |
| Net investment in plant | $21,466 | | $21,466 |
| Allowance for Working Capital: | | | |
| Cash on hand and in banks, accounts receivable, and materials and supplies | $ 4,033 | $ | $ 4,033 |
| Less accounts payable and accrued taxes | 2,497 | | 2,497 |
| Total | $ 1,536 | | $ 1,536 |
| Original cost net investment | $23,002 | | $23,002 |
| Rate of return on fair value (original cost net investment) | 2.58% | | 14.00% |

8. Based on test period data, Crisp can generate $4878 additional revenues by increasing its monthly minimum charge from $1.50 to $3.00 and by raising its rates for monthly KWH usage in excess of 30 KWH by 12.7 percent. Crisp's monthly rates and charges would be as follows:

MONTHLY CHARGES PER KWH

| Usage | Present Rates | Approved Rates | Percent Increase Over Present Rates |
|---|---|---|---|
| 1-30KWH (Domestic & Commercial) | $.10 | $.10 | -0- |
| 31-80KWH (Domestic & Commercial) | .05 | .056 | 12.7% |
| 81-130KWH (Domestic & Commercial) | .04 | .045 | 12.7% |
| KWH in excess of 130 KWH | | | |
| Domestic | .02 | .023 | 12.7% |
| Commercial | .03 | .034 | 12.7% |

MONTHLY MINIMUM CHARGE

| | |
|---|---|
| Present Charge | $1.50 |
| Approved Charge | 3.00 |

FARM EQUIPMENT SERVICE

Same as domestic rates plus demand charge of $1.15 per KW for all KW in excess of 10 KW per month.

Minimum monthly charge shall be greater of (1) $.75 per KVA of transformer capacity or fraction thereof, or (2) the contract minimum.

9. By means of a Cost Adjustment Factor, Edgecombe-Martin passes on to its customers, including Crisp, all increases in the cost of electricity attributable to VEPCO's Wholesale Fuel Cost Adjustment Factor. By Order dated May 30, 1974, the Commission allowed Crisp, on an interim basis and subject to refund, to pass on to its customers, through a Purchased Power Cost Adjustment Clause, the increased electricity cost attributable to Edgecombe-Martin's Cost Adjustment Factor. Crisp's Purchased Power Cost Adjustment Clause was equal to Edgecombe-Martin's Cost Adjustment Factor increased by a multiplier of 1.18 to account for line-loss and tax factors. Crisp's use of the Purchased Power Cost Adjustment Clause has increased its rates and charges only to the extent occasioned by increased purchased power expenditures. At present, both VEPCO and Edgecombe-Martin continue to apply cost adjustment factors to their KWH sales.

10. The Commission is aware of the possibility that, in the future, VEPCO's wholesale electricity rates will increase because of wholesale electricity rate increases

allowed by the Federal Power Commission; the Commission is also aware that should this eventuate, Edgecombe-Martin may in turn raise its rates to reflect this increased cost of wholesale electricity. For Crisp, because of small size and total dependency upon purchased power, such a passed-on increase in wholesale electrical rates could easily and swiftly reduce or obliterate the Company's rate of return. This situation, however, can be avoided if Crisp's Purchased Power Cost Adjustment Clause, by means of which Crisp is presently passing on increased purchased power costs attributable to VEPCO's Wholesale Fuel Cost Adjustment Factor, is expanded to cover those purchase power cost increases attributable to increases in VEPCO's wholesale electricity rates. The following Purchased Power Cost Adjustment Clause will do this: Crisp should increase or decrease its approved rates by 0.118 mill per KWH for each 0.1 mill by which its total average purchased power cost per KWH purchased during the preceding month exceeds or is less than 15.2 mills per KWH. The .118 mill per KWH increased is obtained by multiplying 0.1 mill per KWH by the 1.18 line loss and tax factor multiplier discussed above in Finding of Fact No. 9; the 15.2 mills per KWH represents Crisp's end of period average test period cost per KWH.

11. Pursuant to Commission Order issued April 10, 1974, Crisp put into effect, effective May 2, 1974, and subject to interest, an across-the-board interim rate increase of 13%. This interim rate increase, however, exceeds the rate increase authorized by today's Order and, therefore, caused Crisp to collect excessive interim revenues.

## CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, the Commission concludes that Crisp Power Company, Inc. should be allowed to increase its rates and charges by a 12.7% increase in its monthly commercial and residential rates for KWH usage in excess of 30 KWH and by an increase in its monthly minimum charge from $1.50 to $3.00. The Commission further concludes that Crisp should continue to apply to its KWH billings a Purchased Power Cost Adjustment Clause. Such increased rates and charges and Purchased Power Cost Adjustment Clause will allow Crisp to convert its presently inadequate rate of return into a reasonable and fair return on its investment.

Because Crisp placed into effect interim rates higher than the rates authorized today, Crisp should refund, at 6 percent interest, to each customer billed under interim rates, the difference between the actual amount so billed and the amount which would have been billed had the rates authorized today then been in effect.

The Commission also concludes that if and when Crisp receives cash distributions from Edgecombe-Martin in retirement of capital credits accumulated by Crisp for its electrical purchases during and after 1957, Crisp should

immediately notify the Commission of such distribution and retain such distribution pending Commission Order. Since these capital credits represent refunds in the cost of power purchased by Crisp, since Crisp's customers have provided the funds with which Crisp purchases its power, and since Crisp's test period expenses have not been reduced by any capital credits because of the uncertainty of time of distribution, the Commission is of the opinion that any cash distributions of capital credits should redound to the benefit of Crisp's customers. Given the uncertainty of distribution, how Crisp's customers will benefit from such distributions can best be determined by the Commission when and if such distributions are made.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective with all service rendered on and after December 15, 1974, applicant, Crisp Power Company, Inc., is authorized and permitted to put into effect increased monthly rates and charges in the form of a 12.7 percent increase in charges for KWH usage in excess of 30 KWH and an increase in the minimum monthly charge from $1.50 to $3.00, as detailed in Appendix A attached hereto.

2. That Crisp shall promptly refund, in cash or by billing credit, to each customer billed under interim rates, the difference between the actual amount so billed and the amount which would have been billed had the rates authorized in this Order then been in effect, and that Crisp shall promptly report to the Commission the refund procedures taken.

3. That Crisp shall continue to apply to its monthly KWH sales a Purchased Power Cost Adjustment Clause by increasing or decreasing its approved rates by 0.118 mill per KWH for each 0.1 mill by which its total average purchased power cost per KWH purchased for the preceding month exceeds or is less than 15.2 mills per KWH.

4. That whenever Crisp receives from Edgecombe-Martin a cash distribution representing retirement of capital credits Crisp has accumulated on electricity purchases during and after 1957, Crisp shall immediately notify the Commission of the amount of such distribution and hold such distribution pending Commission Order concerning dispersal of such funds.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

CRISP POWER COMPANY, INC.

Rates and Charges Authorized in
North Carolina Utilities Commission
Docket E-38, Sub 4 Effective December 1, 1974

| Usage | Approved Rates |
|---|---|
| 1-30 KWH (Domestic & Commercial) | $.10 |
| 31-80 KWH (Domestic & Commercial) | .056 |
| 81-130 KWH (Domestic & Commercial) | .045 |
| KWH in excess of 130 KWH: | |
| Domestic | .023 |
| Commercial | .034 |

PURCHASED POWER COST ADJUSTMENT CLAUSE

The above rates shall be increased or decreased by 0.118 mill per KWH for each 0.1 mill by which the total average purchased power cost per KWH purchased for the preceding month exceeds or is less than 15.2 mills per KWH.

MONTHLY MINIMUM CHARGE

$3.00

(Domestic & Commercial)

FARM EQUIPMENT SERVICE

Same as domestic rates plus demand charge of $1.15 per KW for all KW in excess of 10 KW per month.

Minimum monthly charge shall be greater of (1) $.75 per KVA of transformer capacity or fraction thereof, or (2) the contract minimum.

DOCKET NO. E-7, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Duke Power Company for Authority to Adjust and Increase its Electric Rates and Charges | ) ) ) | FINAL ORDER CLOSING DOCKET |

BY THE COMMISSION. This proceeding was instituted on May 31, 1972, with the filing by Duke Power Company (hereinafter called "DUKE") of an application for authority to increase its electric rates and charges for retail customers in North

Carolina. The Application sought increases ranging from 4% on low-use customers to approximately 10% for high-use customers in the residential service, and from 5% to 17% in the industrial service, to produce additional annual revenue from retail service of $28,371,000.

The Application was heard in Raleigh from November 8, 1972, through December 20, 1972. The Commission issued its Order on June 21, 1973, allowing 72% of the increase applied for, to produce $21,000,000 additional annual revenue.

Duke appealed from the Order of the Commission to the Court of Appeals, and on March 6, 1974, the Court of Appeals issued its decision affirming the Commission in Utilities Commission, et al v. Duke Power Company, 21 N.C. App. 89 (1974).

Duke appealed from the Court of Appeals to the Supreme Court, and the Supreme Court reversed the Court of Appeals and the Utilities Commission and remanded the case to the Commission in Utilities Commission, et al v. Duke Power Company, 285 N.C. 377 (1974). By Order entered herein on October 10, 1974, the Commission issued its final Orders deciding subsequent rate applications filed by Duke in Docket No. E-7, Sub 159, general rate increase, and Docket No. E-7, Sub 161, coal adjustment clause, which were based upon more recent test periods than the test period in Docket No. E-7, Sub 145, and which sought rate increases based upon expenses and revenues for a more recent test period, and rates fixed in such subsequent rate cases would necessarily encompass all of the expenses and revenues involved in the prior proceeding in Docket No. E-7, Sub 145, and the Commission afforded all parties opportunity to file briefs on the procedure for determination of said Docket No. E-7, Sub 145, upon remand from the Court of Appeals, pursuant to the decision of the Supreme Court.

Upon consideration of the briefs filed by the parties and of the entire record in this proceeding and the decision of the Supreme Court on appeal in this proceeding, as above set forth, the Commission is of the opinion that Docket No. E-7, Sub 145, involves the same subject matter which is now the subject matter of the more recent applications and proceedings in Docket Nos. E-7, Sub 159, and E-7, Sub 161.

On October 10, 1974, the Commission issued its final Order in Docket Nos. E-7, Sub 159, and E-7, Sub 161, granting the full increase applied for in each of said applications, for test periods subsequent to the test period in Docket No. E-7, Sub 145. The Commission finds and concludes that the subject matter of Docket No. E-7, Sub 145, has become encompassed by Docket No. E-7, Sub 159, and the decision of the Commission in said Docket No. E-7, Sub 159, granting an increase of $61,000,000 to provide a fair rate of return on the fair rate base of Duke for the test year ending December 31, 1973, covering all reasonable expenses of Duke for said test period has concluded the application of Duke in Docket

No. E-7, Sub 145, for the expenses and revenues and return and rate base on a prior test period.

Based upon the above, the Commission finds that all of the issues included in Docket No. E-7, Sub 145, have been decided and determined in Docket No. E-7, Sub 159, and that the proceeding in Docket No. E-7, Sub 145, should be concluded and the docket closed.

IT IS, THEREFORE, ORDERED that the proceedings on the application of Duke Power Company in Docket No. E-7, Sub 145, have been concluded by the granting of the rate increase as applied for in the subsequent applications in Docket No. E-7, Sub 159, and Docket No. E-7, Sub 161, fuel adjustment clause, and that the docket is now closed.

ISSUED BY ORDER OF THE COMMISSION.

This 10th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 159

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Application of Duke Power Company for Authority to Adjust its Electric Rates and Charges | ) ORDER APPROVING RATES PRESENTLY IN EFFECT; REDUCING CERTAIN RATES AND INCREASING CERTAIN RATES UNDER MODIFIED RATE DESIGN |

HEARD: Commission Hearing Room, Raleigh, North Carolina, and the Cities of Charlotte, Marion and Greensboro, North Carolina

DATE: May 28, 1974, through July 23, 1974

BEFORE: Chairman Marvin R. Wooten, presiding, Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

W. H. Grigg & Steve C. Griffith, Jr.
Duke Power Company
4225 Church Street
Charlotte, North Carolina 28242

Clarence W. Walker
Kennedy, Covington, Lobdell & Hickman

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Charlotte, North Carolina

For the Protestants:

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Bailey, Dixon, Wooten, McDonald & Fountain
P. O. Box 2246
Raleigh, North Carolina 27602
For: R. J. Reynolds Tobacco Company

For the Intervenors:

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Byrd, Byrd, Ervin & Blanton
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For: Great Lakes Carbon Corp., Inc.

James E. Keenan
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For: N. C. Public Interest Research Group, Inc., North Carolina AFL-CIO

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For the Commission Staff:

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BY THE COMMISSION. This proceeding is before the Commission upon the Application of Duke Power Company (hereinafter called "DUKE") filed on September 14, 1973, for an increase in retail rates on electricity sold in North Carolina of approximately $60,378,000 on an annual basis for the original test year ending July 31, 1973, being an increase of approximately 16.8% on overall North Carolina retail operations.

By Order of September 25, 1973, the Commission suspended the rate increase and set the proceeding for investigation and hearing. In its Application of September 14, 1973, Duke applied for an interim rate increase, and after notice and hearing, the Commission by Order of October 30, 1973, authorized an across-the-board increase of 8% to produce approximately $28,000,000 on an annual revenue basis on an interim increase, subject to refund and hearing and final determination.

In Docket No. E-7, Sub 161, Duke also filed for an interim coal clause and simultaneously filed in Docket No. E-7, Sub 159, a Petition for additional interim relief, and on December 19, 1973, the Commission authorized a further interim increase in Docket No. E-7, Sub 159, of 2.25%, subject to refund.

The Commission further ordered that the hearings in Docket Nos. E-7, Sub 159, and E-7, Sub 161, be consolidated for hearing and advanced the test period to the 12 months ending December 31, 1973, and suspended the proposed rates for a period of 270 days from the end of the revised test period date of December 31, 1973. The Commission recognized the Notice of Intervention of the Attorney General and allowed Petitions to Intervene by Great Lakes Carbon Corporation, Inc., North Carolina Public Interest Research Group, Inc., North Carolina AFL-CIO, Duke University, North Carolina Consumer Council, Inc., Chemstrand Research Center, Inc., R. J. Reynolds Tobacco Company, Senior Citizens Club of Winston-Salem, Durham Welfare Rights Steering Committee and Carolina Action.

The Attorney General appealed the Commission's Order of December 19, 1973, authorizing interim increases in Docket No. E-7, Sub 159, and in the interim coal clause in Docket No. E-7, Sub 161. The Court of Appeals allowed Motions to

Dismiss said appeals, and the Attorney General gave notice of appeal from the decision of the Court of Appeals to the North Carolina Supreme Court and filed Petition for Writ of Certiorari on said interim coal adjustment clause. By Order entered September 24, 1974, the Supreme Court denied certiorari and dismissed the appeal. Robert Morgan, Attorney General v. Duke Power Company and State of North Carolina, ex rel., Utilities Commission, _____N.C. _____, (1974).

On March 26, 1974, Duke gave notice of intention to place the full rate increase into effect under Docket No. E-7, Sub 159, as provided in G.S. 62-135. The Commission approved the Undertaking for said bonded rate increase on March 29, 1974, and on April 15, 1974, Duke placed the full increases into effect, producing an overall increase of 16.8% on Duke's North Carolina retail operations, as set forth in detail in the proposed tariffs of increases on all rate schedules filed on September 14, 1973.

On May 9, 1974, the Commission issued its Order requiring publication of the final Notice setting the case for public hearing, including publication of the maximum increases proposed under alternative rate designs to produce equal rates of return between rate classifications, and to promote economic efficiency and reflect incremental cost.

The Commission held public hearings for 23 days beginning May 28, 1974, through July 23, 1974, in Raleigh, Charlotte, Marion and Greensboro.

Briefs were filed in this proceeding on August 23, 1974.

At the public hearings, the Commission received the pre-filed written testimony of all witnesses of the applicant, the Staff and the intervenors, and each witness was tendered for cross-examination and the transcript will show a full and ample right of all parties to introduce all relevant evidence and exhibits and to cross-examine all proposed evidence and exhibits of all other parties.

Duke offered the testimony of the following witnesses: R. E. Frazier, Vice President-Finance, testifying on the financial condition of Duke; W. T. Hyde, Economic Consultant, testifying on rate of return; Dr. Arthur T. Dietz, Professor of Economics, Emory University, testifying on rate of return; W. R. Stimart, Treasurer, Duke, testifying on the accounting records and financial statements of Duke; John B. Gillett, Consulting Engineer, testifying on the trended original cost of Duke's plant; Louis Guth, Economic Consultant, testifying on Duke's plant system and system efficiency; Austin C. Thies, Senior Vice President-Production and Transmission, Duke, testifying on the condition of plant and service of equipment in the Production and Transmission Department; D. W. Booth, Senior Vice President-Retail Operation, Duke, testifying on the Duke retail service, including customer rates; G. A. Coan,

Engineering Consultant, testifying on Duke's rate design; M. T. Hatley, Jr., Manager, Rate Department, Duke, testifying on rate design; W. W. Carpenter, Vice President, Ebasco Services, Inc., testifying on the fuel clause; B. B. Parker, Executive Vice President, Duke, testifying on coal purchasing practices and the fuel clause; Carl Horn, Jr., President, Duke, testifying on financial needs and operations of Duke; D. H. Denton, Jr., Assistant Manager-General Sales of Duke, testifying on the insulation requirements for mobile homes, in order to qualify for the all-electric rate; and Jacob Fisher, President, Homes by Fisher, testifying on insulation requirements and the all-electric rate for all-electric mobiles homes.

The Commission Staff offered the testimony of Dr. Edward Erickson, Professor of Economics, North Carolina State University at Raleigh, testifying on cost of service and rate design; Dr. Robert M. Spann, Professor of Economics, Virginia Polytechnic Institute, testifying on cost of service and rate design; Allen L. Clapp, Staff Engineering Economist, testifying on cost of service and rate design; Donald R. Hoover, Staff Accountant, testifying on financial statements, audit report and accounting records; Edward Tucker, Staff Electrical Engineer, testifying on growth factor and plant allocation; Edwin A. Rosenberg, Staff Economist, testifying on cost of capital and rate of return; William F. Irish, Staff Economist, testifying on weather adjustment; Andrew W. Williams, Staff Engineer, testifying on fuel adjustment clause and generation reserve; and M. D. Coleman, Staff Director of Accounting, testifying on allowance for funds during construction.

The North Carolina AFL-CIO offered testimony of Curtis M. Bushnell and John F. Hennigan, Consulting Engineers, on replacement cost and the depreciation of trended cost plant, and Wilbur F. Hobby, President, North Carolina AFL-CIO, on the impact of rate increases on customers.

The Attorney General offered the testimony of Dr. Charles E. Olson, Professor of Public Utility Economics at the University of Maryland, testifying on rate of return and rate design; David F. Crotts, Economist, North Carolina Department of Justice, testifying on rate design; Wallace Kaufman, President, Conservation Council of North Carolina, testifying on conservation of electric energy and environmental matters; Mrs. Lillian Woo, President, North Carolina Consumers Council, testifying on the impact of rate increase on consumers, management of Duke and financial matters; and Paul Fahey, Consultant, testifying on the fuel clause, cost of coal and coal purchase procedures.

The Senior Citizens Club of Winston-Salem offered the testimony of Dr. Gary W. Bickel, Consulting Economist, testifying on impact of electric rates on consumers; and Dr. William E. Cage, Professor of Economics, Wake Forest University, testifying on utility regulation and ratemaking.

The Durham Welfare Rights Steering Committee and Carolina Action offered the testimony of Dr. Edward J. Wegman, Professor of Statistics, University of North Carolina at Chapel Hill, testifying on the impact of rate increases on consumers.

The Commission conducted additional public hearings in Charlotte, Marion and Greensboro to receive the testimony of public witnesses and also received testimony of public witnesses on designated days during the public hearings in Raleigh.

Forty-five public witnesses testified at the Charlotte hearing in protest and opposition to the rate increase and certain billing practices of Duke and citing the impact of rate increases on the witnesses. Four public witnesses testified in support of the increase.

Twenty-five witnesses testified in Marion in protest and opposition to the rate increase and to billing practices of Duke and the impact of rate increase upon the witnesses.

Thirty-five public witnesses testified in Greensboro in protest and opposition to the rate increase and the billing practices of Duke, including two witnesses from the Senior Citizens Club of Winston-Salem. Five public witnesses testified in support of the increase.

There are five basic issues to be decided in this case:

(1) Duke's reasonable original investment in its properties devoted to the public use in North Carolina.

(2) The fair value of Duke's properties devoted to the public use in North Carolina.

(3) Duke's reasonable operating expenses.

(4) The level of return on the fair value of its properties required to enable Duke to compete in the market for capital funds.

(5) The just and reasonable rates by which Duke may derive the revenues it needs to obtain the rate of return to which it is entitled.

This Order will treat each basic issue in numerical order.

1. Reasonable original investment. We have reviewed the original investment in Duke's properties devoted to the public use in North Carolina. We find that Duke has acquired, purchased and constructed its properties in a manner and with results which meet the statutory standards of reasonable original cost. In some areas, notably that of the construction of major generation facilities, Duke has a record of excellence deserving of recognition and commendation.

2. Fair Value. On balance, the evidence in this and previous recent dockets involving Duke Power Company would persuade us that the fair value of Duke's properties devoted to the public use in North Carolina is not significantly greater than its reasonable original cost. After careful consideration of recognized translators of original cost, we reach a result which (a) recognizes general, historic inflationary pressures; (b) improvements in design and progressive construction efficiencies; and (c) Duke's own proven in-house ability to achieve optimum construction cost results.

3. Reasonable operating expenses. In a separate docket (E-7, Sub 161), we have considered and dealt with Duke's dominant operating expense, i.e., the cost of fossil fuel used in the generation of electric power. In that docket, the findings and conclusions of which are binding here, we have found that it is just and reasonable that Duke be allowed to invoke upon its basic rates a fossil fuel cost surcharge (adjustment) to enable it to equitably and expediently recoup those costs of fossil fuel which exceed the base costs found to be reasonable in this docket. In determining Duke's reasonable base cost of fossil fuel found and concluded herein, we have carefully weighed all the creditable evidence before us, including the broad implications of the current and expected supply of fossil fuel, current and expected market prices, Duke's fossil fuel procurement policies and practices, and the relative availability of coal supply (and the cost thereof) to Duke from its own coal mining subsidiary. We have further weighed and considered Duke's other reasonable operating expenses, and we find that there are certain areas in which Duke should be able to achieve further operating efficiencies and savings. After having carefully considered the current economic environment, the rapidly escalating cost of fuels, and general inflationary trends, we conclude that Duke should begin immediately to institute the most careful review of its entire operating budget to effect and carry out savings in every possible area of operations. It would appear that Duke's administrative cost levels have been growing quite rapidly and out of an abundance of caution it is our conclusion that Duke should give special attention to this area of cost and expense. To cite some examples, it appears that Duke is still paying a former president of the company a $75,000 a year consultant's salary which appears to us to be excessive and not justified. It also appears that Duke is continuing to spend money on advertising (so-called "institutional" advertising) which we find to be difficult to justify in these times, and therefore conclude that except for those contract commitments already entered into, Duke should eliminate this item of operating expense until the further Orders of this Commission. It also appears that Duke has certain employees engaged in activities which are broadly termed "public relations," and we feel that these persons should be withdrawn from such activities until the further Order of this Commission and should be assigned specific

administrative or functional duties directly related to its electric utility operations.

4. Level of Return. The dynamics of the present economy, while demanding the most careful judgment, do not require, any more today than it ever did, a guaranteed rate of return for Duke or any other public utility. The best that is required of us is our reasoned and careful adjudgment of what return will enable Duke to compete in the market for those capital funds which it must have to continue to provide reliable electric service, where and when it may be needed in its North Carolina service area. We have carefully weighed and considered all the evidence before us in this and other recent dockets involving Duke, as well as other public utilities of similar characteristics doing business in North Carolina and the United States, where Duke must compete for its needed capital funds. We carefully weighed and considered Duke's required and anticipated construction program for the foreseeable future and the relationship of this program to the need for additional capital funds. By our findings and conclusions herein, we seek not to guarantee Duke or its stockholders any rate of return, but rather to offer Duke's management a rate structure and level within which, with prudent management, Duke may earn the reasonable return herein found necessary.

5. Rate Design. Basic and inherent to Duke's ability to meet its reasonable operating expenses and earn a reasonable return on the fair value of its properties devoted to the public use in North Carolina are the design of its rate structure. In attempting to enable Duke to construct and implement a rate design which would fairly and equitably distribute the cost of service among its various customer groups and classifications, we previously ordered Duke to carry out detailed cost of service studies. These studies were put in evidence in this docket, as well as Duke's most recent preceding rate increase application. Additionally, the Commission's staff, through its own expertise and the assistance of expert consultants, has offered voluminous testimony on the subject of Duke's rate design and the relationship of rate design to the overall cost of service. Additionally, testimony was offered by intervenors in this docket on this very vital aspect of regulation. The many refinements and subtle implications of rate design are too numerous to treat in detail in this Order; we emphasize that all such criteria have been carefully weighed and considered. Our objective has been to achieve a reasonable and equitable rate of return for each customer class vis a vis that rate of return earned for each other customer class and the company-wide rate of return found to be reasonable herein. We have notably found that the demands upon Duke for increased capacity of generation and transmission facilities and the demands for large amounts of fuels generated by heavy-use customers are the principal factors behind Duke's needs for increased revenues. After careful consideration of all the evidence, we do not see or feel

that the small and medium-use customer on Duke's system is responsible for the pressures upon Duke for increased revenues, and this Order will therefore reflect our decision to allow no increase in basic rates in the residential low-use blocks (up to 350 KWH per month affecting 122,000 households, which customers will receive base rate reductions from present existing rates); and our decision to allow reduced increases lower than that requested by Duke, in basic rates in the residential medium-use blocks (up to 1300 KWH per month affecting 422,000 additional households, which customers will also receive a base rate reduction from present existing rates). We have carefully considered and weighed the proposition of seasonal rates as a method or means of inhibiting the growth of air conditioning load on Duke's system, and have reached the conclusion that there is not a suficient showing to persuade us at this time to invoke this ratemaking device in Duke's North Carolina service territory. In this connection, however, the Commission wishes to emphasize to both Duke and its customers and to the public in general in North Carolina, the continuing urgent need for the conservation of electric energy and indeed all forms of energy in this State and in this Nation. It is abundantly clear that the United States is still confronted with an energy crisis, the solution to which is not yet in sight. Due to market forces beyond the control of this Commission, all forms of energy have reached record price levels, and it does not appear to us that the pressure on energy prices will soon abate. It is, however, our opinion that reasonable and prudent conservation measures on the part of all our people will speed the day when energy prices will begin to level off and perhaps recede in the direction of the levels of the early 1970's. We cannot, of course, promise that conservation will achieve these goals; but we can certainly predict that lacking conservation, the pressures on energy prices will continue to grow and energy prices will continue to escalate. We urge all concerned to investigate every avenue of energy conservation and savings and to practice conservation as a way of life for the predictable and foreseeable future.

Based upon the record herein and the evidence adduced at the public hearings, the Commission makes the following

## FINDINGS OF FACT

1. That Duke is duly organized as a public utility company under the laws of North Carolina, holding a franchise to furnish electric power in a major portion of the State of North Carolina under rates and service regulated by the Utilities Commission as provided in Chapter 62 of the General Statutes.

2. That the reasonable original cost of Duke's property used and useful in providing retail electric service in North Carolina is $1,571,296,000, the reasonable accumulated provision for depreciation is $417,581,000, and the

reasonable original cost, approximately depreciated, is $1,153,715,000.

3. That the reasonable allowance for working capital is $54,092,000.

4. That the reasonable original cost of Duke's property used and useful in providing retail electric service in North Carolina ($1,571,296,000), less accumulated depreciation ($417,581,000), and contributions in aid of construction ($7,807,000), plus an allowance for working capital ($54,092,000) is $1,200,000,000.

5. That the reasonable replacement cost of Duke's property used and useful in providing retail electric service in North Carolina is $1,453,347,000.

6. That the fair value of Duke's electric plant used and useful in providing retail electric service in North Carolina should be derived from giving five-sevenths (5/7) weighting to the original cost of Duke's depreciated electric plant in service and two-sevenths (2/7) weighting to replacement costs of Duke's electric plant. By this method, using the depreciated original cost of $1,145,908,000 (excludes $7,807,000 of contributions in aid of construction) and a replacement cost of $1,453,347,000, the Commission finds that the fair value of said electric plant devoted to retail service in North Carolina is $1,233,748,000.

7. To the fair value of Duke's property used and useful in providing retail electric service to the public within North Carolina at the end of the test year should be added the reasonable allowance for working capital in the amount of $54,092,000.

8. That Duke's approximate gross revenues for the test year after accounting and pro forma adjustments under present rates are $374,076,000 and after giving effect to the company proposed rates are $435,156,000.

9. That the level of operating expenses after accounting and pro forma adjustments, including taxes, interest on customer deposits, and after exclusion of the consulting fee paid to a retired officer ($75,000), is $303,600,000 which includes an amount of $44,629,000 for actual investment currently consumed through reasonable actual depreciation before annualization to year-end level.

10. That the fair rate of return which Duke should have the opportunity to earn on the fair value of its North Carolina investment for retail operations is 7.65% which requires additional annual revenue from North Carolina retail customers of $61,080,000 and requires approval of the increased revenues as filed in the Application on September 14, 1973, and which are presently in effect under bond; provided, that the rate design for said increases is

modified to equalize the rates of return as hereinafter provided.

11. That the fair rate of return on the fair value equity of Duke is 9.81%.

12. That under the rates in effect prior to the authorization of the interim rates herein and the bonded rates herein, Duke was not and would not be earning an adequate rate of return on the property used and useful in its service to the public in North Carolina and under said prior rates Duke could not continue in operation as a viable electric utility in North Carolina, and that if said interim rates and bonded rates are not approved, Duke cannot maintain its ability to compete in the market for capital funds on terms reasonable and fair to its customers and its existing investors, and could not continue the construction of plants presently being built and necessary for the continued service to the public in its service area, and the full amount of the increase applied for and the retention of the interim and bonded rates is necessary to continuation of adequate service in Duke's service area.

13. That the rate of return which would have been earned by Duke during the test period under the rates in effect prior to the interim rates would be 5.4% on the fair value of its plant in service in North Carolina, which would have been inadequate to pay the interest on Duke's debt and cost of capital to support the plant then in service, and if Duke were required to refund any of the interim rate increases being collected during the test period and during the hearing, said refunds would cause a financial crisis and jeopardize the continued ability of Duke to meet its expenses in providing reliable and adequate electric service in its service area in North Carolina.

14. That during the last three general rate cases of Duke, i.e., Docket Nos. E-7, Sub 120 in 1971, E-7, Sub 128 in 1972, and E-7, Sub 145 in 1973, the Commission has authorized rates which the Commission calculated would allow Duke to earn a 12% return on actual equity in the first two cases and an 11% rate of return on actual equity on the third case. Due to the increases in expenses after each case greater than the expenses of the test period utilized, Duke has not earned the allowed rate of return and has operated over the last three years at a rate of return less than the return authorized by the Utilities Commission as a just and reasonable rate of return.

15. In addition to rising operating expenses and fixed charges, Duke's rate design has significantly contributed to attrition in its earnings.

16. That it is necessary for Duke to compete in the market for capital funds on terms which are reasonable and fair to its customers and to its existing investors in accordance with G. S. 62-133(4) in order to meet its capital

requirements and maintain facilities and services in accordance with the reasonable requirements of its customers, and under the rates in effect prior to the interim increases herein Duke would not be able to compete in the capital market on such terms.

17. That the rates filed herein in Docket No. E-7, Sub 159, are found to be just and reasonable rates for all amounts heretofore collected thereunder and for all amounts to be collected thereunder, without any refund therefor, pending implementation of the modified rate designs provided and approved in this Order for future application.

18. That Duke's interim and temporary rates are not unlawfully discriminatory and that the revenues collected by Duke under provisions of refund should be retained by Duke, in that the total annualized amount of revenue collected does not exceed the allowed annual general rate increase of $61,080,000 granted in this Order.

19. That the rates of return between rate classifications produced by Duke's proposed rates are closer together than those produced by previous rates; however, substantial variations would still exist under Duke's proposed rates.

20. That Duke's proposed rate designs may be made more effective in accurately charging the cost of service and promoting economic efficiencies and in conserving our scarce energy resources.

21. A rate design should (1) reflect costs of service, (2) recognize changes in long run incremental costs, (3) require classes of customers to pay their fair share of the costs to serve them, and (4) enable the utility to earn a fair rate of return on the fair value of its property including a return on equity sufficient to attract necessary new capital. The rate design approved in this case and attached hereto in Exhibits 1, 2, 3, and 4 will substantially achieve these objectives and result in more equitable and efficient pricing of electric power to Duke's customers.

22. Duke and the Staff should continue to study the refinement of metering techniques, pricing mechanisms and conservation measures, so that Duke's customers will have incentives to use power as efficiently and conservatively as possible, and in these ways reduce the demands being placed on the company and its ratepayers in the building of generating facilities.

23. That the fair rate of return on Duke's fair value rate base is 7.65%, which will allow Duke to continue to pay a reasonable dividend on its common stock attributable to its North Carolina retail operations, and retain a sufficient surplus for capital needs or other application by its shareholders and directors.

24. That the reasonable base cost of fossil fuel included in the rates fixed as just and reasonable rates in this docket is 0.5039 cents per kilowatt hour.

25. The Commission considered the use of seasonal rates with a summer-winter differential for the summer air conditioning peak demand costs, but finds this ratemaking method is not justified at this time, as being insufficiently tested to justify the difficulty and misunderstanding possible from such a rate system.

26. That the schedules showing the derivation and application of such findings are set forth and included as part of these findings as follows:

DUKE POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RETURN
"000's" OMITTED

| | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues | | | |
| Gross operating revenues | $ 374,076 | $61,080 | $ 435,156 |
| Operating Revenue Deductions | | | |
| Fuel expense | 120,883 | | 120,883 |
| Purchased power | 9,621 | | 9,621 |
| Operation and maintenance expenses (excluding fuel and purchased power) | 72,883 | | 72,883 |
| Depreciation | 49,280 | | 49,280 |
| Taxes - other than income | 35,854 | 3,665 | 39,519 |
| Taxes - state income | 251 | 3,445 | 3,696 |
| Taxes - Federal income | 1,248 | 25,906 | 27,154 |
| Taxes - deferred income | 15,916 | | 15,916 |
| Investment tax credit normalized | 112 | | 112 |
| Amortization of investment tax credits | (2,555) | | (2,555) |
| Total operating revenue deductions | 303,493 | 33,016 | 336,509 |
| Net operating income | 70,583 | 28,064 | 98,647 |
| Less: Interest on customer deposits | 107 | | 107 |
| Net operating income for return | $ 70,476 | $28,064 | $ 98,540 |

| | | | |
|---|---|---|---|
| **Investment in Electric Plant** | | | |
| Electric plant in service | $1,571,296 | $ | $1,571,296 |
| Less: Accumulated depreciation | 417,581 | | 417,581 |
| Contributions in aid construction | 7,807 | | 7,807 |
| Net investment in plant | 1,145,908 | | 1,145,908 |
| **Allowance for Working Capital** | | | |
| Materials and supplies | 36,839 | | 36,839 |
| Cash | 24,221 | | 24,221 |
| Minimum bank balances | 8,590 | | 8,590 |
| Prepayments | 315 | | 315 |
| Less: Average tax accruals | ( 8,736) | (5,419) | ( 14,155) |
| Customer deposits | ( 1,718) | | ( 1,718) |
| Total allowance for working capital | 59,511 | (5,419) | 54,092 |
| Net investment in electric plant in service plus allowance for working capital | $1,205,419 | $(5,419) | $1,200,000 |
| Fair value rate base | $1,293,259 | $(5,419) | $1,287,840 |
| Rate of return on fair value rate base | 5.45% | | 7.65% |

DUKE POWER COMPANY
RETURN ON COMMON EQUITY
NORTH CAROLINA RETAIL OPERATIONS
"000's" OMITTED

| Capitalization | Fair Value Rate Base | Ratio % | Embedded Cost or Return on Common Equity % | Net Operating Income for Return |
|---|---|---|---|---|
| | Present Rates - Fair Value Rate Base | | | |
| Long-term debt | $ 663,583 | 51.31 | 6.67 | $44,261 |
| Preferred stock | 175,870 | 13.60 | 7.22 | 12,698 |
| Common equity 1/ | 428,130 | 33.10 | 3.16 | 13,517 |
| Deferred investment tax credit 2/ | 603 | .05 | - | - |
| Deferred income taxes | 25,073 | 1.94 | - | - |
| Total | $1,293,259 | 100.00 | - | $70,476 |
| | Approved Rates - Fair Value Rate Base | | | |
| Long-term debt | $ 660,600 | 51.29 | 6.67 | $44,062 |
| Preferred stock | 175,080 | 13.59 | 7.22 | 12,641 |
| Common equity 1/ | 426,600 | 33.13 | 9.81 | 41,837 |
| Deferred investment tax credit 2/ | 600 | .05 | - | - |
| Deferred income taxes | 24,960 | 1.94 | - | - |
| Total | $1,287,840 | 100.00 | - | $98,540 |

1/ Excludes common stock equity in subsidiaries of $32,648,000.

2/ Excludes $2,474,000 of Job Development Investment tax credit.

NOTE: Deferred investment tax credit and deferred income taxes represent cost-free capital.

DUKE POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
REVENUE REQUIREMENTS CORRELATED TO
ORIGINAL COST AND FAIR VALUE COMMON EQUITY
"000's" OMITTED

| Item | Original Cost Net Investment Prior to Adjustment for Fair Value Increment |
|---|---|
| Revenue Requirements: | |
| Gross revenues - present rates | $374,076 |
| Additional gross revenue required to provide 11.50% return on original cost common equity | $ 54,930 |
| Total revenue requirements | $429,006 |
| Net income available for return on equity | $ 38,986 |
| Equity component | $338,914 |
| Return on actual common equity | 11.50% |

| Revenue Requirements: | Fair Value Rate Base |
|---|---|
| Gross revenues - present rates | $374,076 |
| Additional gross revenue required to provide 11.50% return on original cost common equity | $ 54,930 |
| Additional gross revenue required for fair value common equity | $ 6,150 |
| Total additional revenue | $ 61,080 |
| Total revenue requirements | $435,156 |
| Net income available for return on equity | $ 41,837 |
| Equity component | $426,600 |
| Return on fair value equity | 9.81% |

CONCLUSIONS

The Commission concludes from all of the evidence in this proceeding that it is necessary and essential and in the public interest to approve the revenues presently being collected from interim rates and temporary rates under provisions of G.S. 62-135, and that it is further necessary and essential in the public interest to modify the rate designs upon which said rates are structured, for collection of such revenues in the future. Failure to approve said interim and temporary rates, and the revenues collected thereunder, as just and reasonable, would jeopardize adequate service to the public, and would place Duke in a weakened financial condition to compete in the market for capital funds. The public interest requires that North Carolina continue to be provided with adequate and reliable electric service to maintain a sound economy and that Duke be financially able to continue the operation of electric service which is essential to the health and welfare of the public of North Carolina. The interim and bonded rates are approved only until such time as modified rate designs to produce the same additional revenues can be placed into effect as provided hereafter in this Order.

The Commission concludes that the company's evidence with respect to replacement cost failed to give proper consideration to improvements in plant design and efficiency. The Commission further concludes the company's method of computing the depreciation reserve applicable to the trended original cost is incorrect. First, the company trends up the original cost of plant, but fails to trend up in like amount the depreciation reserve applicable to that plant. For example, the depreciation reserve applicable to the trended original cost of the Rocky Creek hydro production plant was 24%, whereas the book depreciation was 90% on an original cost basis. Second, it is recognized that the group method utilized in the Duke evidence in which large amounts of plant are included in one category and to which a composite depreciation rate is applied is the least accurate.

The Commission concludes that the analysis of the depreciation reserve applicable to the steam and hydro plant conducted by the witnesses Bushnel and Hennigan is the correct method of computing the depreciation reserve as applied to the trended original cost. The Commission takes note that this method is also appropriate for the transmission and distribution plant of the company.

G.S. 62-134(b) authorizes the Commission to suspend rates filed by Duke for a period of 270 days from the time they would otherwise have gone into effect. The rates filed in Docket No. E-7, Sub 159, on September 14, 1973, would have gone into effect on October 15, 1973, and the Commission Order suspending said rates for 270 days would have expired on July 12, 1974, being 270 days after the original effective date.

Duke appealed to the Supreme Court from the Commission's Order in the Application of Duke in Docket No. E-7, Sub 145, which fixed the rates in effect prior to the interim rates herein, and the Supreme Court reversed the Commission in its calculations of the return required by North Carolina law on the equity investment in the Duke property. On July 1, 1974, the Supreme Court remanded the rate case in Sub 145 to the Commission on the Court's finding that the Utilities Commission's calculation of rate of return on the fair value of Duke's property was not in accord with the statutory formula for rate of return on equity as required by the Supreme Court in Utilities Commission v. General Telephone, 281 N.C. 318. This most recent requirement of the Supreme Court for a revised method of calculating the rate of return on the fair value of the equity requires approval of the 16.8% overall increase to produce $61,137,000 of additional annual revenue on North Carolina retail electric operations. Anything less than the $61,137,000 annual increase applied for in this Application would fail to meet the requirements of the Supreme Court in Utilities Commission v. Duke, 285 N.C. 377 (1974), on the appeal in Docket No. E-7, Sub 145, and would be inadequate under the North Carolina law.

In considering the various accounting adjustments that were presented in the Staff testimony and the Duke testimony, the Commission concludes that this proceeding should be decided on the basis of the accounting adjustments recognized in the last Duke rate case in Docket No. E-7, Sub 145, as decided on appeal in the North Carolina Supreme Court in Utilities Commission, et al v. Duke Power Company, 285 N.C. 377 (1974), without prejudice to such consideration of accounting adjustments as the Commission Staff or other parties may seek in any subsequent rate proceedings. This includes the adjustments for the allowance for funds during construction (AFDC), for investment credit, for deferred income taxes and for such other accounting adjustments which were included in the Staff testimony or the testimony of other parties and which are not adopted in this decision. The Staff and said parties are free to present studies in support of such adjustments in other cases involving Duke or other utilities regulated by the Utilities Commission, and this decision shall not be construed to be a precedent or res judicata as to the treatment of the accounting adjustments allowed in this decision or not allowed in this decision, and they are specifically not rejected for consideration in future cases.

The reasonable operating expenses of Duke have excluded the $75,000 a year consulting compensation paid to the former President of Duke.

We find that a rate of return of 9.8% on the fair value equity of Duke is a just and reasonable rate of return on the appreciated equity of Duke. It requires gross revenue of $6,150,000 in addition to the $54,930,000 necessary to produce a return of 11.5% on the book common equity of Duke. The $6,150,000 is additional revenue required under the

decision in Commission v. Duke, 285 N.C. 377 (1974), as the return on the appreciated equity from the fair value appreciation in the rate base, referred to by the Court as the "paper profit." The $54,930,000 of additional revenue would have produced a return on actual common equity of 11.5% and would have allowed Duke to compete in the market on terms reasonable to its existing stockholders and to its customers, and the $6,150,000 more revenue from additional rate increases is deemed to comply with the requirement for additional earnings from such paper profits in the fair value rate base. The book common equity is increased by the entire $87,840,000 of the increment for the fair value rate base. This changes the ratio of equity from 28% to 33% in the capital structure of Duke, as pro formed for the fair value equity. The required rate of return on fair value equity is reduced by the resulting change in capital structure, based upon the reduced risk to the equity component, and the Commission finds that the fair rate of return on the resulting fair value equity is 9.81%. Util. Comm. v. Duke, (supra), at p. 396. This will require a rate increase of $61,080,000 and is found to be fair on the original cost equity and results in the stockholders receiving additional earnings attributable to the paper profit included in the fair value equity of $6,150,000. This results in the stockholders actually having rates set to produce 12.35% return on the actual equity they have invested, instead of the 11.5% which the Commission finds to be a fair return on actual common equity, in compliance with the Court's decision in Commission v. Duke, supra.

This Order is based upon a test period of twelve months ending December 31, 1973, and fixes rates to produce a fair rate of return on the fair value of all property used and useful in providing service to the public at the end of the test period on December 31, 1973. This determination thus encompasses the subject matter of any prior rate application still pending based on an earlier test period and earlier expenses, revenues and rate base. In the rate case filed by Duke on May 31, 1972, in Docket No. E-7, Sub 145, the Commission Order of June 21, 1973, granting 72% of the rate increase applied for was appealed by Duke and the Court of Appeals affirmed the Commission in Utilities Commission v. Duke Power Company, 21 N.C. App. 89, 203 S.E. 2d 404 (1974). Duke appealed to the North Carolina Supreme Court, and the Supreme Court reversed and remanded, in Utilities Commission v. Duke Power Company, 285 N.C. 377 (1974), with instructions to remand to the Commission for further proceedings by the Commission not inconsistent with the Court's opinion. This Order and the rates fixed herein thus cover a more recent test period and encompass the matters included in the Court's opinion.

The rate schedules filed by Duke in its Application on September 14, 1973, were designed to produce $61,080,000 of additional annual revenue from its North Carolina retail customers during the twelve months ending December 31, 1973. These rates were designed on the same basis as the rates

approved by this Commission in Duke's last rate case, Docket No. E-7, Sub 145. The interim and temporary rates in this docket, which are in effect subject to refund, are not unlawful. The Commission is of the opinion that since the total additional revenues obtained by Duke from rates that were in effect in this docket subject to refund would be no greater than the $61,080,000 of additional annual revenue found herein to be just and reasonable, and since the interim and temporary increases are found to be not unlawful, none of the revenue collected subject to refund in this docket should be refunded.

The rates proposed by Duke in this docket are based upon the general format of the rate schedules previously in effect. The proposed increases were applied to the existing rate design, resulting in raising the price per KWH in each block of each schedule. The Commission concludes from the evidence of the witness Spann that the rates of return obtained from Duke's proposed rates for the test year vary substantially between rate classifications. Using Duke's proposed rates, based on test year operations, the rate of return for the residential class would have been 10.19% which would have been greater than the North Carolina system retail average of 9.45%. The rate of return from the industrial class would have been materially lower at 7.94%. (Figures based on net investment.)

The Commission concludes that an appropriate rate design should reflect long-run incremental costs, conserve energy resources, and promote economic efficiencies. The rate of return on the residential rate class should be reduced and the rate of return on the industrial class should be increased so that each class pays a return which is closer to the average retail rate of return. Certain residential rate schedules had a lower than average rate of return, while others were above average. The variation in rates of return between rate schedules within the residential class on Duke's proposed rates would be relatively large. This variation should be reduced. Rate schedules which meet these objectives are listed as "Approved Rates" in Exhibits 1, 2, 3 and 4 attached. The approved rate schedules attached are designed with pricing changes to reflect a more equitable and efficient rate design.

The residential rates are designed such that all residential customers who use less than 350 KWH will receive no rate increase. In addition, residential customers who use less than 1300 KWH will receive rate increases in amounts less than those proposed by the company and less than the rates presently in effect under bond. All monthly bills for usage over 1300 KWH will be charged the amount proposed by Duke (Note: round-off errors may cause these bills to be a few cents different from Duke's proposed charges). Sample bills for each residential rate schedule are included in Exhibits 1, 2 and 3.

Under this rate design, approximately 40.9% of the bills rendered in North Carolina on the basic residential schedule, R, during 1973 would receive no increase, and 94.7% would receive an increase less than that proposed by Duke. Approximately 10.8% of the North Carolina bills on the residential water heating schedule, RW, would receive no increase, with 84.5% receiving less than the full increase proposed by Duke. On the residential all-electric schedule, RA, in North Carolina, about 5.4% of the bills would receive no increase, with 44.8% receiving increases less than Duke proposed. In total, an average of 122,000 residential households in North Carolina would receive no increase in rates, with an average of approximately 422,000 additional residential households receiving less than the full increase proposed by the company. All customers will continue to be affected by the operation of the automatic fossil fuel cost adjustment clause which will result in increases or decreases on the basic rates varying with monthly fossil fuel costs.

The changes in the pricing of the residential rate schedules would reduce the total revenues obtained from the residential customers and, therefore, reduce the rate of return on that class of service. Increases in addition to those proposed by Duke would be needed in the industrial class to obtain a rate of return on that class of service which would more nearly equal the average retail rate of return. The industrial rate schedules (Schedules I and IP) listed as "Approved" in Exhibit 4 were increased in amounts greater than that proposed by the company. The additional revenue obtained from the industrial customers would be no greater than the loss in revenues realized by Duke due to the changes described above in the residential schedules so that the total additional annual North Carolina revenues produced by the rate schedules finally approved herein will be approximately equal to but no greater than the $61,080,000 found reasonable.

As can be seen from Exhibit 4, the industrial Schedule I which is listed as "Approved" uses Duke's basic rate design, but reprices the blocks of the rate schedule so that the price in each rate block is greater than or equal to Duke's proposed rate, but no greater than the rate listed as "Equal Rates of Return" which was noticed to the public. Further, the percentage increase on each rate block is larger in the first blocks of the rate schedule which would cause poor load factor customers to experience larger percentage increases on their bills. This change would reduce the amount of subsidization present within the industrial schedule as found and testified to by Dr. Spann.

A review of the effect of the approved residential and industrial rate schedules discussed above indicates that based on test year operations, the rates of return would move closer together. The residential rate of return would be 9.53%, with the average retail rate of return being 9.45%. The industrial rate of return would be 8.91%. This

represents a considerable reduction in the variations in rate of return. Further, the approved residential schedules would reduce variations in rates of return within that class by approximately 35%.

The Commission concludes that although Duke's interim and temporary rates are not unlawful, it is necessary to reprice the residential and industrial schedules in such a manner that the rates of return on these classes of service would be more nearly equal and more closely meet the other objectives set out heretofore. The Commission is of the opinion that the rate schedules listed as "Approved" in Exhibits 1, 2, 3 and 4 (R, RW, RA, I and IP rate schedules) would produce this result and, therefore, should be substituted for Duke's proposed rate schedules under the rate section of the appropriate tariffs. All other terms and conditions of those schedules, as well as all other tariffs included in this Application, should be approved as filed. The total additional annual revenues obtained by Duke from the rate schedules approved will be no greater than $61,080,000.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective for service rendered in North Carolina on and after the date of this Order, Duke Power Company is hereby allowed to place into effect the increased rates described in paragraph 2 below, which are designed to produce additional annual revenues in the amount of $61,080,000.

2. That the rates approved in this Order are to be designed as follows: The rate schedules listed as "Approved" in Exhibits 1, 2, 3 and 4 attached to this Order (R, RW, RA, I and IP rate schedules) shall be substituted for Duke's proposed rate schedules R, RW, RA, I and IP under the "Rate" section of the respective tariffs. All other terms and conditions of those tariffs and all other rate schedules filed in the Application, including Schedules G, W, GA, 9, BC, T2, T, and TS, as well as all aspects of all other tariffs included in this Application are hereby approved as filed.

3. That the revenues collected by Duke under the interim and temporary rates filed in this docket are hereby affirmed as just and reasonable and the undertakings filed with said rates are hereby discharged and cancelled.

4. That Duke Power Company and the Commission Staff are hereby directed to study the refinement of metering techniques, pricing mechanisms, and conservation measures so that Duke's customers will have incentives to use power as efficiently and conservatively as possible, and in these ways reduce the demands being placed on the company and its ratepayers in the building of generating facilities.

5. That Duke Power Company should give public notice of the rate increase approved herein by mailing a copy of the Notice attached as Appendix "A" by first class mail to each of its North Carolina retail customers during the next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.

This 10th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

EXHIBIT No. 1

RESIDENTIAL SERVICE - General

R Schedule

Present

| | |
|---|---|
| $3.40 | for the first 80 KWH or less |
| 2.47¢ | per KWH for the next 220 KWH |
| 2.36¢ | per KWH for the next 700 KWH |
| 2.24¢ | per KWH for the next 500 KWH |
| 1.76¢ | per KWH for all over 1500 KWH |

Proposed

| | |
|---|---|
| $4.00 | for the first 80 KWH or less |
| 2.88¢ | per KWH for the next 220 KWH |
| 2.75¢ | per KWH for the next 700 KWH |
| 2.61¢ | per KWH for the next 500 KWH |
| 2.05¢ | per KWH for all over 1500 KWH |

Approved

| | |
|---|---|
| $3.40 | for the first 80 KWH or less |
| 2.47¢ | per KWH for the next 220 KWH |
| 2.36¢ | per KWH for the next 50 KWH |
| 2.88¢ | per KWH for the next 950 KWH |
| 2.61¢ | per KWH for the next 200 KWH |
| 2.05¢ | per KWH for all over 1500 KWH |

Sample Bills

| Usage | Present Bill ($) | Proposed Bill ($) | Proposed Increase over Present (%) | Approved Bill ($) | Approved Increase over Present (%) |
|---|---|---|---|---|---|
| 0 | $ 3.40 | 4.00 | 17.6 | 3.40 | 0.0 |
| 80 | 3.40 | 4.00 | 17.6 | 3.40 | 0.0 |
| 150 | 5.13 | 6.02 | 17.3 | 5.13 | 0.0 |
| 200 | 6.36 | 7.46 | 17.3 | 6.36 | 0.0 |
| 350 | 10.01 | 11.71 | 17.0 | 10.01 | 0.0 |
| 500 | 13.55 | 15.84 | 16.9 | 14.33 | 5.6 |
| 700 | 18.27 | 21.34 | 16.8 | 20.09 | 10.0 |
| 1000 | 25.35 | 29.59 | 16.7 | 28.73 | 13.3 |
| 1500 | 36.55 | 42.64 | 16.7 | 42.59 | 16.5 |
| 2000 | 45.35 | 52.89 | 16.6 | 52.84 | 16.5 |
| 3000 | 62.92 | 73.39 | 16.6 | 73.34 | 16.5 |

EXHIBIT No. 2

RESIDENTIAL SERVICE - with Water Heating

RW Schedule

Present

$3.65 for the first 80 KWH or less

2.47¢ per KWH for the next 70 KWH
1.83¢ per KWH for the next 550 KWH
1.76¢ per KWH for all over 700 KWH

Proposed

$4.25 for the first 80 KWH or less

2.88¢ per KWH for the next 70 KWH
2.13¢ per KWH for the next 550 KWH
2.05¢ per KWH for all over 700 KWH

Approved

$3.65 for the first 80 KWH or less

2.47¢ per KWH for the next 70 KWH
1.83¢ per KWH for the next 200 KWH
2.24¢ per KWH for the next 950 KWH
2.05¢ per KWH for all over 1300 KWH

SAMPLE BILLS

| Usage | Present Bill ($) | Proposed Bill ($) | Proposed Increase over Present % | Approved Bill ($) | Approved Increase over Present % |
|---|---|---|---|---|---|
| 0 | 3.65 | 4.25 | 16.4 | 3.65 | 0.0 |
| 80 | 3.65 | 4.25 | 16.4 | 3.65 | 0.0 |
| 150 | 5.38 | 6.27 | 16.5 | 5.38 | 0.0 |
| 200 | 6.29 | 7.33 | 16.5 | 6.29 | 0.0 |
| 350 | 9.04 | 10.53 | 16.5 | 9.04 | 0.0 |
| 500 | 11.78 | 13.72 | 16.5 | 12.40 | 5.3 |
| 700 | 15.44 | 17.98 | 16.5 | 16.88 | 9.3 |
| 1000 | 20.72 | 24.13 | 16.5 | 23.60 | 13.9 |
| 1500 | 29.52 | 34.38 | 16.5 | 34.42 | 16.6 |
| 2000 | 38.32 | 44.63 | 16.5 | 44.67 | 16.6 |
| 3000 | 55.92 | 65.13 | 16.5 | 65.17 | 16.5 |

EXHIBIT No. 3

RESIDENTIAL SERVICE - All Electric

RA Schedule

Present

| | |
|---|---|
| $3.81 | for the first 80 KWH or less |
| 2.47¢ | per KWH for the next 120 KWH |
| 1.83¢ | per KWH for the next 500 KWH |
| 1.76¢ | per KWH for the next 300 KWH |
| 1.54¢ | per KWH for the next 500 KWH |
| 1.30¢ | per KWH for all over 1500 KWH |

Proposed

| | |
|---|---|
| $4.45 | for the first 80 KWH or less |
| 2.88¢ | per KWH for the next 120 KWH |
| 2.13¢ | per KWH for the next 500 KWH |
| 2.05¢ | per KWH for the next 300 KWH |
| 1.79¢ | per KWH for the next 500 KWH |
| 1.51¢ | per KWH for all over 1500 KWH |

Approved

| | |
|---|---|
| $3.81 | for the first 80 KWH or less |
| 2.47¢ | per KWH for the next 120 KWH |
| 1.83¢ | per KWH for the next 150 KWH |
| 2.16¢ | per KWH for the next 950 KWH |
| 1.79¢ | per KWH for the next 200 KWH |
| 1.51¢ | per KWH for all over 1500 KWH |

SAMPLE BILLS

| Usage | Present Bill ($) | Proposed | | Approved | |
|---|---|---|---|---|---|
| | | Bill ($) | Increase over Present (%) | Bill ($) | Increase over Present (%) |
| 0 | 3.81 | 4.45 | 16.8 | 3.81 | 0.0 |
| 80 | 3.81 | 4.45 | 16.8 | 3.81 | 0.0 |
| 150 | 5.54 | 6.47 | 16.8 | 5.54 | 0.0 |
| 200 | 6.77 | 7.91 | 16.8 | 6.77 | 0.0 |
| 350 | 9.52 | 11.10 | 16.6 | 9.52 | 0.0 |
| 500 | 12.26 | 14.30 | 16.6 | 12.76 | 4.1 |
| 700 | 15.92 | 18.56 | 16.6 | 17.08 | 7.3 |
| 1000 | 21.20 | 24.71 | 16.6 | 23.56 | 11.1 |
| 1500 | 28.90 | 33.66 | 16.5 | 33.62 | 16.3 |
| 2000 | 35.40 | 41.21 | 16.4 | 41.17 | 16.3 |
| 3000 | 48.40 | 56.31 | 16.3 | 56.27 | 16.3 |

## Industrial Service - Schedule I

| Present Rate | Duke's Proposed Rate | % Increase of Rate over Present | |
|---|---|---|---|
| | | | For the first 125 KWH per KW Billing Demand |
| $4.42 | $5.15 | 16.5 | for the first 100 KWH or less |
| 3.06¢ | 3.57¢ | 16.7 | per KWH for the next 1,170 KWH |
| 2.47¢ | 2.88¢ | 16.6 | per KWH for the next 1,730 KWH |
| 2.12¢ | 2.47¢ | 16.5 | per KWH for the next 27,000 KWH |
| 2.01¢ | 2.33¢ | 15.9 | per KWH for the next 30,000 KWH |
| 1.89¢ | 2.20¢ | 16.4 | per KWH for the next 30,000 KWH |
| 1.47¢ | 1.71¢ | 16.3 | per KWH for the next 910,000 KWH |
| 1.45¢ | 1.69¢ | 16.6 | per KWH for all over 1,000,000 KWH |
| | | | For the next 275 KWH per KW Billing Demand |
| .95¢ | 1.10¢ | 15.8 | per KWH for the first 140,000 KWH |
| .83¢ | .96¢ | 15.7 | per KWH for the next 60,000 KWH |
| .72¢ | .83¢ | 15.3 | per KWH for all over 200,000 KWH |
| | | | For all over 400 KWH per KW Billing Demand |
| .72¢ | .83¢ | 15.3 | per KWH for the first 1,000,000 KWH |
| .66¢ | .77¢ | 16.7 | per KWH for all over 1,000,000 KWH |

NOTE: The rate approved for the IP Schedule will be the same as that for the I Schedule but will include an additional charge of 5¢ per KW billing demand per month.

EXHIBIT No. 4

## Industrial Service - Schedule I

| Equalized Rate of Return (NOTICED) | | Rate Approved | | |
|---|---|---|---|---|
| Rate | % Increase of Rate over Present | Rate | % Increase of Rate over Present | |
| | | | | For the first 125 KWH per KW Billing Demand |
| $5.62 | 27.1 | $5.62 | 27.1 | for the first 100 KWH or less |
| 3.89¢ | 27.1 | 3.88¢ | 26.8 | per KWH for the next 1,170 KWH |
| 3.14¢ | 27.1 | 3.12¢ | 26.3 | per KWH for the next 1,730 KWH |
| 2.69¢ | 26.9 | 2.67¢ | 25.9 | per KWH for the next 27,000 KWH |
| 2.55¢ | 26.9 | 2.51¢ | 24.9 | per KWH for the next 30,000 KWH |
| 2.40¢ | 27.0 | 2.39¢ | 26.5 | per KWH for the next 30,000 KWH |
| 1.87¢ | 27.2 | 1.84¢ | 25.2 | per KWH for the next 910,000 KWH |
| 1.84¢ | 26.9 | 1.81¢ | 24.8 | per KWH for all over 1,000,000 KWH |
| | | | | For the next 275 KWH per KW Billing Demand |
| 1.21¢ | 27.4 | 1.16¢ | 22.1 | per KWH for the first 140,000 KWH |
| 1.05¢ | 26.5 | 1.02¢ | 22.9 | per KWH for the next 60,000 KWH |
| .92¢ | 27.8 | .86¢ | 19.4 | per KWH for all over 200,000 KWH |
| | | | | For all over 400 KWH per KW Billing Demand |
| .92¢ | 27.8 | .83¢ | 15.3 | per KWH for the first 1,000,000 KWH |
| .84¢ | 27.3 | .77¢ | 16.7 | per KWH for all over 1,000,000 KWH |

NOTE: The rate approved for the IP Schedule will be the same as that for the I Schedule but will include an additional charge of 5¢ per KW billing demand per month.

EXHIBIT No. 4

APPENDIX "A"

DOCKET NO. E-7, SUB 159
DOCKET NO. E-7, SUB 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Duke Power Company | ) | |
| for Authority to Adjust its Electric | ) | NOTICE TO |
| Rates and Charges | ) | CUSTOMERS |

On September 14, 1973, Duke Power Company filed an Application with the North Carolina Utilities Commission for authority to increase electric rates to its North Carolina retail customers. This Application requested approval of an overall 16.8% increase in rates that would produce $61,080,000 of additional annual revenues from North Carolina retail customers. The rates proposed by Duke were placed into effect subject to refund on April 15, 1974.

On October 10, 1974, the Commission issued the final decision in this docket. That Order requires that the interim and temporary rates presently in effect be rolled back to the original rates for residential customers using less than 350 KWH a month, and be rolled back partially for residential customers using less than 1300 KWH a month, effective for service rendered after October 10, 1974. The bill for usage over 1300 KWH monthly will be equal to Duke's temporary charge which is presently in effect. This rate design results in bills which will be lower, exclusive of fuel charges, than those currently being charged for all households with a monthly usage under 1300 KWH. On the average, approximately 122,000 households in North Carolina will receive a decrease back to their prior rates, and approximately 422,000 more households will receive some reduction in their present rate. All customers will be affected by the automatic fossil fuel clause which results in increases or decreases on the basic rate varying with fossil fuel costs.

Duke's North Carolina industrial customers will be charged rates in excess of those proposed by the company. Poor load factor industrial customers will receive the largest percentage increases. This rate design will result in raising the rates of return on this class of service closer to the average retail rate of return and, therefore, will cause the industrial class to more nearly pay its fair share of costs.

The general, or commercial rate, schedules were approved as filed, and as presently in effect.

The Order found that the revenue collected from the interim and temporary rates was required to maintain service, and the roll-back in low-use residential rates and

the increase in industrial rates was ordered effective for service rendered after October 10, 1974, without refund.

The Commission emphasized to both Duke and its customers and to the public in general in North Carolina the continuing urgent need for the conservation of electric energy, and indeed all forms of energy in this State. The Commission stated that it is clear that the United States is still confronted with an energy crisis, the solution to which is not yet in sight. The Commission expressed its opinion that reasonable and prudent conservation measures on the part of all people will speed the day when energy prices will begin to level off and perhaps recede in the direction of the levels of the early 1970's. The Commission stated that lacking conservation, the pressures on energy prices will continue to grow and energy prices will continue to escalate, and urged all concerned to investigate every avenue of energy conservation and savings and to practice conservation as a way of life for the predictable and foreseeable future.

Copies of the schedules may be obtained at your Duke Power Company offices.

Issued October 10, 1974.

DUKE POWER COMPANY

DOCKET NO. E-7, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Application of Duke Power Company | ) ORDER DISMISSING |
| for Authority to Adjust its | ) APPLICATION INCONSISTENT |
| Electric Rates and Charges | ) WITH CURRENT INCREASES |

BY THE COMMISSION. On May 24, 1974, Duke Power Company filed the Application herein, seeking approval of an increase in rates on retail electric service in North Carolina to become effective July 1, 1974, to produce additional revenue in the approximate amount of $83,332,000 annually, based upon an overall increase of 16.6% in its rates and tariffs for retail service in North Carolina.

At the time of the filing of this Application on May 24, 1974, Duke had pending before the Commission its rate increase application in Docket No. E-7, Sub 159, in the amount of $60,378,000 annually, based on an overall increase of 16.8% in rates, and an application in Docket No. E-7, Sub 161, for a coal adjustment clause. An increase approved in part and denied in part in Docket No. E-7, Sub 145, on June 21, 1973, was pending on appeal in the North Carolina Supreme Court on Duke's appeal from the Order of the North Carolina Court of Appeals affirming the Commission in Util. Comm. v. Duke Power Co., 21 N.C. App. 89, 203 S.E. 2d 404

(1974). The increases proposed in Docket Nos. E-7, Sub 159, and E-7, Sub 161, were consolidated for hearing and were heard during the period from May 28, 1974, through July 23, 1974.

By Order of June 27, 1974, the Commission suspended the rate increase proposed by Duke in Docket No. E-7, Sub 167, for a period of 270 days under G.S. 62-134(b) and set the proceeding for further Orders of the Commission, and denied Duke's petition for interim rate relief filed with the Application.

By Order entered September 10, 1974, after hearing and briefing by the parties, the Commission approved the revenues collected under the coal adjustment clause, subject to any further Order the Commission might enter modifying the coal adjustment clause.

On April 15, 1974, Duke placed the full increase applied for in Docket No. E-7, Sub 159, in effect as a temporary rate under bond under G.S. 62-135. Prior Orders of the Commission in said Docket No. E-7, Sub 159, had allowed motions for interim rate increases of 8% effective November 15, 1973, and 2.25% effective January 19, 1974.

By final Order entered on October 10, 1974, the Commission approved the 16.8% overall increase in annual revenues then in effect under bond in Docket No. E-7, Sub 159, in an amount then estimated to produce $61,080,000 annual revenue, and approved the amounts collected under interim and temporary rates under bond, but prescribed new rate designs for application of said increased annual revenue to Duke's tariff of rates and charges, to apply the increase to those classifications of customers and to the schedules of customers found just and reasonable and nondiscriminatory based on the record in said proceeding. The Order of October 10, 1974, in Docket No. E-7, Sub 159, applied a greater portion of the rate increases to commercial and industrial customers and to the high volume residential customers, with certain resulting decreases in the proposed rates for small residential customers. The new rate designs were based upon voluminous testimony in said Docket No. E-7, Sub 159, relating to the differences in rate of return from the respective classifications of customers and to the failure of the large volume rate schedules to take into consideration the increasing cost of new production and the higher cost of incremental volumes of electric power for the high volume customers and the inadequacy of the declining block rates for higher use by all customers. The new rate designs offer a strong potential for maintaining the rate of return of Duke as approved for the test period ending December 31, 1973, and are based upon testimony that the new rate designs could slow down or bring an end to the attrition of earnings of Duke.

The new rate designs, produce an overall increase in revenue 16.8% greater than the revenue in Docket No. E-7,

Sub 145, being $61,080,000 of additional revenue annually for the test period ending December 31, 1973.

Duke has not had any experience under the new rate designs, and it is anticipated and expected that the rate designs will slow down the attrition in the earnings of Duke and offers the expectation that the fair rate of return fixed in the Order of October 10, 1974, will be realized by Duke for the prospective period beginning with the effective date of the new rate designs on November 1, 1974.

By final Order entered on October 10, 1974, in Docket No. E-7, Sub 161, the Commission approved a fossil fuel adjustment clause which allows Duke to pass through to its customers all increases in the cost of coal and oil on a monthly fuel surcharge added to each customer's bill, based on the actual fuel expense increase for each KWH sold. This fuel clause prevents any substantial erosion or attrition in earnings from increases in fuel prices, and removes this expense as a cause or basis for filing a new rate case before a pending case is completed. The Commission had allowed an interim coal adjustment clause in Docket No. E-7, Sub 161, effective January 15, 1974, but the final Order of October 10, 1974, allowing a fossil fuel adjustment adds other fossil fuels, including oil, and the fuel adjustment clause removes fuel expense in the calculation of a need for a further rate increase in the docket.

In addition to the new rate designs effective October 10, 1974, in August 1974 Duke informed the Commission of a considerable reduction in its construction program which will eliminate approximately $150,000,000 a year of new construction and will reduce the need for new money for Duke and slow down the need for additional capital from the marketplace. Customers of Duke have achieved considerable conservation in the use of electricity and the announcement of the reduced construction program was made by Duke, in part, upon the reduced rate of growth predicted by Duke.

The Application in this proceeding was filed on May 24, 1974, prior to the hearings in Docket Nos. E-7, Sub 159, and E-7, Sub 161, and without knowledge by Duke of the modified rate designs fixed by the Commission, and without knowledge of the reduction in construction program and the full effects of the conservation of electricity by Duke's customers.

Based upon the above considerations, the Commission finds that the Application for rate increase in this docket to be inconsistent with the rate increase and rate of return considered by the Commission in the hearings from May 28, 1974, through July 23, 1974, and considered by the Commission in its final Order of October 10, 1974, in Docket Nos. E-7, Sub 159, and E-7, Sub 161. The rate increases sought in this Docket No. E-7, Sub 167, are thus based on a premise of rates, rate of return and revenue and expenses which are no longer in existence, and are inconsistent with

rates already approved by the Commission in other Duke rate applications. The Application is thus out-of-date and inappropriate based upon the subsequent actions of the Commission in Docket Nos. E-7, Sub 159, and E-7, Sub 161, and is not based upon conditions now in effect with respect to Duke's rates, revenues and rate of return, and for these reasons the Commission is of the opinion and finds that the rate Application should be dismissed.

IT IS, THEREFORE, ORDERED that the Application of Duke Power Company filed herein on May 24, 1974, for authority to adjust its electric rates and charges as contained in said Application is hereby denied for the reasons hereinabove set forth.

ISSUED BY ORDER OF THE COMMISSION.

This 10th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-15, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Pamlico Power and Light Company, Inc., for an Adjustment in its Rates and Charges ) ORDER GRANTING RATE INCREASE

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, November 14, 1974, at 10:30 a.m.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

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For the Commission Staff:

Robert F. Page
Assistant Commission Attorney

North Carolina Utilities Commission
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E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
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Raleigh, North Carolina 27602

BY THE COMMISSION. On April 26, 1974, Pamlico Power and Light Company, Inc. (hereinafter called Applicant), filed an application with the Commission for authority to increase its rates and charges in North Carolina. It further requested a purchase power adjustment clause and an emergency interim rate relief requiring a 16.1% uniform, across-the-board increase in the level of rates heretofore prescribed by the Commission in Docket E-15, Sub 22.

On May 21, 1974, the Commission entered an Order in the above-captioned matter which, among other things, suspended the proposed general rate increase, declared this matter to be a general rate case, ordered an investigation into the reasonableness of the proposed rates and required that notice be given to the public.

On June 3, 1974, Pamlico Power and Light Company by and through its attorney filed an Undertaking by Petitioner to institute the purchase power adjustment clause and also filed motion on June 3, 1974, requesting the Commission to permit Pamlico Power and Light Company to place into effect on one day's notice the purchase power adjustment clause contained in application heretofore filed with the Commission on April 26, 1974. By Order dated June 5, 1974, the Commission approved the proposed undertaking.

By further Order dated September 4, 1974, the Commission suspended the proposed emergency interim rates included in Pamlico Power and Light Company's application, set the matter for hearing in the Commission Hearing Room, required Pamlico Power and Light Company to give notice of the aforementioned hearing to its customers. The matter of interim rates was heard at the designated time and place. Upon the evidence adduced therein these interim rates were allowed to become effective by Order dated September 25, 1974. The matter in the above-captioned case was heard on Thursday, November 14, 1974, at 10:30 in the Commission's Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina. There were no protestants present at said hearing.

Applicant offered the testimony of Mr. P. D. Midgett, Jr., President of Pamlico Power and Light Company, who testified regarding the need of Pamlico Power and Light Company for immediate rate relief in order to cover its ordinary expenses and borrow money to finance its present construction. He further testified regarding the corporate

makeup of said company. Mr. Howard W. Jones, Registered Professional Engineer and Consultant of Pamlico Power and Light Company testified regarding plant presently in operation owned by Pamlico Power and Light Company and regarding improvements to said plants which Mr. Jones has suggested.

The Applicant further offered the testimony of Mr. Joseph R. Plott, Manager with Arthur Young and Company, a firm of certified public accountants, who offered testimony regarding financial conditions of Pamlico Power and Light Company as well as predictions regarding projected income if rate relief is granted. Said witnesses were cross-examined by the Utilities Commission Staff.

North Carolina Utilities Commission Staff offered testimony of Mr. F. Paul Thomas, Staff Accountant, who testified regarding certain adjustments the Utilities Commission Staff had made to the exhibits supplied by the Applicant. He further testified regarding the financial needs of Pamlico Power and Light Company, Inc. The Commission Staff further offered the testimony of Mr. J. Reed Bumgarner, Utilities Engineer, Electric Section, Engineering Division, who testified regarding distribution of facilities, service arrangements, and offered certain suggestions regarding possible improvements to Pamlico Power and Light Company's distribution system.

Based on the application filed, testimony offered, and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That Pamlico Power and Light Company is a duly organized public utility subject to the jurisdiction of the North Carolina Utilities Commission and is providing electric utility service to certain customers in eastern North Carolina.

2. That Pamlico Power and Light Company, which has no electric generating power, purchases all its electricity from Virginia Electric and Power Company (VEPCO). Pamlico Power and Light Company continues to pay an increasing price for purchased electricity due to a general rate increase granted VEPCO and also by an automatic fossil fuel adjustment clause which this Commission has granted to VEPCO. There is little likelihood that Pamlico's increased cost of purchased electricity will decrease in the foreseeable future.

3. That the original cost net investment of Pamlico Power and Light Company is $760,471, that the working capital requirement is $1,408 and that original cost net investment plus working capital requirements is $761,879.

4. That the net operating income for return before the proposed increase, after staff adjustments, including

amortization of rate case expenses over a three-year period, is $23,943.

5. That net operating income for return after proposed increase, after staff adjustments including amortization of rate case expenses over a three-year period is $62,786.

6. That rate of return on original cost net investment before proposed increases is 3.14% and that rate of return on original cost net investment after proposed increases will be 8.24%. That the net operating income for return before the proposed increases of $23,943 less interest expense of $23,218, less preferred dividends of $4,007, leaves a negative amount available for common equity of -$3,282.

7. That the net operating income for return after proposed increase of $62,786 less the interest expense of $23,218, less preferred dividends of $4,007, leaves an amount available for common equity of $35,561.

8. That the common equity of Pamlico Power and Light Company is $368,140.

9. That the return on common equity before the proposed increase is -.89% and that return on common equity after the proposed increase will be 9.66%.

10. That Pamlico Power and Light Company has no service rules and regulations on file with this Commission.

11. That Pamlico Power and Light Company does have service rules and regulations, however, they have not been filed with or approved by this Commission.

12. That certain service voltage levels are not within the levels prescribed by the Commission rules and regulations.

13. That Pamlico Power and Light Company should continue its present program of line improvements, outlining the systems study by Mr. Jones, which study should be modified periodically to assure that realistic power costs are factored into the determination of optimum conductor sizes.

14. Pamlico Power and Light Company should file a complete set of service rules and regulations for Commission approval.

Based on the foregoing Findings of Fact, the Commission reaches the following

## CONCLUSIONS

The Commission concludes from all the evidence in this proceeding that it is necessary and essential and in the public interest to approve the revenues presently being

collected from interim rates and temporary rates under the provisions of G. S. 62-135. Failure to approve said interim and temporary rates and the revenues collected thereunder as just and reasonable would jeopardize adequate service to the public and would place Pamlico Power and Light Company in a weakened financial condition to compete in the market for capital funds. Public interest requires that North Carolina continue to be provided with adequate and reliable electric service to maintain a sound economy and that Pamlico Power and Light Company be financially able to continue the operation of electric service which is essential to the health and welfare of the public of North Carolina. The interim and bonded rates are approved only until such time as modified rates designed to produce the same revenue can be placed into effect as provided hereinafter in this Order.

The Commission further concludes that its net operating income for return after proposed increase in rates and charges for Pamlico Power and Light Company will be $62,786 on which, after interest expenses and preferred dividends have been deducted from said amount will produce an amount available for common equity of $35,561. The Commission concludes that when this figure is compared with Pamlico Power and Light Company's common equity of $368,140 it will produce a rate of return on fair value common equity after the proposed increase of 9.66% which this Commission deems to be a just and reasonable rate of return. The Commission, therefore, concludes that because good cause has been shown in writing that the rate increase heretofore placed under suspension by this Commission should be withdrawn and that the Applicant should be allowed to institute an across-the-board increase of 15.90% which should provide annual net operating income for return of $62,786 which is needed to produce a rate of return of 8.24% on original cost investment. The Commission further concludes that the Applicant should file its service rules and regulations with this Commission so that they may be approved by this Commission.

IT IS, THEREFORE, ORDERED:

1. That the Commission Order suspending proposed rate increase, setting investigation and hearing, and requiring public notice in this matter dated May 21, 1974, be, and hereby is, cancelled and withdrawn.

2. That the Applicant, Pamlico Power and Light Company, Inc., be allowed to increase the level of rates heretofore prescribed by this Commission in Docket No. E-15, Sub 22, by applying thereto a uniform, across-the-board increase of 15.90% to become effective January 1, 1975.

3. That Applicant, Pamlico Power and Light Company, file a complete set of service rules and regulations with this Commission for its approval.

4. That the revenues collected by Pamlico Power and Light Company on the interim and temporary rates filed in this docket are hereby affirmed as just and reasonable and the undertakings filed with said rates are hereby discharged and cancelled.

5. That Pamlico Power and Light Company shall give public notice of the rate increase approved herein by mailing a copy of the notice attached as Appendix "A" by first class mail to each of its North Carolina retail customers during the next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. E-15, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application by Pamlico Power and Light Company, Inc., for an Adjustment in its Rates and Charges | ) ) ) | NOTICE TO CUSTOMERS |

On April 26, 1974, Pamlico Power and Light Company, Inc. filed an application with the North Carolina Utilities Commission for authority to increase its rates and charges in North Carolina by a 16.1% uniform across-the-board increase to the level of rates heretofore prescribed by the Commission in Docket E-15, Sub 22. It further requested a purchase power adjustment clause and emergency interim rate relief of 16.1%.

On June 3, 1974, Pamlico Power and Light Company, Inc., by and through its attorneys, filed an Undertaking by Petitioner to institute purchase power adjustment clause and also filed a Motion on June 3, 1974, requesting the Commission to permit Pamlico Power and Light Company, Inc., to place into effect on one day's notice the purchase power adjustment clause contained in the application heretofore filed with the Commission on April 26, 1974. By Order dated June 5, 1974, the Commission approved the proposed undertaking.

After public hearing on the matter of interim rates, the North Carolina Utilities Commission by Order dated September 25, 1974, allowed a uniform across-the-board interim emergency increase of 12.2% subject to the undertaking for refund filed by Pamlico Power and Light Company in this

proceeding with interest as to any amount not finally approved by the Commission.

On December 16, 1974, the Commission issued the final decision in this docket. The Order found that the revenue collected from the interim and temporary rates was required to maintain service and, therefore, dissolved and cancelled the undertaking by Pamlico Power and Light Company, Inc. for refund and allowed Pamlico Power and Light Company, Inc. to permanently retain the revenues collected under the interim rates. The final Order further allowed the Applicant to increase the level of rates heretofore prescribed by this Commission in Docket No. E-15, Sub 22, by applying thereto a uniform, across-the-board increase of 15.90% to become effective on January 1, 1975. Copies of the schedules may be obtained at the offices of Pamlico Power and Light Company.

This the 16th day of December, 1974.

PAMLICO POWER AND LIGHT COMPANY, INC.
By_____
P. D. Midgett, Jr.
President

DOCKET NO. E-15, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of Application of Pamlico Power and Light Company for an Adjustment in its Rates and Charges | ) ) ) | ERRATA ORDER |

BY THE COMMISSION. It has come to the attention of the Commission that the Ordering Paragraph 6 of Commission Order Granting Rate Increase issued December 16, 1974, in the above captioned matter has erroneously been deleted, and the Commission being of the opinion that said error should be corrected,

IT IS, THEREFORE, ORDERED: 1. That Commission Order Granting Rate Increase dated December 16, 1974, in the above captioned matter be, and the same hereby is, amended to include Ordering Paragraph 6 which shall read as follows:

"6. That Pamlico Power and Light Company, Inc., be allowed to institute the purchase power cost adjustment clause in the form of a purchased power cost adjustment factor to be applied to each kilowatt hour sold, which factor shall be equal to the cost adjustment factor of its supplier, Virginia Electric and Power Company, multiplied by a tax factor of 1.06 and an appropriate line loss factor."

2. That in all other respects the Commission Order of December 16, 1974, shall be and remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-94

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Charles M. Reeves, Jr., and Sam Q. Bass<br>Complainants<br><br>vs.<br><br>Carolina Power & Light Company and Harkers Island Electric Membership Corporation<br>Respondents | ORDER DISMISSING COMPLAINT |

HEARD IN: The Municipal Board Room, City Hall, 202 South 8th Street, Morehead City, North Carolina, on Wednesday, May 15, 1974, at 9:30 a.m.

BEFORE: Chairman Marvin R. Wooten (presiding) and Commissioners Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

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For the Commission Staff:
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Raleigh, North Carolina 27602

BY THE COMMISSION. This matter arose upon the filing with this Commission of a Petition on March 10, 1972, by Charles M. Reeves and Sam Q. Bass for the assignment of Cape Lookout and Core Banks, hereinafter referred to as Core Banks, in Carteret County, North Carolina, to an electric supplier.

Order serving Petition upon Carolina Power & Light Company and Harkers Island Electric Membership Corporation was issued by the Commission on March 27, 1972, and answer of Harkers Island Electric Membership Corporation was received by the Commission on April 19, 1972, and response of Carolina Power & Light Company was received April 21, 1972, and amendment thereto by Carolina Power & Light Company was received on December 15, 1972.

Notice to Complainant Petitioners of the answers filed by the Defendants was issued on May 5, 1972, and reply thereto by Complainant Petitioners with a request for public hearing was received by the Commission on June 7, 1972.

Order serving Complaint Petition for hearing on September 12, 1972, was issued by the Commission in August of that year. After numerous requests for and granting of continuances, all of which are a part of the record in this case, Final Order continuing the matter to May 15, 1974, at 9:30 a.m., in the Municipal Board Room, City Hall, 202 South 8th Street, Morehead City, North Carolina, was issued.

Complainants offered the testimony of Charles M. Reeves, Jr., Sam Q. Bass, David J. Reaves and Headon Willis, property owners on Core Banks, who testified that they thought that there was a need for public utility electric service on Core Banks. Mr. David Yeoman was tendered for

cross-examination as corroborating and adopting the testimony of Mr. Willis.

Josiah Bailey testified that he was owner and operator of Outer Banks Transportation Company, which is a common carrier carrying passengers and freight between Harkers Island and Core Banks. He further testified that although it was not essential that he be provided electric service on Core Banks, it would be a great convenience for him in the operation of his business.

Complainants further offered the testimony of Stephen Massey, Commander-Chief of the Civil Engineering Branch of the Fifth Coast Guard District, who described the present facilities owned by the Coast Guard which are located on Core Banks. He stated that the Coast Guard desired to have a source of public power due to the fact that it would be much cheaper to operate than the present system since the Coast Guard's present system was in need of repair and replacement. Henry Styron, Chief Boatswain's Mate and Officer in Charge of Cape Lookout Station, testified that there was a need for the Coast Guard Rescue Station presently located on Core Banks and that the Coast Guard desired to receive power from a public electric supplier. John Angras, Jr., Contracting Officer for the Fifth Coast Guard District, testified that the Coast Guard desired to be served by a public electric supplier and that the Coast Guard would be willing to pay some contributions in aid of construction, but that no money had been presently set aside for said contributions.

Tony Seaman, Jr., Restaurant Owner and interested citizen, testified that he would like to see electric service supplied to Core Banks so that a Marine Science Laboratory could be established on Core Banks. He further testified that he did not own any property on the Core Banks.

In opposition to said petition, Charles Manooch, Vice President of the Carteret County Wildlife Club, and Bob Simpson representing North Carolina Wildlife Federation and the Conservation Council of North Carolina, stated their opposition to the imposition of electric power facilities on Core Banks because of what they thought the detrimental effect would be to the ecology. Walker Gillikin, Betty Sue Rinehart, Francis Rinehart, Gladys Cutter Harker, all residents of Harkers Island, North Carolina, and members of Harkers Island Electric Membership Corporation, stated that they were in opposition to Harkers Island Electric Membership Corporation having to furnish electric power to Core Banks because it would detrimentally affect the financial and economic status of Harkers Island Electric Membership Corporation and, therefore, would require their rates to go up.

Wilson Davis testified that he presently owns property on Core Banks and stated that he is opposed to the establishment of electric service on Core Banks because he

is afraid that it would destroy the ecology. Mary Simpson of the Environmental Resources Committee of Carteret County stated that she is opposed to supplying electricity to Core Banks because she was concerned about the environmental impact of public power on Core Banks because of the potentiality of an unnecessarily high deleterious effect on a basically natural area.

Respondent, Carolina Power & Light Company, first submitted into evidence deposition of Mr. Preston Rydell, Superintendent of Cape Lookout National Seashore, regarding the status of Core Banks as a national seashore without any objection of the parties involved. Carolina Power & Light Company further offered the testimony of M. E. White, State Department of Administration, who described the State's interest and ownership of the Core Banks.

Robert Hunter, Department of Natural and Economic Resources, in the position of special assistant to the Secretary for the State of North Carolina, testified regarding steps presently being taken by the State of North Carolina for the acquisition of land on the outer banks for inclusion in the Cape Lookout National Seashore.

Thomas J. Byrum, Manager-Distributing Engineer for Carolina Power & Light Company, testified concerning the problems, cost and expenses of supplying Core Banks with electric power. Mr. L. R. Stalling, Assistant Energy Service Manager, testified regarding what the estimated future revenues by present demand on the Core Banks would be under current rate schedules. Norris Edge was tendered for cross-examination by Respondent, Carolina Power & Light Company, to further corroborate the testimony given by Mr. Byrum and Mr. Stallings.

Respondent, Harkers Island Electric Membership Corporation, offered the testimony of H. W. Horney, of the North Carolina State Rural Electrification Authority who testified regarding cost and feasibility of supplying electric power to the Core Banks. Mr. H. R. Litzaw, Registered Professional Engineer, Booth and Associates, Inc., Raleigh, North Carolina, testified regarding the estimated cost to Harkers Island Electric Membership Corporation for the extension of service to the Cape Lookout area and Core Banks. Mr. Maxwell Willis, Board Member of Harkers Island Electric Membership Corporation, testified regarding the cost of the establishment of electric service to Core Banks and the further expenses of maintaining said system.

Based on testimony given, the exhibits presented, filed briefs and the evidence adduced, this Commission makes the following

FINDINGS OF FACT

1. That both Carolina Power & Light Company and Harkers Island Electric Membership Corporation are "electric suppliers" as defined by G. S. 62-110.2 (a) (3) and are subject to the jurisdiction of the North Carolina Utilities Commission in this docket.

2. That the petition in this matter requests the assignment of Cape Lookout and Core Banks, North Carolina, to either Carolina Power & Light Company or Harkers Island Electric Membership Corporation.

3. That there are only two year-round residents in the area in question, and the United States Coast Guard Station with a contingency of eighteen (18) men.

4. That the future growth potential of the area for electrical use is very limited by the presently authorized Cape Lookout National Seashore.

5. That in order for Carolina Power & Light Company to properly serve the area in question, it will be necessary to construct three-phase electric service facilities which would cost Carolina Power & Light Company approximately $900,000 to build.

6. That in order for Harkers Island Electric Membership Corporation to properly serve the area in question, it will be necessary to construct facilities which would cost Harkers Island Electric Membership Corporation approximately $420,000 to build.

7. That the potential revenues from the present customers on Core Banks and any foreseeable future customers would not exceed $3,000 annually.

8. That annual maintenance cost of the facilities necessary to serve the area would exceed actual revenues which could be expected to be received therefrom.

9. That the Complainants, Sam Q. Bass and Charles M. Reeves, have not carried the statutory burden of proof to show that public convenience and necessity would best be served by requiring Carolina Power & Light Company or Harkers Island Electric Membership to provide electric service to Core Banks.

10. That the complaint in the above-captioned matter should be dismissed.

Based on the above Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

G. S. 62-110.2 (c) (1) requires this Commission to assign as soon as practicable electric suppliers to all areas by adequately defined boundaries that are outside the corporate

limits of municipalities and that are more than 300 feet from the lines of all electric suppliers as such lines exist on dates of the assignment; however, this Commission concludes that it has a mandate to consider the public convenience and necessity before assigning said area. This Commission further concludes that upon scrutiny of the facts involved in this petition requesting the assignment of Cape Lookout and Core Banks to either Carolina Power & Light Company or Harkers Island Electric Membership Corporation that such assignment is not in accordance with the public convenience and necessity.

The purpose of regulation of public utilities is to protect the interest of the public to the end that adequate service may be provided at reasonable rates and in fixing such rates, Utilities Commission must be fair to both the users and the consumers. State ex rel N.C.U.C.vs. Piedmont Natural Gas Company, 254 NC 536, 119 SE 2d 469. This Commission must consider how the public convenience and necessity can best be served in determining adequate service. The Commission concludes that if the public convenience and necessity of the majority of ratepayers is impaired in order to provide service for a few individuals, the service is not in the public interest.

The Supreme Court of North Carolina in State ex rel N.C.U.C.vs. Haywood Electric Membership Corporation, 260 NC 59, 131 SE2d 865, stated the policy that a company has a right to realize sufficient revenues by their rendition of such services to meet its expenses. The Commission concludes that in the matter in question that the evidence tends to show that the utilities will not be able to derive sufficient revenues from the residents of Core Banks to compensate them for the expenses incurred to maintain said distribution system. The Supreme Court, speaking to this issue, stated: "Waste of a utility's manpower, or other resources, with no substantial resulting benefit to the public is not in the public interest. . ." State ex rel N.C.U.C. vs. Atlantic Coast Line Railroad,268 NC 242, 150 SE 2d 368. The Commission concludes that if Carolina Power & Light Company or Harkers Island Electric Membership Corporation is required to serve the area in question, said service will create financial losses which must be borne by the majority of the rate-payers and, therefore, would not be in the public interest.

The Supreme Court in State ex rel N.C.U.C. vs. Southern Railway Company, 254 NC 73, 118 SE 2d 21, stated five criteria for deciding if a utility should be required to serve or continue to serve: "(1) The character and population of the territory served; (2) the public patronage or lack of it; (3) the facilities remaining; (4) the expense of operation as compared with revenue from it; (5) the operations. . .as a whole." The Commission, after careful scrutiny of these criteria must conclude that the public convenience and necessity will not be served by requiring either Carolina Power & Light Company or Harkers Island

Electric Membership Corporation to provide electric service to Core Banks and that G. S. 62-110.2 when invoked in this factual situation does not require this Commission to assign the area in question to Carolina Power & Light Company or Harkers Island Electric Membership Corporation nor to require either of those utilities to provide electrical service to Core Banks.

G. S. 62-75 places the burden of proof upon the Complainant in a complaint proceeding before the North Carolina Utilities Commission. The Commission concludes that in the above-captioned matter, Complainant has failed to carry the statutory burden of proof and, in fact, scrutiny of the evidence presented indicates that the public convenience and necessity can best be served by not requiring the establishment of electric service on Core Banks. The Commission must, therefore, conclude that the complaint of Charles M. Reeves, Jr., and Sam Q. Bass should be dismissed.

IT IS, THEREFORE, ORDERED

1. That the complaint of Charles M. Reeves, Jr., and Sam Q. Bass, Complainants, vs. Carolina Power & Light Company and Harkers Island Electric Membership Corporation, Defendants, be, and the same hereby is, dismissed.

2. That the docket in the above-captioned matter be, and hereby is, closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 233

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Carolina Power and Light<br>Company Application for<br>Authority to Enter into<br>Various Agreements<br>Relating to Coal Mining. | ) | ORDER APPROVING VARIOUS<br>AGREEMENTS RELATING TO COAL<br>MINING AGREEMENTS AND<br>REQUIRING SPECIAL REPORTS<br>RELATING THERETO |

This cause coming on to be heard upon an Application of Carolina Power and Light Company (CP&L) filed under date of January 24, 1974, for approval by the Commission of various agreements and transactions more specifically set forth hereinafter, and the Commission having reviewed the verified application, exhibits, and other matters of record, makes the following findings of fact:

FINDINGS OF FACT

1. CP&L is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and it is engaged in the generating, transmitting, delivering and furnishing of electricity to the public for compensation.

2. Coal comprises a substantial portion of the fuel required by CP&L in the generation of electricity and CP&L is seeking out potential long-term sources of coal and negotiating with the owners of coal supplies for long-term arrangements that will help assure the availability of coal to meet the Company's future coal requirements. Pickands Mather and Co. (PM), a Delaware corporation, has acquired and is acquiring long-term interests and mining rights in certain low sulfur coal properties located in Pike County, Kentucky. These properties are estimated to contain reserves of low sulfur coal sufficient to support a mine with a capacity of one million tons of clean coal a year for a period of up to 25 years.

3. There are very few sources of low sulfur coal that are available for development presently, and after diligent search by CP&L, the evaluation by experts, and negotiation by CP&L and PM, it appears that it is to the long-term advantage and benefit of CP&L and its customers for CP&L to be assured of a long-term supply of coal from these properties.

4. PM is willing to develop the mine properties provided the capital required for such development is jointly supplied by PM and CP&L, and the parties have agreed, subject to the approval of this Commission, to an arrangement which will assure CP&L of 80% of the coal

produced from the properties for a period of 25 years or until the reserves are exhausted.

5. Under the agreements and arrangements proposed, PM and CP&L will organize and operate a corporation in accordance with the provisions of a shareholders agreement substantially in the form of Exhibit A to CP&L Application. The corporation will be organized under the laws of the State of Delaware as the Leslie Coal Mining Company (LC), and its articles of incorporation and by laws will be substantially in the form attached to Exhibit A to the Application. The purpose of LC will be to construct and operate a coal mine in Pike County, Kentucky, with 80% of the common equity capital of LC being owned by CP&L and 20% being owned by PM.

6. In the event a lease with favorable terms and conditions can be obtained, the mine will be financed through a long-term lease agreement pursuant to which LC will lease all or part of the operating mine and equipment. If a lease cannot be obtained with acceptable terms and conditions, LC will be capitalized at not less than $30,000,000, 75% to be represented by debt capital and 25% to be represented by equity capital. The debt capital, if required by the lender, will be secured by a mortgage on LC's real property and unconditional undertakings by CP&L and PM to purchase from LC, pro rata in proportion to their shareholdings in LC, all washed coal produced by LC. In the event that additional sums are needed and cannot be obtained on a reasonable terms, CP&L will advance LC the additional funds needed in exchange for subordinated notes substantially in the form of Exhibit B to the Application.

7. LC will acquire the real property upon which the mine will be developed and operated (Leslie Property) in accordance with the provisions of a property agreement between LC and PM substantially in the form as Exhibit C to the Application. The term of the property agreement will be for 25 years or such longer time as necessary to exhaust the mineable and merchantable reserves of coal contained in the Leslie Property. Pursuant to the Property Agreement, PM will be paid 35¢ per ton royalty for each ton of coal mined and shipped from the Leslie Property. This royalty payment will be subject to escalation in accordance with a formula set forth in the agreement and utilizing a price index.

8. LC and Robert Coal Company (Robert), a wholly-owned subsidiary of PM, will enter into a management agreement substantially in the form of Exhibit D to the Application. Pursuant to the management agreement Robert will manage and supervise the construction, development, improvement and operation of the mine under the direction of LC, and it will furnish all employees for the work force of the mine. During the construction of the mine, Robert will receive from LC a construction supervision fee of 2 1/2% of the initial capital cost estimate. During the operation of the mine, Robert will receive a fee of 15¢ per ton of coal

shipped from the mine plus reimbursement of its out of pocket cost, these payments being made in consideration for managing and supervising the mine. The fee of 15¢ will be subject to escalation in accordance with a formula set forth in the agreement and utilizing a price index.

9. CP&L will purchase from LC 80% of the total annual output of washed coal from the mine and PM will purchase 20% of said output under the coal purchase agreements substantially in the form as Exhibits E and F to the Application.

10. CP&L will pay LC as the purchase price of coal received by it each year an amount equal to the greater of (i) the fair market value of the coal received by it or (ii) 80% of LC's total cost of producing coal for such year. PM likewise will pay LC an amount equal to the greater of (i) the fair market value of the coal received by it or (ii) 20% of LC's total cost of producing coal for such year. LC's cost of producing coal will not include any cost for equity funds invested in LC by CP&L.

11. In order for CP&L to realize a reasonable return on investor-provided capital invested in LC, CP&L proposes to account for the coal purchased under the coal purchase agreement with LC (Exhibit E to the Application) in accordance with the procedures set forth in Exhibit G to the Application. This will be accomplished by crediting to cash the price actually paid LC, which will be the cost of producing the coal or fair market value, whichever is higher, and debiting inventory by the total amount of the coal cost, which shall be the cost of producing coal to LC as defined in Exhibit E plus cost of CP&L's invested equity capital computed by using the rate of return on common equity allowed to CP&L in the latest final order by the Commission establishing just and reasonable rates for electric utility service. Any excess of amounts paid for the coal over the cost of producing thereof (fair market value less cost of producing) will be debited to miscellaneous nonoperating revenues and amounts representing the cost of CP&L invested equity capital will be credited to miscellaneous nonoperating revenues.

12. The development of the mine will require an investment of approximately $30,000,000.

13. The agreements and transactions proposed herein and more fully set forth in Exhibits to the Application are subject to regulation by this Commission under Chapter 62 of the General Statutes of North Carolina and more specifically under Article 8 of Chapter 62 and Section 62-153.

14. The agreements and transactions herein referred to are for a lawful objective and are within the corporate purposes of CP&L.

|5. The agreements and transactions will further the public interest in that:

a. They will make available to CP&L's Roxboro Unit No. 4, which is presently under construction, approximately 800,000 tons of low-sulfur coal per year for 25 years - approximately |/2 of that unit's estimated annual burn.

b. CP&L will have better control over this supply of coal than it presently has over supplies from long-term contracts.

c. The current energy crisis has caused the competition for the purchase of coal to increase dramatically and has virtually eliminated opportunities for acquiring long-term coal supplies through contract, or methods other than through participation by coal users in mine development; thus other feasible alternatives are presently unavailable to CP&L.

d. The results of the coal analysis show that the sulfur content is less than required by EPA emission air quality "Standards of Performance for New Stationery Sources." Under current regulations, using this low sulfur coal, no stack gas desulfurization equipment will be required for Roxboro Unit No. 4 and, in addition, this coal may be blended with high sulfur coal thus making otherwise unusable coal usable. This estimated large savings in sulfur removal equipment costs are an additional justification for the proposed transaction.

|6. The transactions and agreements are consistent with the proper performance by CP&L of its service to the public; will not impair its ability to perform that service; and are reasonably necessary and appropriate for such purposes in that:

a. In order to meet the future energy needs of its customers, CP&L has a duty to exercise diligence to secure adequate sources of coal that will be available to meet its future requirements;

b. Because of the scarcity and/or the location of known reserves of low sulfur coal, and because of the demand for coal caused by the current energy crisis, these transactions represent the most feasible arrangement available to CP&L for obtaining coal of this quality and quantity for the period of time for which it is needed;

c. The contracts and arrangements for which approval is sought are reasonable and will benefit CP&L and its customers.

|7. On February 22, |974, the Commission held a conference for the purpose of hearing the applicant and the Attorney General's coal expert on the provisions of the

various coal mining agreements. Attending and participating in the conference were the Commissioners, and members of its Staff; representatives of CP&L and Mr. I. Beverly Lake, Jr., Assistant Attorney General, and Mr. Paul Fahey, representing the Attorney General's office as a coal procurement consultant.

At this conference, CP&L representatives with Mr. Sherwood Smith (Senior Vice President and General Counsel) serving as spokesman first reviewed and explained the various coal mining agreements followed by Mr. Fahey's review and comments about each of the agreements.

In essence, Mr. Fahey pointed out that the terms of the contracts were not as definite and certain as he would desire in the areas of penalties for lack of performance and financial liabilities which might become operative due to lack of performance by parties other than CP&L, and financial liabilities caused by economic, environmental, or other conditions not directly caused by either parties to the agreements. Mr. Fahey, nonetheless, felt that under the present economic and energy fuel supply conditions and in view of CP&L's need for the quantities and qualities of coal expected from coal mining properties covered by these agreements that CP&L should not be barred from participating in their execution.

18. Notwithstanding the above findings of fact, which in the main are favorable to and support an order granting the authority sought by CP&L, a close review of the various agreements and in particular Exhibit E attached to the Application and entitled "Coal Purchase Agreement Between Carolina Power and Light Company and Leslie Coal Mining Company" lack the strict requirements and possible penalties relating to lack of performance on the part of LC, as would normally be required in contracts between non-affiliated companies which resulted from pure arms-length negotiations. An example of a loose type provision is found on Page 3, Section 4, Specifications & Quality, wherein among other items the BTU/pound content is stated as 12,800 minimum (based on 14,900 MAF). Language immediately following this BTU/pound requirement states, "It is further understood between the parties hereto that, although Seller shall use its best efforts to produce a coal product conforming to the above approximate analysis, failure to do so shall in no event constitute a breach of this Agreement and Buyer (CP&L) shall remain committed for eighty (80) percent of the washed coal produced from the Leslie Mine during the life of said mine." There are no provisions for price adjustments based on failure to produce the specified quality of coal. All through the various agreements and especially the "Management Agreement Between Robert Coal Company and Leslie Coal Mining Company" (Exhibit D to the Application), the term best efforts are used in reference to performance and without any adjustments or penalties for failure to meet specified performance levels. Robert Coal Company, which will manage the mining operations for a fee of 15¢ per net

ton of 2,000 pounds on all washed coal shipped from LC, is a wholly-owned subsidiary of PM, which has for some time been engaged in managing and supervising coal mining and processing properties and has thereby acquired special skills and knowledge necessary for the mining and preparation of bituminous coal and these skills and knowledges are available to Robert Coal Company. Yet in the main, the contracts and agreements are structured on the cost-plus-fixed fee type contracts, which by their nature lack the incentives for effective cost controls and quality performance inherent in guaranteed performance fixed price type contracts generally entered into through arms-length negotiations.

CP&L clearly assumes the greater financial responsibility should this coal mining undertaking not be successful or administered with extreme diligence and efficiency.

The Commission fully recognized the need for and benefits of CP&L securing an adequate supply of coal and especially high quality low sulfur content coal such as contemplated from the Leslie Coal Mining Company property as herein proposed. The Commission also must exercise its authority and responsibility to see that the cost of this essential element and large portion of the total cost of providing the needed electric energy by CP&L for its customers is kept at the very lowest level possible consistent with sound and prudent managerial policies and practices.

## CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions described herein, and in particular the shareholders agreement, property agreement, management agreement, coal supply agreement, and the accounting procedures substantially in the form as Exhibits A, C, D, E, and G respectively, with attachments substantially in the form attached thereto, are:

a. Subject to regulation by this Commission under Chapter 62 of the General Statutes of North Carolina and more specifically under Article 8 of Chapter 62 and Section 62-153.

b. For a lawful object within the corporate purposes of Carolina Power and Light Company.

c. Compatible with the public interest.

d. Necessary and appropriate for and consistent with the proper performance by CP&L of its service to the public.

e. Not detrimental to the ability of CP&L to perform its service to the public and will in no way impair that ability.

f. Reasonably necessary and appropriate for the proper performance by CP&L of its service to the public and the carrying out of its corporate purposes.

g. However, to insure that CP&L and the Commission are kept fully and timely posted on the operating costs of Leslie Coal Mining Company (the Seller), so that CP&L as a majority owner (80%) of the Seller can take prompt and corrective measures to keep the mining costs at a favorable relative position to the costs of coal purchased from non-affiliated other sources, certain operating reports are to be submitted by the Seller to CP&L and the Commission on a prescribed schedule. Also, CP&L is being put on notice that the Seller's costs of producing its coal under these referenced agreements must be closely monitored by CP&L and should they get out of line to the point that coal being supplied CP&L under these agreements is substantially higher than the fair market value of coal of the same or comparable grade and quality being purchased from non-affiliated other sources, the excess cost would be disallowed for rate making purposes.

h. The Commission finds the proposed accounting treatment as reflected by the methodology contained in Exhibit G to be reasonable based on the assertion by CP&L that this accounting treatment will always result in the price of coal being charged as an operating expense item to include only the actual coal production costs to Leslie Coal Mining Company (such costs to be like those enumerated on page 5 of Exhibit E as attached to the application) plus a return on CP&L's actual invested equity capital in Leslie Coal Mine (such rate of return to be the rate of return on common equity allowed CP&L in the latest final order by the Commission establishing just and reasonable rates for electric utility service).

IT IS, THEREFORE, ORDERED that:

1. The transactions proposed herein by CP&L pursuant to the shareholders agreement, property agreement, management agreement, and coal supply agreements substantially in the form as Exhibits A, C, D, and E, respectively, with attachments sunstantially in the form attached thereto, and each and every exhibit and attachment be, and are hereby, approved.

2. The accounting treatment as contained in Exhibit G and as defined in the above conclusions item (h) of this order, be and is hereby approved.

3. The purchase by CP&L from time to time of the share of capital stock of Leslie Coal Mining Company and the making of loans, advances, pledges to, guarantees for the

benefit of Leslie Coal Mining Company, for the purposes as set forth in the exhibits referred to herein, be and hereby are approved.

4. CP&L cause Leslie Coal Mining Company to prepare Summary Cost Reports for transmittal to the Commission in a similar format to the Summary Cost Sheets identified as Exhibit C, pages C-1, 2, 3, 4, and 5, attached to and a part of Exhibit H, "Preliminary - Big Creek Reserve Area, Pike County, Kentucky, Pickands Mather & Company," October 1973 by John T. Boyd Company, Mining Engineers and Geologists. The above reports are to have additional information showing the average BTU/pound content for each report period.

These reports are to be sent to the Commission not later than 30 days after the close of each quarter after the Leslie Coal Mining Company operation reaches its design level of 1,000,000 tons of washed coal per year or its operations become profitable based on the pricing of its coal at "fair market value," whichever comes first.

Carolina Power and Light Company is also required to include as a part of the report its own comparative analysis of the price of the coal purchased from Leslie Coal Mining Company to that coal it has purchased during the same report period from its other non-affiliated sources.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. E-2, SUB 244

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Carolina Power & Light Company | ) | ORDER GRANTING AUTHORITY |
| - Authority to Enter into a | ) | TO ENTER INTO A |
| Financing Arrangement Covering | ) | FINANCING ARRANGEMENT |
| Certain Turbine Generator Units | ) | (NET LEASE) CONCERNING |
| | ) | CERTAIN TURBINE |
| | ) | GENERATOR UNITS |

TO: CAROLINA POWER & LIGHT COMPANY

This cause comes before the Commission upon an Application of Carolina Power & Light Company (the "Company") filed under date of May 21, 1974, wherein approval of the Commission is sought to enter into a lease arrangement with respect to eleven internal combustion turbine generating units.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina. It is duly authorized to engage in the business of generating, transmitting, distributing and selling electric power and energy. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on the business above mentioned in both states. It is an electrical utility under the laws of this State and in its operations in this State is subject to the jurisdiction of this Commission. It is a public utility under the Federal Power Act.

2. At December 31, 1973, the Company's short-term notes payable amounted to $28,355,799 and are expected to be about $8,000,000 at May 31, 1974, after the sale and application of proceeds of 650,000 of Serial Preferred Stock, $8.48 Series, issued February 28, 1974, for $64,317,500 and after the application of proceeds from $125,000,000 principal amount of First Mortgage Bonds, Series due 2004, sold and issued on May 22, 1974. Such funds have been or will be expended in continuing the Company's construction program of substantial additions to its electric generation, transmission and distribution facilities in order to meet the continuing increase in demand for electric service.

3. During 1973, expenditures for the Company's construction program were $358,091,000, and are estimated to be $445,461,000 in 1974, of which $84,901,000 were expended through March 31, 1974, and of which $157,791,000 is expected to be expended through May 31, 1974.

4. The Applicant proposes to enter into a financing arrangement described below and substantially as set forth in the proposed Participation Agreement (the "Participation Agreement") attached to the Application as Attachment A for the purpose of financing the cost of construction of additions to its electric plant facilities.

5. In the conduct of its business as a utility, the Company entered into a purchase agreement with Westinghouse Electric Corporation ("Purchase Contract") attached to the Application as Attachment B whereby the latter is supplying the Company with eleven (11) internal combustion turbine generator units, together with certain accessory equipment, for an aggregate purchase price of approximately $36,475,000. These units are all located in Darlington County, South Carolina. The total installed cost of the units together with accessories and supporting equipment is expected to be approximately $67,246,000 of which property having a cost of approximately $46,000,000 is to be assigned under the proposed leasing arrangement.

6. The proposed financing arrangement, which is described in the Application, is summarized as follows:

(a) By virtue of a Purchase Contract Assignment, substantially as set forth in Exhibit G to the Participation Agreement, the Company would assign its rights under the Purchase Contract (with the exception of the Company's rights and interests in respect of and to the extent the Purchase Contract relates to transmission or distribution equipment) to First National Bank of South Carolina (First National) as the trustee under a trust agreement (substantially in the form of Exhibit F to the Participation Agreement) for the benefit of General Electric Credit Corporation ("GECC").

(b) The Company would also transfer title to said eleven (11) internal combustion turbine generator units, accessories and supporting equipment to First National, as trustee, pursuant to a Bill of Sale. The turbine generator units, accessories and supporting equipment are hereinafter called "the Equipment."

(c) It is proposed that First National will pay the Company for such rights and the Equipment out of (a) funds representing approximately seventy percent (70%) or approximately $32,200,000 of the aggregate purchase price which would be borrowed from institutional investors and (b) funds which would be advanced to First National, as trustee, by GECC as an investment in the beneficial ownership of the Equipment, and which would represent the remaining thirty percent (30%), approximately, of the purchase price, or approximately $13,800,000.

First National, as trustee, would simultaneously lease the Equipment to the Company under a lease (the "Lease") substantially in the form of Exhibit D to the Participation Agreement, described in more detail below. The institutional investors would receive promissory notes, to bear interest at the rate of 9.125% per annum, which would be obligations of First National, as trustee, payable solely out of the assets of the trust estate, and would be secured by a security interest in the Equipment, the Lease and the rentals due thereunder, as well as all other rights and assets in the trust estate. First National would hold the trust estate, including the Equipment, as trustee for the benefit of GECC, as owner, and First National, as trustee, would assign a security interest in the Equipment and the Lease to Bankers Trust Company as trustee under an indenture substantially in the form of Exhibit E to the Participation Agreement securing the institutional investors, as lenders. First National, GECC and such lenders are hereinafter collectively called "the Lessor."

(d) The Lease would be a net lease for a term of twenty-five (25) years from July 1, 1974, and, if necessary, for an interim period prior to July 1, 1974. Under the Lease, the Company would operate the Equipment and would be responsible for maintaining, repairing and insuring it, and for paying substantially all taxes, assessments and other costs arising from the possession and use thereof. The Company would bear

the risk of loss in the event of condemnation of or casualty to all or a part of the Equipment. In the event that any of the Equipment should become unusable by the Company as a result of a casualty, the Lease would be terminated on the next rental payment date upon payment of the amount of the value of such Equipment and which is to be a stipulated percentage of the original cost, varying from a high of 105.467% to a low of 15.0000% over the period of the Lease. The Company would also have the option at any time after the expiration of the fifteenth year of the Lease to make a determination that the Equipment is economically obsolete. In such event, the Company will be responsible for the deficiency, if any, between the termination value of the Equipment (to be similarly stipulated) and the net resale proceeds.

The rentals to be paid by the Company semi-annually in arrears until the end of the term of the Lease would be calculated to provide funds sufficient to pay the principal and interest on the notes to be issued to the institutional investors by First National and to return the equity investment of GECC to it plus a return on its investment. Based on the cost of 9.125% for the senior funds, the semi-annual rental would equal 4.088% of the aggregate purchase price for the Equipment. These 50 semi-annual payments will be $1,880,530.60 with the final payment adjusted to produce an accumulative grand total of all payments in the amount of $94,026,550 which equates to an annual rental rate of approximately 8.176%. The Company would have the option to renew the Lease at a fair rental value for unlimited periods of one year or more of duration, and would have no option to purchase the Equipment under the Lease. At the termination of the Lease, GECC would be entitled to receive any proceeds realized from again leasing or selling the Equipment.

To permit First National, as trustee, appropriate access to the Equipment, the Company will grant to it an easement on the Company's premises at Darlington, South Carolina by means of a Deed of Easement, substantially in the form of Exhibit B to the Participation Agreement.

(e) The Company would have the absolute and uncontrolled right to use the Equipment in its electric utility operations, subject only to the conditions of the Lease; and the Company will exercise the same measure of control over the operation and management of the Equipment as it would exercise as owner. The Lease will not, therefore, impair the Company's ability to perform its services to the public as an electric utility, nor will it relieve the Company of any of its responsibilities as an electric utility with respect to the operation or maintenance of the Equipment, or otherwise.

(f) The Lessor will not at any time exercise any measure of control or direction over the performance by the Company of its service as an electrical utility; nor will the Lessor have any economic interest in or liability with respect to

the Equipment or the Lease, except the right to receive semiannual rentals and early termination values under the terms of the Lease, and upon termination of the Lease, it will be entitled to the residual value of the Equipment. The Lessor will not, therefore, render any service to the public as a utility or exercise any of the rights, privileges, duties or obligations of an electrical utility. It will derive no other compensation or bear any risk of loss as owner of the Equipment. The Company will assume full electrical utility responsibility with respect to the Equipment, including without limitation, the obtaining and maintaining of any permits and certificates and the filing of any reports which might from time to time be required in connection with its ownership or operation. The Company has, as required by law, previously obtained Certificates of Public Convenience and Necessity with respect to the installation and operation of the Equipment.

(g) The Company believes that the transaction herein proposed is desirable and in the public interest in that:

(a) In the Company's opinion, leasing is the most desirable means of obtaining the permanent financing for this Equipment under existing conditions. Recently the 8.75% First Mortgage Bonds due 2000 of the Applicant were trading with a yield to maturity of approximately 9.7%.

(b) Leasing would provide financing in an amount equal to 100% of the cost of the Equipment and would enable the Company to tap sources of capital not otherwise available to it.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transaction herein proposed is:

(a) For a lawful object within the corporate purposes of the Company and within the limits of the authority and purposes set forth in its Articles of Incorporation, as amended;

(b) Compatible with the public interest;

(c) Necessary and appropriate for, and consistent with, the proper performance by the Company of its service to the public as a utility and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes;

(e) Not a transaction which will subject either First National or GECC, upon the completion of the transactions described herein and as contemplated by

the Participation Agreement, the Purchase Contract Assignment, the Lease and the Easement, to the jurisdiction of this Commission or constitute either of them a "public utility" within the meaning of the North Carolina Public Utilities Act of 1963 as amended;

(f) That the terms and conditions of the Lease and the Participation Agreement be, and hereby are, approved.

ORDER

IT IS, THEREFORE, ORDERED, that Carolina Power & Light Company be, and it is hereby, authorized, empowered and permitted under the terms and conditions set forth in the Application; (1) to enter into the net lease financing transaction described in this Order and in the Application, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transaction; and (2) to file with the Commission when the transaction has been completed a report showing the final terms and conditions including the proposed initial accounting journal entries to record the transaction on the books and the monthly accounting entries to record the rental payments.

ISSUED BY ORDER OF THE COMMISSION.

This 7th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 244

MARVIN R. WOOTEN, CHAIRMAN, CONCURRING. I agree fully with the majority in approving the proposed financing plan involving the leasing of certain turbine-generator units and I would point out the following additional facts from the record in this case, which were before the Commission and considered by it in arriving at the majority decision:

(1) That while internal combustion turbine-generator units of this type have relatively high operational costs, their low investment cost combined with limited operation during peak periods make this type generation economically attractive for meeting peak load demands;

(2) That when factors beyond the control of Carolina Power & Light Company forced delays in the expected operation dates of the Brunswick and Harris Nuclear Plants, reserve levels were lowered to the point of jeopardizing reliable electric service to Carolina Power & Light's customers; and

(3) That installation of internal combustion turbine-generators, which can be constructed more rapidly than any other generation facility, was the most prudent action available to ensure reliable electric service to Carolina Power & Light's customers.

Marvin R. Wooten, Chairman

DOCKET NO. E-2, SUB 244

HUGH A. WELLS, COMMISSIONER, DISSENTING. It does not appear to me that internal combustion turbines constitute an efficient device for the generation of electricity. Their acquisition cost is relatively high and their operational costs are exceptionally high. It would therefore appear that the decision by Carolina Power & Light Company to acquire and use such a large number of these units and to assume the attendant cost of their ownership and operation cannot be said to be compatible with the public interest, consistent with the proper performance by Carolina Power & Light Company of its service to the public, or reasonably appropriate to said service.

Hugh A. Wells, Commissioner

DOCKET NO. E-2, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Carolina Power | ) | |
| & Light Company for Authority | ) | ORDER GRANTING AUTHORITY |
| to Enter into a Sale and | ) | TO ENTER INTO A SALE AND |
| Leaseback Arrangement | ) | LEASEBACK ARRANGEMENT |
| Concerning Certain Nuclear | ) | CONCERNING CERTAIN |
| Material | ) | NUCLEAR MATERIAL |

This cause comes before the Commission upon an application of Carolina Power & Light Company (the "Company"), filed under date of November 21, 1974, wherein approval of the Commission is sought to enter into a sale and leaseback arrangement with respect to certain nuclear material.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina. It is duly authorized to engage in the business of generating, transmitting, distributing and selling electric power and energy. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on the business above mentioned in both states. It is a public utility regulated under the Federal Power Act

and the laws of this State and in its operations in this State is subject to the jurisdiction of this Commission.

2. At September 30, 1974, the Company's short-term notes payable amounted to $48,006,497 and are expected to be about $157,000,000 at November 29, 1974. Such funds have been or will be expended in continuing the Company's construction program of substantial additions to its electric generation, transmission and distribution facilities in order to meet future demands for electric service.

3. During 1973, expenditures for the Company's construction program were $358,091,000 and are estimated to be $380,191,000 in 1974, of which $258,678,000 was expended through September 30, 1974.

4. The Company proposes to enter into the nuclear material lease agreement (the "Nuclear Lease") and Bill of Sale (the "Bill of Sale") substantially in the form attached to the application as Exhibit A and Exhibit B respectively in order to reduce the amount of new securities required to be sold to fund the Company's construction program.

5. The terms and conditions of the Nuclear Lease provide:

(a) The Company, at its discretion may from time to time sell to PruLease, Inc. ("PruLease"), nuclear material comprising the fuel assemblies which make up the cores at the Brunswick No. 1 and Brunswick No. 2 nuclear power stations. The sales price of such nuclear material will be an amount equal to the Company's cost of milling, conversion, enrichment, fabrication, installation, storage and any other costs incurred by the Company in acquiring such material. The Company may sell PruLease up to $50 million worth of nuclear material.

(b) All of the nuclear material sold by the Company to PruLease will be leased back by the Company for a monthly rental price equal to the amount of nuclear material burned two months previously plus a carrying charge on the unamortized fuel at an annual rate equal to 1-3/4 percent plus the higher of the then existing prime rate of PruLease's commercial paper rate. The monthly rental mathematically expressed is the sum of (A) and (B) below:

(A) Monthly Burnup Charge = MWH produced during second X preceding month | MWH Charge formula to be agreed upon by PruLease and the Company

(B) Rent = SCV X (BR+1-3/4%) X $\frac{\text{days in current month}}{360}$

WHERE:

SCV (Stipulated Casualty Value) = Acquisition Cost - Cumulative Monthly Burnup

BR (Base Rate) = the higher of the prime interest rate or PruLease's dealer quoted 90-day commercial paper rate

(c) The Company proposes to charge its payments under the contract to fuel expense. The monthly charge to Account 518 - Nuclear Fuel Expense will be a pro rata part of the cost of the nuclear material under the lease based on the thermal energy produced. This account will also be charged with all other lease expenses. The charges will be allocated based on the number of MWH's generated in each month as compared to the total MWH's expected to be generated from the nuclear material.

A sub-account is to be maintained which shows separately the monthly interest charges and the accumulative interest charges which are a portion of the monthly lease payment.

(d) The Company is required to account for the Nuclear Lease on its books as a true lease for all purposes subject to the strictures of applicable law and regulatory authorities.

(e) Under the Nuclear Lease, the Company would utilize the nuclear fuel in its reactors and would be responsible for maintaining, repairing and insuring the nuclear material, and for paying substantially all taxes, assessments and other costs arising from the possession and use thereof. The Company would bear the risk of loss in the event of condemnation of or casualty to all or a part of the nuclear material which it will insure against consistent with its general insurance practices.

(f) The Company would have the absolute and uncontrolled right to the possession and use of the nuclear fuel in its electric utility operations, subject only to the conditions of the Nuclear Lease and during the term of the Nuclear Lease so long as no condition of default exists the Company will exercise the same measure of control over the operation and management of the nuclear fuel as it would exercise as owner. The Nuclear Lease will not, therefore, impair the Company's ability to perform its services to the public as an electric utility, nor will it relieve the Company of any of its responsibilities as an electric utility with respect to the transportation, operation, maintenance, reprocessing or disposal of the nuclear material.

(g) PruLease will not at any time exercise any measure of control or direction over the performance by the Company of its service as a public utility nor will PruLease have any economic interest in or liability with respect to the nuclear material or the Nuclear Lease, except the right to

receive monthly rentals and upon termination of the Nuclear Lease, it will be entitled to the Stipulated Casualty Value of the nuclear material and, in most cases, to the excess, if any of fair market value of the nuclear material over and above the Stipulated Casualty Value. PruLease will not render any service to the public as a utility or exercise any of the rights, privileges, duties or obligations of a public utility. It will derive no compensation other than the monthly rentals nor bear any risk of loss as owner of the nuclear material. The Company will assume full public utility responsibility with respect to the nuclear material including without limitation, the obtaining and maintaining of any permits and certificates and the filing of any reports which might from time to time be required in connection with its ownership or operation. In the event that PruLease acts or fails to act in any manner which in the Company's opinion impairs its ability to fulfill its electric utility responsibilities with respect to the nuclear material, the Company may, upon notice to PruLease, terminate the Nuclear Lease and automatically revest title to the nuclear material in the Company.

(h) The Nuclear Lease has an indefinite term which may expire upon the occurrence of any of the events set forth in Sections 8, 13, 16, 17 and 18 as follows: (i) If PruLease gives notice of termination pursuant to Section 8 or 18 or the Company exercises its option to purchase pursuant to Section 19, the Company would have the right to purchase the nuclear material at a price equal to the greater of Stipulated Casualty Value or appraisal value; (ii) If the Nuclear Lease is terminated pursuant to Section 13 the Company would be required to pay to PruLease the Stipulated Casualty Value, use its best efforts to sell the material to a qualified third party, and, upon such sale, pay the proceeds to PruLease. PruLease would then pay back to the Company the amount previously paid as Stipulated Casualty Value to the extent available from such proceeds. Section 13(c) provides that the Company may terminate the Nuclear Lease at any time after one year upon determining that the nuclear material is no longer useful to the Company by reason of being economically unserviceable or for any other reason. Section 13(f) provides that the Nuclear Lease will terminate upon the expiration of the "cooling off" period for any nuclear material subsequent to its removal from the nuclear reactor without agreement by the Company and PruLease to extend the lease term. The Company presently estimates that the "cooling off" period for all of the nuclear material to be leased will have expired within five years; (iii) Section 16 provides that upon the occurrence of any event of default (as defined in Section 15), PruLease may terminate the lease, take possession of or sell the nuclear material; (iv) Section 17 permits PruLease to terminate the Nuclear Lease upon notice for changes in the Atomic Energy Act, laws or regulations, regulations concerning the carrying out of the transactions comtemplated in the Nuclear Lease, applicable insurance, occurrence of a nuclear incident with an aggregate liability in excess of

$10 million, adoption of additional laws or regulations, or material modification of existing approvals, with respect to the Nuclear Lease or transactions contemplated thereby. In the event of such termination title to the nuclear material immediately revests in the Company and the Company is required to pay to PruLease the Stipulated Casualty Value.

6. The Company believes that the transaction herein proposed is desirable and in the public interest in that leasing would provide financing in an amount equal to 100 percent of the cost of the nuclear material and would enable the Company to tap sources of capital not otherwise available to it. To the extent that funds are obtained pursuant to the arrangement herein described, the Company will be relieved from the need of seeking a corresponding amount of permanent financing at a time when the terms and conditions in the securities markets are generally unfavorable for permanent utility financing. The terms and conditions of this transaction compare favorably to the terms under which similar transactions are presently being negotiated. If a sum of similar magnitude were available and could be obtained by the Company in the short-term money market at this time at the present prime rate of interest of 10-1/4 percent such a loan would require either a 20 percent compensating balance or an "all in" rate such that the minimum effective rate of interest would be 12.8 percent.

7. No fee for services (other than attorneys, accountants, rating services and fees for similar technical services) in connection with the negotiation or consummation of the lease transaction will be paid in connection with the transaction except a closing fee of $125,000 payable to PruLease.

8. The purpose for which the proposed transaction is to be effected, as hereinabove set forth, is (i) a lawful objective within the corporate purposes of the Company; (ii) compatible with the public interest; (iii) consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and (iv) reasonably necessary and appropriate for such purpose.

## CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transaction herein proposed is:

(a) For a lawful object within the corporate purposes of the Company and within the limits of the authority and purposes set forth in its Articles of Incorporation, as amended;

(b) Compatible with the public interest;

(c) Necessary and appropriate for, and consistent with, the proper performance by the Company of its service to the public as a utility and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes; and

(e) Not a transaction which will subject PruLease, upon the completion of the transactions described herein and as contemplated by the Nuclear Lease, to the jurisdiction of this Commission or constitute it a "public utility" within the meaning of the North Carolina Public Utilities Act of 1963 as amended.

ORDER

IT IS, THEREFORE, ORDERED, That Carolina Power & Light Company be, and it hereby is authorized, empowered and permitted under the terms and conditions set forth in the Application:

A. To enter into the sale and leaseback arrangement described in this Order and in the Application, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transaction; and

B. To account for the nuclear material lease payments described in the Application and as modified in this Order.

IT IS FURTHERED ORDERED that Carolina Power & Light Company shall maintain a sub-account of Account 518 - Nuclear Fuel Expense - which shows separately the monthly interest charges and the accumulative interest charges which are a portion of the monthly lease payment.

IT IS FURTHER ORDERED that Carolina Power & Light Company shall submit an initial report within 30 days after the execution of this lease agreement showing the source material and methodology used in determining the amount of the MWH charge formula. Any subsequent changes in the amount of the MWH charge formula must be similarly reported before they become effective.

IT IS FURTHER ORDERED that the terms and conditions of the Nuclear Lease and Bill of Sale are hereby approved.

IT IS FURTHER ORDERED that PruLease shall not be subject to the jurisdiction of this Commission or be deemed a "public utility" within the meaning of the North Carolina Public Utilities Act of 1963, as amended, as a result of entering into the transactions contemplated by the nuclear lease and described hereinabove.

IT IS FURTHER ORDERED that Carolina Power & Light Company file with this Commission, after the consummation of the transactions described in this Order and in the Application, a report setting forth the terms of such transactions (including the expenses of the transactions) and a copy of the executed final form documents and agreements that are material to the transactions, and that this proceeding be, and the same is, continued on the docket of the Commission, without day, for the purpose of receiving the aforementioned documents and the results of the transactions, as hereinabove provided, and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to relieve Carolina Power & Light Company from complying with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This 27th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 168

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Petition of Virginia Electric and Power Company to Change From Flow-Through to Normalization Accounting for Income Tax Benefits From Liberalized Depreciation and the Asset and Depreciation Range System on Additions Placed in Service During and Subsequent to 1974. | ) | ORDER GRANTING CHANGE FROM FLOW-THROUGH TO NORMALIZATION ACCOUNTING |

BY THE COMMISSION: This matter is before the Commission upon petition filed on November 18, 1974, by Virginia Electric and Power Company (VEPCO) wherein the company seeks approval to change from the flow-through method to the normalization method with respect to the tax benefits from liberalized depreciation and asset depreciation range (ADR) on property additions placed in service beginning with the year 1974. VEPCO states in its petition that it has taken full advantage of liberalized depreciation and ADR and has with this Commission's approval consistently followed flow-through accounting for the Federal income tax reduction from both liberalized depreciation and ADR.

VEPCO further states that a change to normalization accounting is needed for the long-run benefit of the consumer. The company asserts that normalization accounting

would make available through deferred taxes substantial capital for its construction program; that this cost-free capital reduces the overall cost of capital and minimizes the need to go to the financial market under today's adverse conditions; and that interest coverage requirements of the company's mortgage indenture and fixed charge coverage used by rating agencies will be improved by normalization with compensating rate relief and that as a consequence of improved ratings the cost of capital is reduced.

For the foregoing reasons, the Commission finds that VEPCO's request for approval from flow-through to normalization accounting with respect to the income tax benefits from liberalized depreciation and ADR on additions made during and subsequent to 1974 should be approved.

IT IS, THEREFORE, ORDERED:

1. That VEPCO's request for change from flow-through to normalization accounting for the income tax effects of liberalized depreciation and ADR on additions placed in service during and subsequent to 1974 be, and the same is hereby, approved.

2. That VEPCO shall account for deferred income taxes as set forth in Rule R1-35 and that the tax deferrals for rate-making purposes be reflected in accordance with the provisions of Section 167 of the Internal Revenue Code and regulations thereunder.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Virginia Electric<br>and Power Company for Authority<br>to Sell and Leaseback Realty | ) | ORDER GRANTING<br>AUTHORITY TO SELL<br>AND LEASEBACK REALTY |

This cause came before the Commission upon an application of Virginia Electric and Power Company (Vepco) filed December 10, 1974, wherein authority is sought by Vepco to sell and leaseback realty located in Virginia, as described below.

Based on the evidence of record herein, the records of the Commission and the verified representations in the application, the Commission makes the following:

FINDINGS OF FACT

1. Vepco is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its general offices in Richmond, Virginia, and is authorized to engage in the business of generating, transmitting, distributing and selling electric power in the State of North Carolina. It is a public utility under the laws of North Carolina, and as such is subject to the jurisdiction of this Commission.

2. Vepco presently owns the following properties: (a) approximately 21.7 acres, together with the improvements thereon, known as 7500 West Broad Street, Richmond, Virginia (Parcel A); (b) approximately 6.4 acres, together with the improvements thereon, known as 525 First Colonial Road, Virginia Beach, Virginia (Parcel B); and (c) approximately 8.0 acres, together with the improvements thereon, known as 100 Washington Street, Herndon, Virginia (Parcel C). Parcel A, Parcel B and Parcel C are collectively referred to herein as the Premises. The principal improvements on the Premises are Vepco office buildings, warehouses and repair shops.

3. To reduce the amount of new securities required to be sold in aid of Vepco's 1974 construction program, Vepco proposes to sell the Premises and the improvements thereon, free from the lien of Vepco's Indenture of Mortgage, to Chemical Bank, New York (Chemical), as Trustee for several pension funds. In order to comply with Virginia law, a Virginia bank may hold title to the Premises for Chemical.

4. The sale prices have been determined by appraisals and are payable in cash to Vepco at the closing, in the respective amounts of $4,900,000 for Parcel A, $1,200,000 for Parcel B and $1,200,000 for Parcel C. Simultaneously with the sale of the Premises, Vepco will enter into net leases (the Leases) for the use of the Premises for an initial term of 20 years at an annual rental of 10% of the sale price for the respective Parcel. The rentals will be payable in equal monthly installments in advance. Such rentals, paid to Chemical, or to the Virginia bank, for Chemical, as the case may be, will be net of all taxes, repairs and other costs relating to the maintenance and operation of the Premises.

5. Each Lease will provide for two 5-year renewal options to Vepco at an annual rental of 10% of the fair market value (as defined in the Lease) of the respective Parcel as of the first day of the renewal term. In no event will the rentals for a renewal term be less than the original rental rate or exceed $823,200 per annum in the case of Parcel A, $201,600 in the case of Parcel B or $201,600 in the case of Parcel C.

6. Vepco will have the option under each Lease to purchase each respective Parcel at the end of the 10th or 15th lease year. The purchase price for each respective Parcel will be equal to the greater of (a) the purchase price paid by Chemical, or the Virginia bank, as the case may be, or (b) the fair market value (as defined in the Leases) of the respective Parcel, plus an additional 20% of such amount, if the option is exercised at the end of the 10th lease year, or an additional 10%, if the option is exercised at the end of the 15th lease year. In addition, Vepco will have the option to purchase each respective Parcel at the end of the initial term or at the end of any renewal term at a purchase price equal to the greater of the purchase price paid by Chemical, or the Virginia bank, as the case may be, or the fair market value (as defined in the Leases) of the respective Parcel as of the last day of the initial term or renewal term, as the case may be.

7. In final form, the Leases will provide that in the event of damage to or destruction of any particular Parcel, Vepco will be entitled to the proceeds of insurance thereon and the net rentals will continue to be payable to Chemical, except that if, during the last 5 years of the Lease term, more than 50% of the Buildings and Improvements (as defined in the Lease) are destroyed, Vepco may cancel such Lease upon written notice within 30 days of such casualty.

8. The Company proposes to charge its payments under the Leases to rent expense. The customary legal, accounting, brokerage, tax and other expenses of the transaction will be prorated over the original terms of the Leases.

9. Chemical and the Virginia bank cannot enter into the proposed transaction if by their participation therein, they will become subject to regulation by the Commission as public utilities or public service companies.

## CONCLUSIONS

From a review and study of the application, its supporting data and other information in the Commission's files, the Commission is of the opinion and concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of Vepco;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Vepco of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

ORDER

IT IS, THEREFORE, ORDERED, That Virginia Electric and Power Company, be, and it is hereby authorized, empowered and permitted:

1. To enter into the transactions described in this Order and in the application, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transactions.

2. To account for the transactions as described in the application and more specifically as follows:

As prescribed in the Uniform System of Accounts the amortization of the gain, before reduction in income tax, will be credited to Account 421.1, Gain on Disposition of Property, and the amortization of the increase in income tax attributable to such gain will be charged to Account 409.2, Income Taxes, Other Income and Deductions. Account 421.1 must be maintained in sufficient detail to permit readily the accounting treatment given this particular transaction over the life of the amortization of the gain on the sale of the realty.

Vepco shall furnish the Commission Accounting Division two (2) copies of the journal entries recording the sale of the realty and the gain related thereto.

IT IS FURTHER ORDERED, That Chemical Bank of New York and the Virginia bank which may participate in this sale/leaseback transaction shall not, because of their participation in the arrangement, be subject to regulation by the Commission as a public utility or a public service company.

IT IS FURTHER ORDERED, That Vepco file with this Commission after the consummation of the transactions described in this Order and in the application, a report setting forth the terms of such transactions (including the expenses of the transactions), and at the time of such report Vepco shall file with this Commission a copy of each Lease and all other instruments, documents and agreements entered into by Vepco that are material to the transactions in the final form in which the same are executed; and that this proceeding be, and the same is, continued on the docket of the Commission, without day, for the purpose of receiving the aforementioned documents and the results of the transactions, as hereinabove provided, and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to relieve Vepco from complying with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 172

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of<br>Application of Virginia Electric<br>and Power Company for Authority<br>to Sell Additional Pollution<br>Control Facilities and Issue<br>Intermediate-Term Obligation | ) | ORDER GRANTING<br>AUTHORITY TO SELL<br>ADDITIONAL POLLUTION<br>CONTROL FACILITIES AND<br>ISSUE INTERMEDIATE-<br>TERM OBLIGATION |

This cause came before the Commission upon an application of Virginia Electric and Power Company (Vepco) filed December 10, 1974, wherein authority is sought by Vepco for intermediate-term financing of additional pollution control facilities at its North Anna Power Station in Virginia, as described below.

Based on the evidence of record herein, the records of the Commission and the verified representations in the application, the Commission makes the following:

FINDINGS OF FACT

1. Vepco is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its general offices in Richmond, Virginia, and is authorized to engage in the business of generating, transmitting, distributing and selling electric power in the State of North Carolina. It is a public utility under the laws of North Carolina, and as such is subject to the jurisdiction of this Commission.

2. In Docket No. E-22, Sub 157, Vepco obtained authority from the Commission to issue short-term obligations to finance certain pollution control facilities at Vepco's North Anna Nuclear Power Station located in Louisa County, Virginia (the North Anna Station), and in connection therewith, to sell such pollution control facilities. The short-term obligations were to be issued through, and the pollution control facilities sold to, the Industrial Development Authority of the Town of Louisa, Virginia (the Authority), a political subdivision of the Commonwealth of Virginia, organized and existing pursuant to the Virginia Industrial Development and Revenue Bond Act (Code of

Virginia, Section |5.|-|373 et seq. ) (the Industrial Development Act).

3. Vepco now proposes to issue an intermediate-term obligation, through the Authority, to finance additional pollution control facilities (the Additional Pollution Control Facilities) at the North Anna Station, and as in Docket No. E-22, Sub |57, to sell the Additional Pollution Control Facilities to the Authority.

4. The proposed transaction will enable Vepco to finance the capital requirements attributable to the Additional Pollution Control Facilities at a lower interest cost than any available alternate means of financing.

5. Vepco proposes to enter into a credit agreement (the Credit Agreement) with the Authority and Morgan Guaranty Trust Company, a New York bank (the Bank). The Credit Agreement will provide that in December |974, the Authority will issue to the Bank a note in the principal amount of approximately $|0 million and with up to a 30-month maturity (the Note). The proceeds of the Note will be paid by the Authority to Vepco to acquire the Additional Pollution Control Facilities, subject to the prior lien of the Indenture Trustee under Vepco's Indenture of Mortgage, at a price equal to the cost of those facilities to Vepco. Section |5.|-|379 expressly empowers the Authority to issue obligations and to use the proceeds of the sale of such obligations to acquire pollution control facilities.

6. Vepco will deliver to the Authority a bill of sale with respect to the Additional Pollution Control Facilities. But so long as no event of default exists, such bill of sale will not be recorded by the Authority and Vepco is to retain the absolute right to possess, use and manage the Additional Pollution Control Facilities during the term of the Credit Agreement, subject only to its provisions.

7. As collateral for the Note, Vepco will issue, at the time of the issuance of the Note, its note (the Collateral Note), payable to the Authority and equal in amount, maturity and interest rate to the Note. The Authority will have no obligation under the Note except to make payments from the proceeds of the Collateral Note.

8. The Collateral Note and the rights of the Authority under the Credit Agreement, except for any interest which the Authority may have in the Additional Pollution Control Facilities, will be assigned to the Bank as security for payment of the Note.

9. The Bank will purchase the Note on the basis that the interest thereon, at a rate not to exceed 7-|/8%, is exempt from Federal taxation. Vepco and the Bank will enter into a contingent purchase and indemnification agreement (the Contingent Purchase Agreement) whereby, if the interest on the Note becomes taxable to the Bank, Vepco will agree to

repurchase the Note and to pay the Bank additional interest, in an amount equal to the difference between the interest actually paid or accrued on the Note and the amount of interest which would have been payable if the Note had borne interest at the rate not to exceed 125% of the Bank's minimum commercial lending rate. Under the Contingent Purchase Agreement, Vepco will also, if the interest on the Note becomes taxable to the Bank, pay to the Bank such additional sums as will, on an after tax basis, save the Bank harmless from any loss on that account.

10. It is contemplated that the Note will be repaid from proceeds of the sale of the Authority's long-term tax-exempt pollution control bonds at the maturity of the Note.

11. All expenses of the transaction will be paid by Vepco, charged to unamortized discount and expense and amortized over the term of the Note. The sale of the Note will be accounted for as long-term debt. The Note will reduce the amount of bank loans or commercial notes that would otherwise be outstanding, at a substantial saving in interest cost. Accordingly, Vepco plans to charge interest accrued on the Note to interest expense, as would be the case with respect to the bank loans or commerical notes that would otherwise be outstanding, and continue to provide allowance for funds used during construction for expenditures on the Additional Pollution Control Facilities recorded in construction work in progress.

12. The Bank cannot enter into the proposed transaction if by its participation therein, it will become subject to regulation by the Commission as a public utility or a public service company.

13. The proposed transaction will have no pro forma effect on the Company's income statement except for a decrease in interest cost. The Note will replace an equal amount of bank loans or commercial notes and will be shown on the balance sheet as long-term debt.

## CONCLUSIONS

From a review and study of the application, its supporting data and other information in the Commission's files, the Commission is of the opinion and concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of Vepco;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Vepco of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

ORDER

IT IS, THEREFORE, ORDERED, That Virginia Electric and Power Company, be, and it is hereby authorized, empowered and permitted:

1. To enter into the transactions described in this Order and in the application, including the issuance of the Collateral Note and the assumption of the obligations set out in the Credit Agreement and the Contingent Purchase Agreement, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transactions.

2. To devote the proceeds of the transactions described in this Order and in the application to the purposes set forth in the application.

3. To account for the transactions relating to the Note and the Collateral Note as described in the application.

IT IS FURTHER ORDERED, That Morgan Guaranty Trust Company of New York, by its participation in this transaction, shall not become subject to regulation by this Commission as a public utility or a public service company.

IT IS FURTHER ORDERED, That Vepco file with this Commission after the consummation of the transaction, described in this Order and in the application, a report setting forth the terms of such transactions (including the expenses of the transactions), and at the time of such report Vepco shall file with this Commission a copy of the Credit Agreement, the Contingent Purchase Agreement and all other instruments, documents and agreements entered into by Vepco that are material to the transactions in the final form in which the same are executed; and that this proceeding be, and the same is, continued on the docket of the Commission, without day, for the purpose of receiving the aforementioned documents and the results of the transactions, as hereinabove provided, and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to relieve Vepco from complying with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. LPG-1, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of Filing of Revised Rates and Requesting that a Fuel Adjustment Clause be Allowed by Lonnie R. Langley, d/b/a Langwood Mobile Park, Highway 97 West, Rocky Mount, North Carolina | ORDER APPROVING RATES AND ALLOWING FUEL ADJUSTMENT CLAUSE |

BY THE COMMISSION: On November 3, 1972, Lonnie R. Langley, d/b/a Langwood Mobile Park (hereinafter referred to as Langley), filed an Application with the Commission for a Certificate of Public Convenience and Necessity to provide water, oil and gas utility services to Langwood Mobile Park, Nash County, North Carolina, and for approval of rates. By Order dated February 9, 1973, the Commission granted a franchise and approved the proposed rates of the Applicant in the above-mentioned Application.

On September 11, 1973, the Commission received from Langley, an Application under Docket No. LPG-1, Sub 1 for an adjustment of his rates and charges. This adjustment was requested due to the wholesale increase of gas and oil to the Applicant by his suppliers. Langley requested that he only be allowed to pass his wholesale increase on to his customers. On September 17, 1973, the Commission, at Staff Conference, accepted for filing in Docket LPG-1, Sub 1 the proposed rates.

On October 25, 1973, the Commission received from Langley under Docket No. LPG-1, Sub 2 an Application for adjustment of rates and charges due to the wholesale increase of gas and oil from his suppliers which said increase would be passed on to Applicant's customers.

On October 29, 1973, the Commission, at Staff Conference, accepted for filing the proposed rates by Mr. Langley.

On December 13, 1973, the Commission received from Mr. Langley a request that the Commission accept for filing revised rate schedules submitted under Docket No. LPG-1, Sub 3. Said rate schedules reflected only the wholesale increase of gas and oil to Langley from his suppliers. Before the Commission had time to act on the above-mentioned filing, Mr. Langley notified the Staff that his wholesale price of oil was again increased by 5¢ per gallon effective January 2, 1974. In response to the numerous increases, filing fees and associated paper work, Mr. Langley submitted a request that the Commission add a fuel adjustment clause to his tariff for future wholesale increases and request permission that effective January 3, 1974 he be allowed to increase the price of gas and oil metered to customers in Langwood Park, subject to one (1) day's notice, as wholesale rates from suppliers are increased to him.

FINDING OF FACTS

Due to the energy shortage, the Commission realizes that from time to time in the future the wholesale price of gas and oil to Mr. Langley from his suppliers may fluctuate. Due to the limited number of customers and the type service rendered, in order that no unjust burden is imposed on Mr. Langley, it seems equitable that a fuel adjustment clause be allowed on the tariff of Langwood Mobile Park. Such fuel adjustment clause would enable Mr. Langley to increase or decrease his rates to his customers on a one day's notice by the amount of his wholesale increase or decrease in cost from his suppliers provided that the Commission receives evidence that the wholesale cost to Mr. Langley has increased or decreased. By use of the Fuel Adjustment Clause, a filing fee of $25.00 will no longer be necessary if the increase or decrease in rates is due solely to wholesale increases or decreases in cost to the Langwood Mobile Park from its suppliers of gas and oil.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That effective January 3, 1974, the proposed rates and fuel adjustment clause of Lonnie R. Langley, d/b/a Langwood Mobile Park, as are reflected in attached tariff (Appendix A) are approved as filed under Docket LPG-1, Sub 3 as amended.

(2) That the Applicant is authorized to increase or decrease the rate to his customers by the amount of the wholesale increase or decrease in the cost of fuel by filing a Tariff on one (1) day's notice. Said filing to include documented evidence of the increase or decrease cost from Applicant's fuel suppliers.

(3) That the Notice to the Public Appendix "B" attached hereto be hand delivered on the same date of filing to each gas and/or oil customer of the Langwood Mobile Park. Such Notice shall also be placed in a conspicuous location within the Langwood Mobile Park.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of January, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

Appendix A

SCHEDULE OF RATES

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Lonnie R. Langley, d/b/a
Langwood Mobile Park

Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Langwood Mobile Park, Rocky Mount,
North Carolina

GAS AND OIL RATE SCHEDULES

Metered Rates (Residential Service).

Gas: $0.57 per gallon for cooking only (May, June, July, August, and September)

$0.31 per gallon for heating and cooking (January, February, March, April, October, November, and December)

Oil: 35.9¢ per gallon

Fuel Adjustment Clause:

Effective January 3, 1974, rates of the gas and/or oil customers of the Langwood Mobile Park are subject to change on a one (1) day's notice by the amount of the wholesale increase or decrease in cost to the Langwood Mobile Park from its gas and/or suppliers.

BILLS DUE - Fifteen days after date received.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket LPG-1, Sub 3, effective January 3, 1974.

Appendix B

NOTICE TO THE PUBLIC

DOCKET NO. LPG-1, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is hereby given that Langwood Mobile Park has filed a revised tariff as authorized by the North Carolina Utilities Commission pursuant to a fuel adjustment clause which allows increase or decrease in rates on a one (1) day's notice by the amount of the wholesale increase or decrease in cost from the fuel suppliers.

Gas and Oil Rate Schedule

Metered Rate (Residential Service)

Gas: per gallon for cooking only
(May, June, July, August, September)

per gallon for heating and cooking
(January, February, October, November,
March, April, December)

Oil: per gallon

By:_____
Lonnie R. Langley

_____
Date

**NOTE:** This is a sample of the Notice to the Public. On each revision you are required to file a copy of the Notice with the Commission.

DOCKET NO. PL-1, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Exxon ) ORDER APPROVING ISSUANCE OF
Pipeline Company for ) $250 MILLION PRINCIPAL AMOUNT
Approval Before Issu-) OF EXXON PIPELINE COMPANY'S
ance of Securities ) 9% GUARANTEED 30-YEAR DEBENTURES

This cause comes before the Commission upon a Petition of Exxon Pipeline Company (Petitioner) filed under date of October 25, 1974, wherein authority is sought to issue 250 million dollars of 9% Guaranteed Debentures due 2004. The payment of the principal of, premium, if any, and interest on the Debentures is guaranteed by the Petitioner's parent, Exxon Corporation.

Petitioner's application was filed by attorney

J. Allen Adams
Sanford, Cannon, Adams & McCullough
1500 BB&T Building
P. O. Box 389
Raleigh, North Carolina 27602

Based on the evidence of record herein, the records of the Commission, and the verified representations in the Petition, the Commission makes the following:

FINDINGS OF FACT

1. That Exxon Pipeline Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Houston, Texas and a registered office in North Carolina at 111 Corcoran Street, Durham County, North Carolina.

2. That Exxon owns and operates some thirteen thousand miles of pipeline in ten states, including a substantial amount of which is common carrier pipeline, and by Certificate of Public Convenience and Necessity issued by this Commission August 29, 1972 (Docket No. PL-1), operates a pipeline as a common carrier of two or more petroleum products by pipeline for the public for compensation from the Marine Terminal of Exxon Corporation in New Hanover County, North Carolina, on the east bank of the Cape Fear River at or near the confluence of that river and the Brunswick River, thence crossing under the Cape Fear River and proceeding in a northern direction approximately 14 miles to a point on the west bank of said Cape Fear River.

3. That the aforesaid 14 miles of pipeline constitutes the sole operation of Petitioner within the State of North Carolina.

4. As of December 3|, |973, Exxon Pipeline had net plant in service and work under construction of about $3|7 million, and the plant in service for the North Carolina portion of Exxon Pipeline had a book value of $3,580,7|5, or about |% of Exxon Pipeline's plant valuation. The $250 million of 9% 30-Year Guaranteed Debentures due 2004 will be issued by Exxon Pipeline and will be unconditionally guaranteed by its parent, Exxon Corp. Exxon Corp. was incorporated under the laws of the state of New Jersey in |882 and its subsidiaries and affiliated companies operate in the United States and more than |00 other countries, principally in exploring for and producing crude oil and natural gas; in petroleum and chemical manufacturing and in transporting and selling crude oil, natural gas, petroleum and chemical products.

5. Exxon Pipeline Company owns a 20% undivided interest in the Trans Alaska Pipe Line System (TAPS), which is a proposed 800-mile, 48-inch pipe line presently under construction to transfer crude oil from Alaska's north slope to a tanker terminal at the Port of Valdez, Alaska.

6. That the proceeds from the sale of the Debentures will be used to finance a part of the TAPS project and to repay $45 million of currently outstanding short-term debt incurred primarily for the construction of TAPS.

7. That none of the proceeds will be used to finance any properties of Exxon Pipeline Company located in North Carolina, neither will any of the North Carolina properties be pledged specifically as security for this debt. Exxon Corporation will unconditionally guarantee the due and punctual payment of the principal of, premium, if any, and interest on the Debentures and the due and punctual payment of the sinking fund payments, when and as the same shall become due and payable, whether by declaration or otherwise.

8. That Exxon Pipeline Company has registered said offering with the Securities Exchange Commission, copy of said registration statement being attached to Petition as Exhibit A, and copy of the Final Prospectus for such offering being attached to Petition as Exhibit B.

## CONCLUSIONS

From a review and study of the Petition, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions herein proposed are:

|. For a lawful object within the corporate purposes of the Petitioner;

2. Compatible with the public interest;

3. Necessary and appropriate for and consistent with the proper performance by the Petitioner of its service to the

public and will not impair its ability to perform that service; and

4. Reasonably necessary and appropriate for such purpose.

ORDER

IT IS, THEREFORE, ORDERED that Exxon Pipeline Company be, and it is hereby authorized, empowered and permitted:

1. To offer $250,000,000 of its 9% Guaranteed Debentures due 2004, with payment of the principal of, premium, if any, and interest on the Debentures guaranteed by Exxon Corporation for the purposes and under the terms specified in the Final Prospectus attached to the Petition as Exhibit B.

2. That Exxon Pipeline Company file with this Commission, within thirty (30) days after the consummation of the transaction described in this Order and in the Petition, a report setting forth the final terms of such transaction (including the expenses of the transaction and a calculation showing the net annual interest cost to Exxon Pipeline Company).

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 131

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application of Piedmont Natural Gas Company, Inc., for Authority to Adjust and Increase its Rates and Charges | ) ) ) ) | ORDER ESTABLISHING RATES |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday and Wednesday, October 15 and 16, 1974.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Jerry W. Amos, Esquire
James T. Williams, Esquire
Brooks, Pierce, McLendon, Humphrey & Leonard
Attorneys at Law
P. O. Drawer U
Greensboro, North Carolina 27402

For the Intervenor:

Robert P. Gruber, and
Jerry J. Rutledge
Associate Attorneys General
Justice Building
Raleigh, North Carolina
Appearing for: The Using and Consuming Public

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
and
E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On March 1, 1974, Piedmont Natural Gas Company, Inc., (hereinafter called "Piedmont") filed a petition or application with this Commission in which it sought an increase in its rates and charges for natural gas service, based on the test year ending December 31, 1973. The application included a request that, should the full

general rate increase as proposed by Piedmont be suspended, the company be allowed to place an approximately 6.5% overall rate increase into effect immediately under an undertaking for refund pending final determination by the Commission on the application for a general rate increase.

By Order dated March 21, 1974, the Commission declared the matter to be a general rate case, the proposed rates were suspended, the general rate case was set for hearing in October, 1974, and hearing was set for April 9, 1974, on the petition to place interim rates into effect under an undertaking.

On April 4, 1974, Notice of Intervention in this case was filed by the Attorney General on behalf of the using and consuming public of the State of North Carolina. The Commission, by Order issued on April 8, 1974, recognized the intervention of the Attorney General.

On April 9, 1974, the Attorney General filed a Motion to Deny and Dismiss Piedmont's application for interim rate relief. This Motion was partially denied by a Commission Order issued on April 16, 1974, which authorized Piedmont to increase its rates to all customers other than residential customers by .0638 per MCF.

In its initial Order suspending the proposed general rate increase and setting the matter for hearing, the Commission required Piedmont to use a test year consisting of the twelve months ending April 30, 1974, rather than the December 31, 1973, test year used by Piedmont in its March 1, 1974, filing.

On July 15, 1974, Piedmont filed a Motion for leave to amend its petition for general rate relief in order to increase the amount of additional revenues requested, the need for which was, according to Piedmont, discovered in the process of updating its initial application to the April 30, 1974, test year as required by the Commission. On September 3, 1974, Piedmont filed with the Commission a motion to amend its amended petition and rate schedules filed therewith in order to give effect to a rise in the cost of natural gas purchased from its sole pipeline supplier, for which Piedmont simultaneously requested a "tracking" increase in Docket No. G-9, Sub 137. On September 13, 1974, the Commission issued an Order allowing Piedmont's motion for leave to amend its initial application.

On September 3, 1974, Piedmont filed with the Commission its notice and undertaking, that it intended to place the full amount of its proposed general rate increase into effect for all services rendered on and after October 1, 1974, pursuant to the provisions of Chapter 62 which allow such rates to become effective under an undertaking for refund following the lapse of 180 days after the rate increase as initially proposed would have gone into effect.

On October 1, 1974, Piedmont filed a motion for leave to further amend its amended petition. Piedmont stated that such further amendment was necessary in order to reflect in its proposed rate schedules the effect of yet another increase in price of purchased gas from its pipeline supplier and also to introduce a formula proposed by Piedmont to allow it to track anticipated revenue gains and losses occasioned by curtailment of its supplies of natural gas from its pipeline supplier. The Commission, by Order issued on October 14, 1974, allowed the application to be further amended in the ways proposed by Piedmont.

The matter came on for hearing at the time, place and date initially set by the Commission in its Order setting hearing issued March 21, 1974.

## SUMMARY OF EVIDENCE

Mr. J. D. Pickard, President and Chief Executive Officer of Piedmont Natural Gas Company, testified that this proceeding is only Piedmont's second general rate case since 1959 seeking to increase rates for other than tracking purposes; that the curtailments in natural gas supplies which Piedmont was experiencing from Transcontinental Gas Pipe Line Corporation (Transco), Piedmont's only pipeline supplier, had increased drastically from 4.7% in 1971 to 8.3% in 1972 to 12.9% in 1973 to 27% in mid 1974 and to 31% as of the date of this hearing; that the purposes for the rate increase being sought were that while Piedmont's fixed and variable costs were constantly increasing, the volumes of gas available to it for resale and recovering these costs were constantly decreasing, and that the deepening curtailment threatened the future existence of the company as a viable business entity; that Piedmont needed increased revenues in order to be able to raise capital with which to engage in development and exploration activities outside the Transco system which would increase the amount of natural gas available to Piedmont for resale within the State of North Carolina; and, that the effect on Piedmont's industrial customers and the economy of the State of North Carolina generally would be disastrous if Piedmont were unable to locate and bring to North Carolina new supplies of natural gas to replace those being lost through the deepening Transco curtailment.

Mr. Everette C. Hinson, Vice President and Treasurer of Piedmont, testified that historically the company had been able to absorb increased costs of operation through normal growth and expansion, but that today's inflation and curtailment require the company to pass along its increases in costs to its customers or suffer a decline in its earnings per share; that in the two years since its last general rate increase, the rate of increase in the company's costs has been astounding; that among the most rapidly increasing items of cost to the company are capital costs which have increased from 8.25% in 1972 to almost 12% in 1974; that the deepening Transco curtailment has required

Piedmont to curtail sales to interruptible customers (from whom Piedmont has historically been able to earn a higher rate of return) in order that Piedmont might protect its firm, principally residential, load (from which Piedmont has historically earned a lower rate of return); that Piedmont could no longer rely upon Transco or any other traditional sources to assure its future gas supply, but rather it must begin and continue expensive, frustrating and painstaking efforts to independently secure the volumes of gas which it and its customers need; that fundamental changes in Piedmont's rate structure were necessary in order to accommodate the needs of both the company and its customers, so that the residential load might earn a rate of return for the company more in keeping with the cost of serving such load; that the company's exhibits, other than the testimony and exhibits of its expert witnesses, were prepared by himself or other company employees working under his supervision and that such exhibits fairly, though conservatively, reflect the results of the company's operations during the test period; that the company's exhibits were prepared using the same methodology which was used by the Commission Staff during Piedmont's last general rate case in 1972 and for that reason, there are no major differences between the results shown in the staff exhibits and the company's exhibits; that if the company had computed the return on common equity using the method now utilized by the Commission Staff, it would have shown a return on common equity of approximately 14.12% which is a difference of only 2/100ths of 1% from the 14.14% shown by the staff on its exhibit; that the curtailment revenue gains and losses tracking formula which was supplied by Piedmont as an exhibit to its second amended petition will allow the company to maintain a stable revenue-generating position by tracking a "margin", which is the difference between gross revenues, less cost of gas and gross receipts taxes; that the operations of the formula would be subject to review by the company and the Commission every six months and appropriate adjustments, if necessary, would be made on an across-the-board per MCF basis; and, that if as presently proposed, the Transco settlement plan with "compensation" feature is approved by the Federal Power Commission (FPC), the company will in all probability be able to reduce the rates which it proposes to charge its customers and still maintain its "margin" at the level desired by the company.

Wilton L. Parr, Vice-President in charge of North Carolina operations, testified that Piedmont's present rate structure was drawn up during a period of and was designed for the sale of 100% of its contract demand volumes of gas from Transco, which because of curtailment, Piedmont was no longer receiving; that the present rates had been designed on a basis of distinguishing between "firm" and "interruptible" customers; that "interruptible" rate structures were designed to be attractive to industrial users so that the large excess of gas that the company would have available for sale during off-peak times in the summer would be purchased by interruptible customers and the

revenues received therefrom could be used to keep the firm price lower than it otherwise would have to be; that Piedmont's present 24 separate rate schedules have in this proceeding been revised so that Piedmont in the future proposes to sell gas only under 12 rate schedules; that the proposed rate schedules were designed using the present reduced availability of natural gas supplies as the major factor under consideration; that other factors considered in designing the new rate structure were the value of service to each class of customer, the cost of serving each class of customer, the need to encourage conservation, competitive fuel prices and the company's revenue requirements; that the new rate structures were designed to dovetail with the Commission's Order of priorities for curtailment as contained in Docket No. G-100, Sub 18; that the new rates charge a higher price per MCF to those customers who, being in high priority categories, can expect to receive gas 365 days a year and progressively lower prices to those customers in descending order of curtailment priority importance, because the value of the gas service being rendered is much less to persons receiving gas only a few days out of the year than to persons receiving gas 365 days of the year; that a study of comparisons for alternative energy costs reveals that, for the average residential user, the cost of heating with natural gas is 75% of the cost of heating with oil, 43% of the cost of heating with propane, and only 26% of the cost of heating with electricity; that natural gas is clearly and demonstrably the most economical of any competing energy source for commercial and industrial customers as well as residential; that as the amount of gas sold to industrial customers decreases because of curtailment, the amount of revenues produced by such customers will likewise decrease and those lost revenues must be replaced by revenues from residential and other high priority customers who will receive gas; that the cost of serving residential customers is much higher than the cost of serving commercial and industrial customers and hence, residential customers should pay a larger portion of the proposed rate increase than commercial and industrial customers; that there has been no significant increase in residential rates for any purpose other than tracking of supplier increases since 1959; and that, since Piedmont's last general rate increase in 1972, the company has spent in excess of $8,000,000.00 for the construction of an LNG plant to meet the needs of its residential and commercial customers. The witness concluded that in light of the factors mentioned above, it was his opinion that the proposed new rate structure was just, fair and reasonable for all classes of service provided by Piedmont and that such proposed rate structure would not be unjustly discriminatory or preferential as to any class of customer or as to any customers within the several classes of customers served by Piedmont.

Mr. Richard S. Johnson, Vice President of Stone and Webster Management Consultants, Inc., 90 Broad Street, New York, New York, testified that his company was asked to

assist Piedmont in designing the rates necessary to produce the revenues which Piedmont determined that it would require in order to raise the capital necessary to meet its expenses and earn a fair return for its shareholders, and to prepare a cost of service study to determine the approximate rate of return which would have been earned by each of Piedmont's classes of service had the proposed rates been in effect during the test year; that, in his opinion, it was imperative that the residential customers receive their fair share of Piedmont's proposed general rate increase; that following the criteria earlier discussed by Witness Parr, his company developed a rate structure encompassing five basic classes of service, with one or more rates within each class of service; that the new rate schedules were designed to tie in with the Commission's Order of priorities as issued in Docket No. G-100, Sub 18; that the design of the new proposed rate structure will tend to encourage conservation to the extent that the use of pricing techniques can achieve conservation; that conservation was only one of many factors considered in the rate design, because to set rates which would maximize conservation would produce test year revenues far in excess of that which Piedmont could justify based on its cost of service; that for the twelve months ended April 30, 1974, as adjusted, Piedmont earned an overall rate of return of 7.96%, a rate of return on its residential class of customers of 4.23%, a rate of return on its commercial and general service of 11.89%, a rate of return on its high priority industrial customers of 25.56% and a rate of return on boiler fuel customers of 10.44% and a rate of return on all other customers of 23.21%; and that, in his opinion, the proposed rate structure would be just, fair and reasonable for the classes of service provided by Piedmont, and would not be unjustly discriminatory or preferential as to any class of customers, or as to any customers within the several classes of customers served by Piedmont.

Mr. Eugene S. Merrill, Senior Vice President and Director of Stone and Webster Management Consultants, Inc., testified that he had prepared studies of the finances and capital cost of Piedmont and the earnings requirements for that company; that he used three (3) approaches in determining earnings requirements, as follows: (1) relative risks or comparative earnings approach, (2) cost of capital approach, and (3) the investor or financial integrity approach; that since its last general rate increase case, Piedmont had sold in the market $14,000,000.00 of 8-1/4% debentures in 1972 and 4.8 million dollars of common stock in 1973; that from 1972 to 1974 Piedmont's senior capital ratio declined from 73.5% to 67.2% whereas Piedmont's common equity ratio increased from 26.5% to 32.8%; that this change in capital structure places Piedmont in a much better position to do the necessary financing to carry out its plans to supplement its gas requirements as well as normal construction programs; that coverage of interest charges has remained close to two times, but the percent earned on common equity declined from 14.7% in 1973 to 11.9% in the twelve-month

period ending March 31, 1974; that earnings per share have declined from $2.19 in 1972 to $1.84 in 1974; that the price of Piedmont common stock on the market is now below book value; that based on the facts uncovered in his introductory study of Piedmont's financial status, he concluded that an improvement in earnings for Piedmont is required so that adequate coverage may be provided for interest on its debt and dividends on preferred stock and so that the decline in common earnings may be reversed; that during the period 1972 to 1974 Piedmont's overall cost of capital increased significantly, but its overall return did not increase to compensate for the increased cost of the capital and Piedmont, therefore, experienced a decline in common stock earnings; that at the conclusion of his comparative earnings study, he determined that comparative earnings could not be properly used to determine the cost of capital for Piedmont; that the common equity ratio of Piedmont is quite thin for a utility and much thinner than most of the comparison companies which he used; that yields on A-rated security issues, such as Piedmont's, have increased from around 8% in 1973 to some over 10% in 1974; that in his opinion the cost of common capital for the group of seventeen (17) comparison natural gas distributors that he analyzed was at least 14%; that such group of natural gas distributors had an average common equity ratio of around 39%; that since Piedmont is capitalized much thinner than the comparison companies, its common equity capital is obviously exposed to greater risks to those of the comparison companies; that for Piedmont's higher risk common capital to earn a return commensurate with the risk and thus compare favorably with the comparison companies used by Mr. Merrill, Piedmont should be allowed to earn a 15.3% return on its common equity; that the overall cost of capital to Piedmont as of the end of the test year is 9.68% and that, in his opinion, the cost of capital to Piedmont Natural Gas in mid-1974 is no less than 9-3/4%; that if the company were allowed to earn revenues sufficient to cover its cost including a 9-3/4% cost of capital, long-term interest charges would be covered by 2.3 times and such coverage would be sufficient to attract debt capital as required by Piedmont; and that in his opinion, Piedmont is more than justified in requesting a rate of return based on a 15% cost of common stock equity and that the requested rate of return is eminently fair.

Mr. David F. Crotts, an Economist with the North Carolina Attorney General's office, testified that he had prepared a study showing the cost of equity capital to Piedmont; that Piedmont should be allowed to earn a rate of return on common equity sufficient to cover the cost of such capital, since in theory the rate of return on equity capital will be equal to the cost of such capital; that, in his opinion, the cost of equity capital for Piedmont is 12.3% on original cost equity and that the cost of equity capital based on fair value equity would depend on the Commission's subsequent determination of the fair value rate base and the resulting fair value capital structure; that the greater the risk assumed by the investor, the higher expected return the

investor would require before assuming the risk; that he applied the discounted cash flow analysis to the data of Piedmont as well as gas comparison companies and other utility comparison companies in deriving an 11.8% return on Piedmont's common stock which a reasonable investor would require; that to the 11.8% he added an appropriate factor to take into account the cost of financing future equity and thereby derived his conclusion that the cost of equity capital to Piedmont is 12.3%; that because of the present day inflation, the state of the economy generally and the market aversion to public utility stocks in particular, it is doubtful that any return short of 20% to 25% on common equity could bring the price of Piedmont stock back up to book, assuming it is possible at all; that most of these factors are outside the control of the Commission and that it would be unjust to the ratepayers to allow a rate of return which would bring the market price of Piedmont stock back up to book value at this time; and that, to the extent the Commission finds a fair value rate base greater than original cost and allows a positive rate of return on this paper profit close to the rate of return on original cost equity, the effects of inflation on the stockholder will be somewhat mitigated.

Mr. Donald E. Daniel, an Accountant on the North Carolina Utilities Commission Staff, testified that he had made an examination of the books and records of Piedmont Natural Gas Company with a view towards determining its original cost net investment, revenues and expenses; that Piedmont's rate of return on original cost net investment after staff accounting and pro forma adjustments was 6.78 percent; that Piedmont's return on common equity after staff accounting and pro forma adjustments is 6.27% and after the company's proposed rate increase, the return on common equity would be 14.14%; that the differences between the company's accounting exhibits and the staff's accounting exhibits were minimal because the company used the exact procedures and techniques employed by the staff in Piedmont's last general rate increase case in 1972; and that, in certain respects, the adjustments made by the staff to the company's figures and exhibits were favorable to the company.

Mr. Thomas M. Kiltie, an Economist in the Operations Analysis Section of the Engineering Division of the North Carolina Utilities Commission, testified that he had performed a quantitative analysis of the cost of capital and fair rate of return to Piedmont; that in preparing such analysis he had used the considerable data supplied by the company as well as information from numerous financial journals and news publications; that the overall cost of capital to Piedmont can be measured as a weighted average of the cost of Piedmont's long-term debt, preferred stock and common equity, such weights being determined by their proportions in the total capitalization structure of the company; that an authorized rate of return above the cost of capital would allow the utility investor to earn excess or monopoly profits through unreasonably high rates imposed

upon the consumer, which rates would misallocate gas resources by inhibiting efficient gas consumption and would redistribute income from the ratepayer to the stockholder - conversely, a return set below the cost of capital will confiscate the property of the investor since insufficient earnings will be reflected in declining values of equity shares; that there is one, and only one, return that is fair in terms of efficient resource use and distributional justice and that fair return is equal to the cost of capital; that as of April 30, 1974, the embedded cost of $67,293,002.00 of outstanding long term debt for Piedmont was 6.87%; that as of April 30, 1974, the embedded cost of Piedmont preferred stock was 7.87%; that using the discounted cash flow analysis technique, with adjustments for market financing costs and market pressures, the cost of equity capital to Piedmont and, hence, the return required on Piedmont's common equity investment falls in a range between 13.75% and 14.05% with a median value of 13.9%; that of the ten (10) gas companies which he selected for purposes of comparison with Piedmont, seven (7) of such companies were selected by Company Witness Merrill using entirely different selection criteria; and that, based upon his analysis of the total cost of each component of Piedmont's capital structure as of the end of the test year, he concluded that the fair rate of return to be applied to Piedmont's original cost rate base is 9.34%.

Mr. William F. Irish, an Economist with the North Carolina Utilities Commission Staff, testified that he had performed an analysis of the comparative costs of alternate fuels and the expected effect of the rate increase in certain customer classes on revenues which Piedmont might expect to derive from such rate increases; that comparative fuels, on average, have a significantly higher cost per million BTU by customer class than does natural gas; that in general his analysis of comparative costs of fuels agrees with the analysis made by the company and the overriding conclusion is that natural gas has a significantly lower cost per million BTU for all customer classes; that given the percentage increases in rates for the residential customers (9.83%) and for commercial and general service customers (approximately 17.05%), it can be expected that natural gas sales to these two customer classes will be reduced because of the rate increase - this simply amounts to the functioning of the law of supply and demand which states that customers will purchase less of any given commodity at a higher price than they would purchase at a lower price; in terms of revenue calculations, any revenue figures arrived at under the assumption of no reduction in sales will in fact be higher than the revenue actually realized - thus the revenue figures reported by the company after the proposed rate increase would be inflated since they are computed under the assumption of absolutely no reduction in sales brought about by the rate increases; in terms of curtailment policy and conservation, a significant reduction in sales because of the price increases may help to alleviate shortages in other customer classes; and that, even when

making the most conservative consumptions as to the elasticity of demand, there will be some reduction in sales and even though revenues will increase because of higher rates, the revenues derived will not increase to the levels reported by the company.

Based upon the verified application, the prefiled testimony and exhibits, the amendments to testimony and oral testimony at the hearing in this cause, which comprises the record herein, the Commission now makes the following

FINDINGS OF FACT

1. That Piedmont Natural Gas Company, Inc., is a duly created and existing New York corporation authorized to do business, and doing business, in North Carolina as a franchised public utility providing natural gas service in forty-two (42) North Carolina communities, and is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. That the increases in rates and charges proposed by Piedmont would produce a total of $4,805,776.00 in additional gross revenues.

3. That the test period set by the Commission and utilized by all parties in this proceeding was the twelve months ending April 30, 1974.

4. After accounting and pro forma adjustments, Piedmont's gross operating revenues in North Carolina were $47,854,000 as developed by the Commission Engineering Staff. Its reasonable operating expenses in North Carolina were $42,303,572 (including cost of gas of $24,669,000) consisting of operating expenses of $42,134,482 (Company Exhibit 8, page 1, line 9, column 3) and interest on customer deposits of $43,090 (Company Exhibit 8, page 1, line 11, column 3) plus Staff adjustments of $126,000 (Daniel Exhibit 1, Schedules 3-1 through 3-6). The resulting net operating income for return after application of the growth factor of 1.0104 was $5,608,000 (Daniel Exhibit 1, Schedule 3, line 3). A schedule of revenues and expenses after proposed rate increase rounded to the nearest thousand and the resulting approximate rates of return follow:

| | After Staff Adjustments | Proposed Rate Increase | After Proposed Rate Increase |
|---|---|---|---|
| 1. Revenues | $47,854,000 | $4,806,000 | $52,660,000 |
| 2. Cost of gas | 24,669,000 | - | 24,669,000 |
| Total | $23,185,000 | 4,806,000 | 27,991,000 |
| 3. Deduct other operating expenses | 17,635,000 | 2,598,000 | 20,233,000 |
| 4. Net operating income | $ 5,550,000 | $2,208,000 | $ 7,758,000 |
| 5. Growth factor (1.04%) | 58,000 | - | 58,000 |
| 6. Net operating income for return | $ 5,608,000 | $2,208,000 | $ 7,816,000 |
| Fixed Charges: | | | |
| 7. Interest | $ 3,461,000 | - | $ 3,461,000 |
| 8. Preferred dividends | 369,000 | - | 369,000 |
| 9. Total fixed charges (line 7 + line 8) | $ 3,830,000 | $ - | $ 3,830,000 |
| 10. Balance for common equity (line 6 - line 9) | $ 1,778,000 | - | $ 3,986,000 |

| | | | |
|---|---|---|---|
| 11. Common equity | $28,354,000 | - | $28,354,000 |
| 12. Rate of return on common equity (line 10 ÷ line 11) | 6.27% | - | 14.06% |
| 13. Fair value equity | $45,540,000 | - | $45,540,000 |
| 14. Rate of return on fair value equity (line 10 ÷ Line 13) | 3.90% | - | 8.75% |
| 15. Original cost net investment | $82,809,000 | - | $82,809,000 |
| 16. Rate of return on original cost net investment (line 6 ÷ line 15) | 6.77% | - | 9.44% |
| 17. Fair value of property | $99,995,000 | - | $99,995,000 |
| 18. Rate of return on fair value (line 6 ÷ line 17) | 5.61% | - | 7.82% |

5. The ultimate difference between the accounting treatment given to Piedmont's book figures by the company and by the Commission Staff is so small that the Commission feels that either the company figures or the staff figures could be equally used without affecting Piedmont's overall revenue requirements. For the sake of uniformity, the Commission herein adopts the accounting treatments in the exhibits of the Commission Staff.

6. The Commission finds Piedmont's net investment as of the end of the test year in utility plant providing service to the public in North Carolina to be $82,809,000, including working capital allowance (Daniel Exhibit 1, Schedule 2, line 12). The Company has expended nearly $18,000,000 in capital improvements since its last general rate case, and the bulk of such expenditures consisted of the building of an LNG plant, which exists solely for the protection of firm and residential customers.

7. As stated by the Commission Staff in the record at Tr. II, pp. 42-44, and presented in Daniel Exhibit 1, Schedules 2-1 and 2-2, the working capital allowance was computed by analysis of the balance sheet and resulted in a working capital allowance of $3,001,000. The Commission finds this to be a reasonable working capital allowance.

8. The fair value of Piedmont's property used and useful in providing service to the public within this State as of the end of the test year is $99,995,089, consisting of the fair value of plant in service of $96,994,089 (Company

Exhibit 4) plus the working capital allowance of $3,001,000 determined in Finding of Fact No. 7. The fair value of plant in service was determined by taking the fair value of Piedmont's property as determined in its last general rate case in April, 1972, adding the original cost value of additions since the last case and deducting the retirements at original cost plus additional depreciation since the last case.

9. Based upon the Commission's foregoing findings of net income and fair value before adjustments for proposed rate increase, the Commission finds Piedmont's rate of return on fair value for the test year to be 5.61% ($5,608,000 ÷ $99,995,089) and its rate of return on its actual common equity investment for the test year to be 6.27% (Daniel Exhibit 1, line 4, column e). Assuming a common equity structure adjustment of $17,186,000 to allow for the increment by which fair value as hereinabove determined exceeds original cost net investment (see Daniel Exhibit 1, Schedule 2, line 12), the rate of return on fair value equity of $45,540,000 for the test year would be 3.90%. The Commission finds that such rates of return on fair value, common equity and fair value equity are insufficient to allow the utility by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

10. The Commission finds that the fair rate of return for Piedmont on the fair value of its North Carolina property as heretofore determined is equal to Piedmont's cost of capital. The cost of capital is determined by calculating the weighted average of the cost to Piedmont of its long-term debt, preferred stock and common equity. The Company's evidence shows an indicated cost of capital of 9.75 based on original cost. The Staff's evidence shows an indicated cost of capital of 9.287 - 9.390 based on original cost. The Commission finds that the cost of capital to Piedmont, and hence its fair rate of return is 9.44% based on original cost, which is equal to 7.82% on fair value as heretofore determined of $99,995,089. Hence, the fair rate of return for Piedmont on the fair value of its North Carolina property used and useful in rendering utility service is 7.82%. The Commission finds such rate of return to be just and reasonable.

11. Based upon the Commission's foregoing findings of revenues, expenses, fair value and fair rate of return, Piedmont will require additional annual gross revenues of $4,805,776.00 to achieve the rates of return on fair value and common equity heretofore determined to be just and reasonable. Such rates are sufficient to allow Piedmont by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable

terms. Such additional revenues will produce a rate of return on the fair value of Piedmont's property of 7.82% ($7,816,000 ÷ $99,995,089) and rate of return on actual common equity of 14.06%, which is $3,986,000 (balance for common determined in No. 4 above) divided by $28,354,000 (actual common equity determined in No. 4 above).

12. The Commission finds that the rates requested by Piedmont in this docket are just and reasonable and accordingly herein approves the full amount of the requested additional revenues and further approves the rate structure as proposed by the company in order that the additional revenues allowed in this Order will be generated upon a schedule of rates which are found herein to be nondiscriminatory and just and reasonable. The sales volumes during the test year reflect the shifting of volumes of gas due to conservation efforts by firm customers.

13. Since within the last two years, the actual and projected rates of curtailment for Piedmont Natural Gas have fluctuated wildly, the rate of curtailment from Transco has been the most uncertain variable element in gas utility rate making. The Commission finds that the "tracking" formula which the company has proposed in order to maintain its margin (the difference between its revenues and the cost of purchased gas plus gross receipt taxes) is just and reasonable and will be to the benefit of both the company and its customers. To the extent that the curtailment plan ultimately approved by the FPC for Transco in Docket RP72-99 provides for "compensation" to Piedmont, the tracking provision herein approved will allow those benefits to be flowed through for the benefit of Piedmont's customers.

Based on the foregoing Findings of Fact, the Commission now reaches the following

CONCLUSIONS

1. Upon consideration of the record herein, it has become apparent that Piedmont Natural Gas Company is in need of substantial rate relief, having issued a significant amount of debt and equity capital during the period 1972 to mid-1974 when interest rates and required earnings on common stock reached an all-time high. Further, the company has sustained a sharp decline in its earnings since its last general rate case in 1972.

2. In the present case, both the Applicant and the Staff offered competent evidence of adjustment to operating revenues to normalize test year revenues to reflect the abnormally warm winter temperature during the test year. The Commission adopts the revenue figures presented by the Staff which were based on Piedmont's total North Carolina supply of natural gas of 42,388,308 MCF during the test year.

3. The Staff and the Company are in substantial agreement concerning the final results of the Company's need for additional revenues. When contrasted with the overall size of the Company's rate base and its annual revenue requirements, the differences between the Company and the Staff are so small as not to require separate resolution herein; in fact, the closeness of the data filed by the Company and the Staff can be taken as further evidence in justification of the Company's need for additional revenue.

4. We conclude that the rate relief requested herein is just and reasonable inasmuch as, according to both Company and Staff figures, it would do little more than restore the Company's earnings on rate base and on common equity to those levels declared by the Commission to be just and reasonable in Piedmont's last general rate increase case, at which time its level of curtailment was less than 10%, whereas at the present time it exceeds 30%.

5. We conclude that the additional revenues requested by Piedmont will allow it to earn a rate of return of 7.82% on its fair value rate base, and a rate of return in the range of 12.5% to 14% on its original cost common equity and a rate of return of approximately 8.75% on its fair value equity. These additional revenues, producing the returns indicated above should be sufficient at the present time to allow Piedmont by sound management to produce a fair profit to its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

6. The Commission concludes that the current natural gas supply situation will not be substantially alleviated in the near future and that, therefore, Piedmont, as well as other natural gas distributors in North Carolina, should refrain from engaging in promotional practices or in the use of promotional advertising which would entice and encourage the low priority use of natural gas and that expenditures for such purposes will not be allowed as reasonable operating expenses in the future until this Commission shall order otherwise. The Commission, however, concludes that educational and informational advertising practices and programs which educate the public as to the appropriate use of natural gas and conservation of energy are valid and reasonable and should not be discouraged.

7. We conclude that the curtailment "tracking" formula as proposed by Piedmont will justly, fairly and reasonably allow the Company to maintain its margin based on gains and losses in revenues depending on the existing level of curtailment in the future. Such a formula will be fair and reasonable not only to the Company, but also to its customers in that the compensation, if any, which is paid to Piedmont for excess curtialment will flow through to reduce the rates required from Piedmont's customers.

8. We finally conclude that the rate structure as proposed by Piedmont is just and reasonable in that it follows closely the order of curtailment priorities established by this Commission in its Order in Docket No. G-100, Sub 18. Such proposed rate structure is not unfair to the residential customer group because the rate of return which will be produced by the residential customers under the proposed rate structure will not exceed the rate of return produced by the rate structure for other customer groups. The rates of return earned by the other classes of customers are just and reasonable. The value of service testimony clearly indicates that the cost of natural gas to these customers is well below the cost of alternate sources of energy.

9. The test year volumes reflect the conservation shift by firm customers to interruptible, and, since the Commission Order herein allows a fair rate of return on such shifted volumes, no further consideration need be given to the interruptible surcharge proposed by Piedmont in its original application.

IT IS, THEREFORE, ORDERED as follows:

1. That the amended and revised tariffs and rate schedules as finally filed by Piedmont with the Commission in this docket and as testified to by Company Witnesses Parr and Johnson be, and the same hereby are, approved and accepted for filing pursuant to G. S. 62-134. Such rates have been in effect under bond since October 1, 1974, and they are hereby allowed to remain effective from and after such date. The rates herein approved are those attached hereto as Exhibit "A".

2. That the revenue collected by Piedmont under the interim rate request approved by the Commission in its Order of April 16, 1974, shall be retained by Piedmont for its corporate purposes.

3. That Piedmont is hereby authorized to file a schedule of rates reflecting changes in curtailment and effects of compensation. Future rate schedules to reflect the further changes in curtailment and compensation shall be filed every six (6) months from and after the date of the initial filing, unless the Commission by Order shall otherwise direct. The Company, in calculating its base margin for purposes of determining the new rate schedules to be filed, shall use the schedule of revenues and cost of gas after proposed rate increase contained in Finding of Fact No. 4 herein.

4. That Piedmont shall notify its customers concerning the effect to them of the rate increase herein granted by appropriate bill insert as a portion of its next regular billing cycle.

5. That the surcharge on interruptible gas sales volumes proposed by Piedmont in its initial filing of March 1, 1974, be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

EXHIBIT "A"

PIEDMONT NATURAL GAS COMPANY, INC.

N.C.U.C. TARIFF Second Revised Sheet No. 1

RATE SCHEDULE #101
RESIDENTIAL SERVICE

Applicability

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to single family residential units, and governmental housing projects.

Rate

First 300 cu. ft. or less per month $2.00
Next 700 cu. ft. per month @ $.28064 per hundred cu. ft.
Next 1,500 cu. ft. per month @ $.19064 per hundred cu. ft.

Year Round Service

Next 2,500 cu. ft. per month
@ $.15764 per hundred cu. ft.
All over 5,000 cu. ft. per month
@ $.12764 per hundred cu. ft.

Space Heating Only

Next 2,500 cu. ft. per month
@ $.18064 per hundred cu. ft.
All over 5,000 cu. ft. per month
@ $.15064 per hundred cu. ft.

Space Cooling (Air Conditioning) - May through September

All over 2,500 cu. ft. per month
@ $.12064 per hundred cu. ft.

Governmental Housing Projects

Governmental Housing Authorities purchasing gas through master meters for redistribution without resale to their residential tenants at $.13564 per hundred cubic feet for all gas. Governmental Housing Authorities purchasing gas under this rate schedule shall provide and maintain all facilities and equipment for the distribution and utilization of gas beyond the outlet of the Company's meter or meters.

Minimum Monthly Bills

Governmental Housing Projects - $0.25 per month per residential unit connected.

All Other - $2.00 per meter per month.

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the
North Carolina Utilities Commission - Docket No.
G-9, Sub 137 Revised
Issued: August 30, 1974
Effective: October 1, 1974

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RATE SCHEDULE #102
COMMERCIAL SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to all non-residential customers, including churches regularly used for religious worship, with peak day requirements not exceeding 50 Mcf per day. Although prolonged interruption or curtailment of service is not anticipated, it may be required by the Company when the supply of gas to higher priority customers is threatened.

Rate

First 300 cu. ft. or less per month $2.00

Next 700 cu. ft. per month @ $.36064 per hundred cu. ft.
Next |9,000 cu. ft. per month @ $.2|264 per hundred cu. ft.

Year Round Service

Next 480,000 cu. ft. per month
@ $.|4064 per hundred cu. ft.
Next 500,000 cu. ft. per month
@ $.|3564 per hundred cu. ft.
All over |,000,000 cu. ft. per month
@ $.||064 per hundred cu. ft.

Space Heating Only

All over 20,000 cu. ft. per month
@ $.|7564 per hundred cu. ft.

Space Cooling (Air Conditioning) May through September

All over 20,000 cu. ft. per month
@ $.|2064 per hundred cu. ft

Minimum Monthly Bills

$2.00 per meter per month

Payment of Bills

Bills are net and due upon receipt. Bills become past due |5 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the
North Carolina Utilities Commission - Docket No. G-9,
Sub |37 Revised
Issued: August 30, |974
Effective: October |, |974

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RATE SCHEDULE #|03
GENERAL SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to all non-residential customers. All gas purchased pursuant to this rate schedule shall be metered separately from any

gas purchased under any of the Company's other rate schedules. Although prolonged interruption or curtailment of service is not anticipated, it may be required by the Company when the supply of gas to higher priority customers is threatened.

Rate

Year Round Service

| | | |
|---|---|---|
| First | 10,000 cu. ft. or less per month | $40.00 |
| Next | 40,000 cu. ft. per month @ $.1564 per hundred cu. ft. | |
| Next | 950,000 cu. ft. per month @ $.1364 per hundred cu. ft. | |
| All Over | 1,000,000 cu. ft. per month @ $.1264 per hundred cu. ft. | |

Space Heating Only

| | | |
|---|---|---|
| First | 10,000 cu. ft. or less per month | $40.00 |
| Next | 990,000 cu. ft. per month @ $.1564 per hundred cu. ft. | |
| All Over | 1,000,000 cu. ft. per month @ $.1464 per hundred cu. ft. | |

Minimum Monthly Bills

$40.00 per meter per month

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the North Carolina Utilities Commission - Docket No. G-9, Sub 137 Revised
Issued: August 30, 1974
Effective: October 1, 1974

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RATE SCHEDULE #104
GENERAL SERVICE - HIGH LOAD FACTOR

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to all non-residential customers. All gas purchased pursuant to this rate schedule shall be metered separately from any gas purchased under any of the Company's other rate schedules. Although prolonged interruption or curtailment of service is not anticipated, it may be required by the Company when the supply of gas to higher priority customers is threatened.

Rate

| | | |
|---|---|---|
| First | 200,000 cu. ft. per month | @ $.13564 per hundred cu. ft. |
| Next | 800,000 cu. ft. per month | @ $.12064 per hundred cu. ft. |
| All Over | 1,000,000 cu. ft. per month | @ $.11564 per hundred cu. ft. |

Minimum Monthly Bills

The minimum monthly bill shall be the greater of the following:

(A) 60% of the maximum monthly bill rendered during the preceding heating season (October through April).

(B) $250.00

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
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Issued: August 30, 1974
Effective: October 1, 1974

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RATE SCHEDULE #105
OUTDOOR GASLIGHT SERVICE

Applicability

This rate schedule is available in the area served with natural gas by the Company in the State of North Carolina to customers using non-metered gas in mantle-equipped outdoor gas light fixtures. Service under the rate schedule is available only to customers receiving such service on August 1, 1974.

Rate

| | |
|---|---|
| First fixture connected | $2.00 per month |
| Each additional fixture connected | $1.50 per month |

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

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Effective: October 1, 1974

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RATE SCHEDULE #106
PROCESS GAS SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to all non-residential customers using gas in direct flame applications for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purposes of this rate schedule propane and other gaseous fuels shall not be considered alternate fuels. Although prolonged interruption or curtailment of service is not anticipated, it may be required by the Company upon one hour's notice when the supply of gas to higher priority customers is threatened.

Standby Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment,

interruption or discontinuance will not cause undue hardship.

Rate

| | | |
|---|---|---|
| First | 500,000 cu. ft. per month | @ $.|4064 per hundred cu. ft. |
| Next | |,500,000 cu. ft. per month | @ $.|3064 per hundred cu. ft. |
| Next | 4,000,000 cu. ft. per month | @ $.||064 per hundred cu. ft. |
| All Over | 6,000,000 cu. ft. per month | @ $.09864 per hundred cu. ft. |

Should it become necessary for the Company to order customer to discontinue using gas, all gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per |00 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bills

The minimum monthly bill shall be 75% of the maximum monthly bill rendered during the preceding twelve months.

Payment of Bills

Bills are net and due upon receipt. Bills become past due |5 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
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Effective: October |, |974

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RATE SCHEDULE #|07
ESSENTIAL HUMAN NEEDS SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to hospitals, nursing homes, orphanages, water pumping and

sewage treatment plants, prisons and schools with resident dormitory facilities. Service is subject to interruption or curtailment upon one hour's notice in the event the Company determines the forecasted average temperature in the Company's service area to be 35 degrees or lower. Although additional interruption or curtailment of service is not anticipated, it may be required by the Company when the supply of gas to higher priority customers is threatened.

Alternate Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship.

Rate

| | | |
|---|---|---|
| First | 500,000 cu. ft. per month | @ $.12064 per hundred cu. ft. |
| Next | 500,000 cu. ft. per month | @ $.10064 per hundred cu. ft. |
| Next | 3,000,000 cu. ft. per month | @ $.09064 per hundred cu. ft. |
| All Over | 4,000,000 cu. ft. per month | @ $.08064 per hundred cu. ft. |

All gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per 100 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bills

The minimum monthly bill shall be the greater of the following:

(A) 25% of the maximum monthly bill rendered during the preceding twelve months.

(B) $500.00

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

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RATE SCHEDULE #108
DIRECT FLAME SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to all non-residential customers using gas in direct flame applications requiring precise temperature controls or precise flame characteristics. Gas purchased under this rate schedule shall not be used in boilers or other indirect flame applications. Interruption or curtailment of service will be required by the Company upon one hour's notice when the supply of gas to higher priority customers is threatened.

Alternate Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship to customer's employees.

Rate

| | | |
|---|---|---|
| First | 500,000 cu. ft. per month | @ $.12564 per hundred cu. ft. |
| Next | 4,500,000 cu. ft. per month | @ $.11064 per hundred cu. ft. |
| All Over | 5,000,000 cu. ft. per month | @ $.09164 per hundred cu. ft. |

Should it become necessary for the Company to order customer to discontinue using gas, all gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per 100 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bills

The minimum monthly bill shall be 75% of the maximum monthly bill rendered during the preceding twelve months.

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
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RATE SCHEDULE #109
INTERRUPTIBLE SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served by the Company in the State of North Carolina to non-residential customers who have interruptible gas requirements of up to 300 Mcfd. The Company is not obligated to deliver specific volumes of gas within any given time period. Service may be interrupted or curtailed upon one hour's notice by the Company.

Alternate Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship to customer's employees.

Rate

All cubic feet per month @ $.09064 per hundred cu. ft.

All gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per 100 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bill

$150.00 per meter per month.

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

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RATE SCHEDULE #110
INTERRUPTIBLE SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served with natural gas by the Company in the State of North Carolina and is applicable to non-residential customers who have interruptible gas requirements of more than 300 Mcfd, but less than 1500 Mcfd. The Company is not obligated to deliver specific volumes of gas within any given time period. Service may be interrupted or curtailed upon one hour's notice by the Company.

Alternate Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship to customer's employees.

Rate

All cubic feet per month @ $.08564 per hundred cu. ft.

All gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per 100 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bill

$500.00 per meter per month.

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the North Carolina Utilities Commission - Docket No. G-9, Sub 137 Revised
Issued: August 30, 1974
Effective: October 1, 1974

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RATE SCHEDULE #111
INTERRUPTIBLE SERVICE

Applicability and Character of Service

Gas Service under this rate schedule is available in the area served with natural gas by the Company in the State of North Carolina and is applicable to non-residential customers who have interruptible gas requirements of not less than 1500 Mcfd. The Company is not obligated to deliver specific volumes of gas within any given time period. Service may be interrupted or curtailed upon one hour's notice by the Company.

Alternate Fuel Capability

Customers receiving service under this schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship to customer's employees.

Rate

All cubic feet per month @ $.07714 per hundred cu. ft.

All gas used by customer after the time specified by the Company for discontinuing service shall be billed in accordance with the rates set forth above plus an additional charge of $2.50 per 100 cubic feet; provided that the additional charge shall apply only if billed by the Company.

Minimum Monthly Bill

$1,000.00 per meter per month.

Payment of Bills

33. Between Kinston, N. C. and the junction of U. S. Highway No. 258 and N. C. Highway No. 24 over U. S. Highway No. 258.

34. Between Red Springs, N. C. and Lumberton, N. C. over N. C. Highway No. 211.

35. Between Red Springs, N. C. and the junction of N. C. Highway No. 710 and U. S. Highway No. 501 over N. C. Highway No. 72 to the junction of N. C. Highway No. 710, thence over N. C. Highway No. 710.

36. Between Elkin, N. C. and the intersection of N. C. Highway No. 65 and U. S. Highway No. 52 over N. C. Highway No. 67 to its junction with N. C. Highway No. 65 and thence over N. C. Highway No. 65.

37. Between the junction of U. S. Highway No. 401 and N. C. Highway No. 55 and Angier, N. C. over N. C. Highway No. 55.

38. Between Zebulon, N. C. and Selma, N. C. over N. C. Highway No. 96.

39. Between the intersection of Interstate Highway No. 95 and U. S. Highway No. 74 and Whiteville, N. C., over U. S. Highway No. 74.

40. Between Jacksonville, N. C. and Wilmington, N. C., over U. S. Highway No. 17.

DOCKET NO. T-1381, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Carolina Crane Corporation, Route 8, Box 114, Raleigh, North Carolina 27612- Application for Authority to Transport Group 2, Heavy Commodities, Between All Points and Places throughout the State of North Carolina | ) RECOMMENDED ORDER GRANTING OPERATING AUTHORITY |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday and Friday, June 20 - 21, 1974

BEFORE: Robert F. Page, Hearing Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain

17. Between Chocowinity, N. C. and Vanceboro, N. C. over U. S. Highway No. 17.

18. Between Laurel Springs, N. C. and Index, N. C. over N. C. Highway No. 88.

19. Between Lenoir, N. C. and Taylorsville, N. C. over N. C. Highway No. 90.

20. Between Lenoir, N. C. and Conover, N. C. over U. S. Highway No. 321.

21. Between Baldwin, N. C. and Deep Gap, N. C. over U. S. Highway No. 2 21.

22. Between Winston- Salem, N. C. and Reidsville, N. C. over U. S. Highway No. 158.

23. Between Mooresville, N. C. and Rockwell, N. C. over N. C. Highway No. 152.

24. Between Whiteville, N. C. and the junction of U. S. Highway No. 17 and U. S. Highway No. 74, over U. S. Highway No. 74.

25. Between the junction of N. C. Highway No. 111 and U. S. Highway No. 70 and Beulaville, N. C. over N. C. Highway No. 111.

26. Between Warsaw, N. C. and Wilmington, N. C. over U. S. Highway No. 117.

27. Between Dunn, N. C. and Clinton, N. C. over U. S. Highway No. 421.

28. Between Clinton, N. C. and Whiteville, N. C. over U. S. Highway No. 701.

29. Between the intersection of N. C. Highway No. 27 and N. C. Highway No. 705 and the intersection of N. C. Highway No. 211 and N. C. Highway No. 705 over N. C. Highway No. 705.

30. Between Eastwood, N. C. and West End, N. C. over N. C. Highway No. 73.

31. Between the junction of N. C. Highway No. 73 and N. C. Highway No. 27 and the intersection of U. S. Highway No. 29 and N. C. Highway No. 73 over N. C. Highway No. 73.

32. Between Kinston, N. C. and the junction of U. S. Highway No. 117 and N. C. Highway No. 55 over N. C. Highway No. 55.

3. Between Arrowood Industrial Park, Mecklenburg County, N. C. and the junction of Interstate Highway No. 77 and N. C. Highway No. 89, in Surry County, over Interstate Highway No. 77.

4. Between Greensboro, N. C. and Durham, N. C. over Interstate Highway No. 85.

5. Between Durham, N. C. and Raleigh, N. C. over Interstate Highway No. 40.

6. Between Winston-Salem, N. C. and Conover, N. C. over Interstate Highway No. 40.

7. Between Rowland, N. C. and Rocky Mount, N. C. over Interstate Highway No. 95 with the right to traverse U. S. Highway No. 301 between Kenly, N. C. and Wilson, N. C. where Interstate Highway No. 95 has not been completed.

8. From Norwood, N. C. over U. S. Highway No. 52 to its intersection with N. C. Highway No. 731, thence over N. C. Highway No. 731 to Mount Gilead, N. C. and return over the same route.

9. From Mount Gilead, N. C. over N. C. Highway No. 73 to its intersection with U. S. Highway No. 220 and return over the same route.

10. From Norwood, N. C. over U. S. Highway No. 52 to its junction with U. S. Highway No. 74 and return over the same route.

11. Between the junction of U. S. Highway No. 301 and U. S. Highway No. 13 and the junction of U. S. Highway No. 13 and U. S. Highway No. 117 over U. S. Highway No. 13.

12. From Greenville, N. C. over N. C. Highway No. 30 to its junction with N. C. Highway No. 33, thence over N. C. Highway No. 33 to Washington, N. C. and return over the same route.

13. Between Kinston, N. C. and Wilson, N. C. over N. C. Highway No. 58.

14. Between the junction of N. C. Highway No. 42 and U. S. Highway No. 421 and Fuquay Varina, N. C. over N. C. Highway No. 42.

15. Between Concord, N. C. and Monroe, N. C. over U. S. Highway No. 601.

16. Between Greenville, N. C. and Bethel, N. C. over U. S. Highway No. 13.

IT IS, THEREFORE, ORDERED

1. That Burris Express, Inc., be, and it is hereby, granted additional operating authority in accordance with Exhibit A hereto attached and that Certificate C-3 be amended accordingly.

2. That the Applicant be, and it is hereby, authorized to file with the Interstate Commerce Commission a copy of this order as evidence for a certificate of registration in accordance with the provisions of Section 206(a)(6) of the Interstate Commerce Act, as amended [49USCA306(a)(6)], relating to registration of state motor carrier certificates.

3. That Burris Express, Inc., comply with all applicable rules and regulations of the North Carolina Utilities Commission and commence operations under the authority granted in Exhibit A not later than thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Docket No. T-681, Sub 41

Burris Express, Inc.
1024 Second Street
P. O. Drawer 700
Albemarle, North Carolina

Regular Route Common Carrier Authority

EXHIBIT A

Transportation of general commodities, except those requiring special equipment, for operating convenience only with no service at any intermediate point thereon over the following routes:

Commodity and Territory Description:

Group 1, General Commodities, over the following routes:

1. Between the junction of Scotland County Road No. 1420 and U. S. Highway No. 401 and Raeford, N. C. over U. S. Highway No. 401.

2. Between Charlotte, N. C. and Greensboro, N. C. over Interstate Highway No. 85.

convenience and necessity in any future case concerning said routes."

4. Burris Express, Inc., has, over a period of several years, experienced operating losses and has been forced to take advantage of every possible means of economizing and better utilizing its equipment so as to avoid reflecting deficits or operating losses.

5. Burris Express, Inc., serves a vital need to the shippers and receivers of freight in North Carolina, both in interstate and in intrastate commerce; and the proposed service set forth in this application will enable it to reduce operating expenses to improve its service and to operate under safer conditions without adversely affecting the use of the highways or the operations of other certificated carriers.

6. There is a public need for the improved service which the proposed 40 routes will enable Burris to render in addition to the other existing, authorized transportation service, both in interstate and in intrastate commerce; and the granting of this application is in the public interest.

7. Public convenience and necessity require the proposed service in intrastate commerce in North Carolina and in interstate and foreign commerce, within limits, which do not exceed the scope of the proposed intrastate operations.

8. Burris is fit, willing and able, financially and otherwise, to perform properly the proposed service.

## CONCLUSIONS

Burris has carried the burden of proof, as required by G. S. 62-262(e), that public convenience and necessity requires the granting of the proposed service in addition to existing authorized service and that the Applicant is fit, willing and able to perform the proposed service, that the same will not result in any unfair or unreasonable competitive advantage over other carriers and that the proposed service will permit economies, will cause the moving of freight more expeditiously and more safely over the proposed routes than over the present routes, and will permit Burris to affect economies which would result in more favorable operating ratios. The proposed routes are safer, more direct and should result in improved service. Burris, in keeping with its representations in its application, should not be permitted to provide transportation service at any point on the proposed routes which it is not already authorized to serve; and the granting of the authority set out in this application shall in no way be construed as granting anything other than the right to operate for convenience over said routes; and the operation over said routes, pursuant to this order, shall not obviate the necessity for the proving of public convenience and necessity in any future case concerning points along said routes.

transportation equipment and will enable Burris Express, Inc., to improve its service to its customers. He further testified that these routes would benefit Burris and the shippers without adversely affecting other certificated carriers and would reflect substantial savings to the carrier, which savings are essential to the preservation of Burris Express, Inc.'s transportation system and that the same would be an improved public service within the area, both in intrastate and interstate commerce.

He further testified that in many cases, except for the fact that this carrier holds authority from the Interstate Commerce Commission under a certificate of registration, many of the routes would be authorized as alternate routes pursuant to the rules and regulations of the Interstate Commerce Commission and that interstate shipments are transported along with intrastate shipments at a ratio of close to 50/50 in all cases; that the interstate shipments could move more economically and expeditiously and more safely over the proposed routes, both with respect to the line-haul movements and peddle runs.

Based upon testimony, exhibits, and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Burris is a duly created and existing corporation, which holds extensive North Carolina intrastate operating authority under Certificate C-3 as a regular route common carrier of general commodities.

2. Burris Express, Inc., is the holder of Interstate Common Carrier Certificate No. MC-113067 and is a motor carrier operating solely within the boundaries of the State of North Carolina, and filed this application with appropriate notice to be published and which was published in the Federal Register pursuant to Section 206(a)(6) of the Interstate Commerce Act, with said notice being published on March 6, 1974.

3. As a result of the notice in the calendars of hearings from the North Carolina Utilities Commission and in the Federal Register, two protests were filed - one by Morven Freight Lines, Incorporated, Box 471, Morven, North Carolina; and one by Dixie Trucking Company, Inc., Post Office Box 3553, Charlotte, North Carolina - which said protests were withdrawn on behalf of these protestants, with the understanding and stipulation that this order would include a provision as follows:

"The granting of the above authority shall in no way be construed as granting anything other than the right to operate for convenience over said routes; and the operation over said routes, pursuant to this order, shall not obviate the necessity for the proving of public

BY THE COMMISSION: Burris Express, Inc., filed application on February 11, 1974, for authority for the transportation of Group 1, General Commodities in Intrastate, Interstate and Foreign Commerce, for operating convenience only, with no service at the intermediate points thereon except as otherwise authorized, over the routes, forty (40) in number, as set out in Exhibit A attached hereto.

In addition to the application before the North Carolina Utilities Commission and as a part of said application, the Applicant also seeks corresponding authority leading to a certificate of registration to conduct operations in interstate or foreign commerce under Section 206(a) (6) of the Interstate Commerce Act. Notice of said application was published in Calendar of Hearings issued February 15, 1974, with correction in a Supplemental Calendar of Hearings issued February 15, 1974; and notice dated March 1, 1974, covering the application for authority leading to the certificate of registration in interstate or foreign commerce under Section 206(a)(6) of the Interstate Commerce Act was published in the Federal Register on March 6, 1974. Thereafter, protests were filed with the Commission by Mr. H. P. Taylor, Jr., Attorney at Law, Wadesboro, North Carolina, for and on behalf of Morven Freight Lines, Incorporated, and Dixie Trucking Company, Inc.; and by Order dated March 27, 1974, order was issued allowing the protests and motions for intervention.

At the call of the hearing, the parties who had heretofore filed protests and had been made parties protestants did not appear and, in fact, a letter was received in evidence which indicated that, in lieu of a stipulation for a provision to be incorporated in the Order of this Commission, their protests were withdrawn.

Mr. Carl Leslie testified on behalf of Burris Express, Inc., stating that he is Vice President, Traffic and Claims, of Burris Express, Inc.; that as such he is responsible for the application before the Commission at this time; that the purpose of the application is to seek authority from the North Carolina Utilities Commission to serve over the 40 routes in order to utilize interstate highways in lieu of other highways in some instances, and to utilize short routes between points which they already are authorized to serve, and, in all cases, in order to affect economies which would contribute to safer operation and which would amount to considerable savings in time and in mileage, as well as afford the carrier to better serve its customers and provide more economical utilization of its equipment; that without reciting all of the evidence in this order, it is suffice to say that all of the routes provide a safer route, shorter route and afford the better utilization of the equipment of the Applicant in its effort to service the shippers and receivers of freight within its territory on a continuing and improved type service, and each of these routes are considered safer and more economical for the operation of

DOCKET NO. T-404, SUB 4 — Barnes Truck Line, Inc. — C-29

DOCKET NO. T-481, SUB 10 — Pitt County Transportation Company, Inc. — C-389

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, viz: Laminated Modular Panels, from Tarboro, North Carolina, to all points and places in North Carolina.

DOCKET NO. T-681, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Burris Express, Inc., for Authority to Transport General Commodities, Except Those Requiring Special Equipment, Over Certain Specified Routes, for Operating Convenience Only and With No Service at Intermediate Points | ) ) ) ) ) | ORDER GRANTING ADDITIONAL OPERATING AUTHORITY |

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Tuesday, April 2, 1974

BEFORE: Chairman Marvin R. Wooten and Commissioners Hugh A. Wells (presiding) and Ben E. Roney

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, and
Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602

For the Protestants:

None

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

3. That there is a need for the transportation of Group 21 - Laminated modular panels from Tarboro, North Carolina, to points and places in North Carolina.

4. That public convenience and necessity requires the services applied for in addition to existing authorized transportation services.

5. That the Applicants, and each of them, are fit, willing and able, financially and otherwise, to properly perform the proposed services on a continuing basis.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

That the Applicants, and each of them, are experienced and well qualified to provide the transportation services applied for in the consolidated dockets herein; that there is a need for such services; that it is in the public interest to grant the applications herein; and that the public convenience and necessity will be served by the granting of the authorities requested in the dockets herein, and in each of them.

ORDER

IT IS, THEREFORE, ORDERED:

(1) That the applications by Barnes Truck Line, Inc. and Pitt County Transportation Company, Inc., be, and the same are hereby, granted.

(2) That the certificates of Barnes Truck Line, Inc. and Pitt County Transportation Company, Inc., be, and the same are hereby, amended to include the authority as more particularly described in Exhibit B attached hereto and made a part hereof.

(3) That the Applicants, and each of them, shall appropriately and promptly file with the Commission tariff schedules of rates and charges pursuant to the authorities herein granted and begin operations under said authorities herein involved within a period of sixty (60) days from the date of this order and otherwise comply with the Commission's Rules and Regulations prior to commencing operations as herein authorized.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of August, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

truckloads would move to points in North Carolina as the Tarboro plant had very little holding or storage capacity, and that several carriers would be required to meet his company's transportation needs.

He further testified that his company has previously utilized the services of the Applicants involved in this proceeding and desires their services from the Tarboro plant, and that his company, Formica, was not solicited by either Protestant herein involved prior to the filing of the applications now before the Commission, but was contacted by Mr. Everette, Everette Truck Line, Inc., on April 22, 1974.

Mr. Woodrow Everette, Everette Truck Line, Inc., Protestant, offered testimony and exhibits tending to show that his company is authorized to transport the involved commodity from Tarboro, North Carolina, to all points in North Carolina; that his equipment list reflects 34 tractors and 51 trailers, 38 of which are flatbeds suitable for the transportation of the involved traffic; that Mr. Cecil W. Bradley, his Traffic Manager, contacted officials of Formica on April 22 and 25, 1974, and solicited traffic from the new Tarboro plant, and that he had flatbed equipment idle.

On cross-examination, Mr. Everette responded that his company specializes in truckload movements; that his company has several applications pending before the Interstate Commerce Commission to serve Weyerhaeuser and that the traffic for said company would require flatbed trailers, and that his company was, as of May 9, 1974, leasing flatbed trailers from Pitt County Transportation Company, Inc.

J. D. McCotter, Inc., did not present a witness, but through Counsel, requested that its equipment list and annual reports be incorporated in the record by reference.

Parties herein requested and were permitted to file briefs in this matter.

Upon consideration of the applications, the evidence presented, the briefs as filed, the Commission's records, and the matter as a whole, the Commission is of the opinion and finds the following

## FINDINGS OF FACT

1. That the Applicants are each experienced common carriers in intrastate commerce in North Carolina, holding Common Carrier Certificates issued by this Commission as follows:

Barnes Truck Line, Inc. - C-29
Pitt County Transportation Company, Inc. - C-389

2. That each of the Applicants have or can acquire sufficient terminal and transportation equipment to render service as applied for.

As requested by Attorney for Applicants in his letter dated March 22, 1974, the two applications as hereinabove described were consolidated for hearing.

The Applicants offered the testimony of three witnesses, Mr. C. T. Harris, Traffic Manager, Barnes Truck Line, Inc.; Mr. Thomas S. Wainwright, Vice President, Pitt County Transportation Company, Inc., and Mr. James H. Gordon, Traffic Manager, Formica Corporation, in support of their applications.

The Protestants offered one witness, Mr. Woodrow Everette, President, Everette Truck Line, Inc., with the equipment list and annual reports of J. D. McCotter, Inc., as filed with the Commission, being offered in the record by reference.

Mr. C. T. Harris, Barnes Truck Line, Inc., and Mr. Thomas E. Wainwright, Pitt County Transportation Company, Inc., offered testimony and exhibits tending to show their respective company's operating authority, equipment used and financial condition. Each of these witnesses testified regarding their experience as carriers; the location of their terminals near Tarboro, the plant site from which the involved commodity will be shipped; their ability and desire to serve the involved shipper and their fleet of flatbed equipment suitable for the transportation thereof.

Mr. James H. Gordon, Traffic Manager, Formica Corporation, shipper, offered testimony and exhibits in support of both applications herein involved. His testimony reflected that his company's new plant, under construction at Tarboro, North Carolina, would process and market laminated modular panels, composed of fibreboard, laminated with a 1/16 inch finishing for use on verticle surfaces; that fibreboard is otherwise known as particleboard or flakeboard, and that the plant is scheduled for completion during July, 1974, and that it would reach full production in September or October, 1974.

He further testified that all outbound shipments would be by regulated motor common carriers; that shipper projects it will ship 330 truckloads in 1975 and 500 truckloads in 1976 to North Carolina points; that shipments would be on a 6-day-a-week basis, with small shipments being consolidated as much as possible for economy; that the traffic would involve multiple dropoffs to points in North Carolina, and at points in South Carolina, Tennessee and Virginia; that many of the shipments would be less-than-truckload and his company desired carriers with authority to handle both intrastate and interstate traffic.

His testimony further reflected that his company would be shipping to various North Carolina points covering all areas of the State; that flatbed trailers are the type that would be required for the transportation of the involved commodity; that there would be days when as many as ten (10)

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on May 9, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding, Commissioners Ben E. Roney and Tenney I. Deane, Jr.

APPEARANCES:

For the Applicants:

Mr. Ralph McDonald, Esquire
Bailey, Dixon, Wooten, McDonald and Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: Barnes Truck Line, Inc.
Pitt County Transportation Company, Inc.

For the Protestants:

Mr. Vaughan S. Winborne, Esquire
Attorney and Counselor at Law
1108 Capital Club Building
Raleigh, North Carolina 27601
Appearing for: Everette Truck Line, Inc.
J. D. McCotter, Inc.

WOOTEN, CHAIRMAN: By applications filed with the Commission on March 22, 1974, in Docket No. T-404, Sub 4, by Barnes Truck Lines, Inc., 506 Mayo Street, P. O. Box 999, Wilson, North Carolina 27893 (Applicant), and Docket No. T-481, Sub 10, by Pitt County Transportation Company, Inc., Highway 258 South, P. O. Box 207, Farmville, North Carolina 27828 (Applicant), through and by their counsel, Mr. J. Ruffin Bailey and Mr. Ralph McDonald, Bailey, Dixon, Wooten, McDonald and Fountain, Raleigh, North Carolina, Applicants seek authority to transport Group 21, Other Specific Commodities, viz: Laminated modular panels from Tarboro, North Carolina, to all points and places in North Carolina.

Each of these dockets were noticed in the April 4, 1974, Commission's Calendar of Hearings. Said notices gave a description of the authority applied for and set the applications for hearing on May 9, 1974, at the place captioned.

Protests were timely filed to the applications by Everette Truck Line, Inc., Washington, North Carolina, and J. D. McCotter, Inc., Washington, North Carolina, through and by their Counsel, Mr. Vaughan S. Winborne, Counsellor and Attorney at Law, Raleigh, North Carolina, and the Commission, by its orders in the captioned dockets dated May 7 and 8, 1974, allowed the protests by Everette Truck Line, Inc., and J. D. McCotter, Inc.

CONCLUSIONS

Applicant offered testimony that he was willing and financially able to render the proposed services. He further offered testimony that there seemed to be some need for these services in the requested counties. This testimony was only corroborated by one witness from the Wilmington, North Carolina, area.

The Hearing Commissioner is of the opinion that the Applicant has failed to carry the burden of proof of showing that public convenience and necessity require the proposed service in addition to existing authorized service in the counties requested by the Applicant as required by G. S. 62-62 and North Carolina Utilities Commission Rules and Regulations R2-15 and, therefore, the application for authority tc transport Group 21, Mobile Homes, in the Counties of New Hanover, Brunswick, Pender, Columbus, Bladen, Duplin, Onslow, Sampscn, North Carolina, as requested in the application, should be denied.

IT IS, THEREFORE, ORDERED

That the application filed by Virgil K. Painter, d/b/a Painter Mobile Homes, Route 3, Box 209A, Wilmington, North Carolina 28401, for irregular route common carrier authority to transport Group 21, Mobile Homes, to and from New Hanover, Brunswick, Pender Counties, North Carolina, from points and places in New Hanover, Brunswick, Pender Counties, North Carolina, to points and places in Columbus, Bladen, Duplin, Onslow, Sampson Counties, North Carolina, be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of January, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-404, SUB 4
DOCKET NO. T-481, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Barnes Truck Line, Inc., and Pitt County Transportation Company, Inc. - Applications For Authority to Transport Group 21, Laminated Modular Panels, From Tarboro, North Carolina to all Points and Places in North Carolina. | ) | ORDER GRANTING APPLICATIONS |

Protestants offered the testimony of Allen Hughes, Sales Representative and Assistant District Manager for Morgan Drive Away. Mr. Hughes testified that his company is certificated to haul mobile homes in the counties that the Applicant has requested the certificate of public convenience and necessity. He further testified that he has had difficulty obtaining enough moving business to keep his drivers busy in this area and that granting of this certificate would cause a financial burden on Morgan Drive Away. Mr. Hughes stated that he is actively soliciting the mobile home transportation business in this area, would welcome any additional business and would be more than willing to serve people in the counties that Painter Mobile Homes has requested authority to serve. Mr. Hughes was cross-examined by the Staff Attorney. At the close of Morgan Drive Away's evidence, Attorney for Morgan Drive Away renewed his motion to dismiss on the grounds that Applicant had not carried the burden of proof in proving a public need for the proposed service in the counties that Applicant has requested authority to serve. This motion was also taken under advisement.

Transit Homes introduced testimony of Forrest L. Strange, District Manager of Transit Homes, Inc. Mr. Strange testified that Transit Homes, Inc., has authority to operate in North Carolina, has terminals in this area in the Towns of Fayetteville, Goldsboro, and Jacksonville. He testified that they advertise in the local directory and actively solicit mobile home moving business.

Edmond W. Clemmons, d/b/a Clem's Mobile Home Repair Service, testified that his certificate covers all the counties that Applicant has requested in his application to serve. He further testified that he has recently purchased a new truck that will enable him to haul any size trailer and thereby enable him to better serve the area in which he has authority to operate. With this testimony Protestants closed their case.

Filing of briefs was waived by all parties involved.

Based on the testimony offered, the evidence adduced, and the exhibits herein, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is fit, willing, and able to perform the proposed service.

2. That the Applicant is financially able and otherwise qualified to furnish adequate service on a continuing basis.

3. That Applicant has not carried the burden of proof in showing the public convenience and necessity requires the proposed service in addition to existing authorized transportation service as required by G. S. 62-62.

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

WOOTEN, HEARING COMMISSIONER: By application filed with the Commission on October 11, 1973, Virgil K. Painter, d/b/a Painter Mobile Homes, seeks irregular route common carrier authority to engage in the transportation of Group 21, Mobile Homes, from points and places to and from New Hanover, Brunswick, Pender Counties, North Carolina; from points and places in New Hanover, Brunswick, Pender Counties, North Carolina, to points and places in Columbus, Bladen, Duplin, Onslow, and Sampson Counties, North Carolina.

Notice of said application along with time and place of the hearing together with a brief description of the authority sought was published in the Commission's Calendar of Hearings issued October 23, 1973. Protests thereto were timely filed by Transit Homes, Inc., P. O. Box 1628, Greenville, South Carolina, Morgan Drive Away, Inc., 2800 West Lexington Avenue, Elkhart, Indiana, and Edmond W. Clemmons, d/b/a Clem's Mobile Home Repair Service, 2702 Dare Street, Wilmington, North Carolina 28401.

The Applicant, Virgil K. Painter, testified that he is ready, willing, and financially able to transport mobile homes in the requested service area. He further testified that there seems to be some need in these counties for additional mobile home moving services. Applicant testified that he knows of some mobile home brokers who have had difficulty in procuring trucks to get their mobile homes moved. Protestants waived cross-examination of the Applicant.

Mr. L. E. Burchette testified that he is a mobile home dealer in Wilmington, North Carolina; and that he is familiar with the needs of mobile home dealers in this area. Mr. Burchette testified that he has had some difficulty procuring mobile home movers to move his larger mobile homes. He further testified that he thinks Painter Mobile Homes is a reliable mover and that his rates are just and reasonable. On cross-examination, Mr. Burchette testified that he did not mind using the other carriers in this area if they would provide him with the necessary services. This testimony concluded the case for the Applicant.

At this juncture, the Protestants joined in a Motion to Dismiss on the grounds that the Applicant had failed to carry the burden of proof of showing a public need for these requested services. This motion was taken under advisement.

DOCKET NO. T-1678

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Virgil K. Painter, d/b/a Painter Mobile Homes, Route 3, Box 209A, Wilmington, North Carolina 28401 - Application for Group 21, Mobile Homes, from Points and Places to and from New Hanover, Brunswick, Pender Counties, North Carolina; from Points and Places in New Hanover, Brunswick, Pender Counties, North Carolina, to Points and Places in Columbus, Bladen, Duplin, Onslow, Sampson Counties, North Carolina | ) | RECOMMENDED ORDER |

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on January 4, 1974, at 11:30 a.m.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

None

For the Protestants:

Edmond W. Clemmons
Clem's Mobile Home Repair Service
2702 Dare Street
Wilmington, North Carolina 28401
Appearing For: Clem's Mobile Home Repair Service

Thomas Harrington
Harrington & Stultz
Attorneys at Law
Box 535
Eden, North Carolina 27288
Appearing For: Morgan Drive Away, Inc.
2800 West Lexington Avenue
Elkhart, Indiana

Garland B. Daniel
Attorney at Law
1106 Capital Club Building
Raleigh, North Carolina
Appearing For: Transit Homes, Inc.
P. O. Box 1628
Greenville, South Carolina

this case was held in Charlotte during the height of the energy crisis. The need for a strong and responsible public transportation system was brought home with compelling force. The Commission reluctantly grants the 10 cents increase in the adult fare and in adult tickets from 7 for $2.00 to 5 for $2.00 in recognition of the company's deteriorating financial condition, and with the expectation that the company will take immediate steps to significantly improve the level of service, especially in those areas testified to by the public witnesses. The Commission invites and enjoins the City of Charlotte to fulfill its responsibility by ensuring that the service of the company will be responsive to the needs of the people of Charlotte.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed tariff filing of Charlotte City Coach Lines, Inc., Local Passenger Tariff No. 1-D, N.C.U.C. No. 10, scheduled to become effective on February 8, 1974, be, and it is, hereby disallowed, except the charter coach provisions named therein, and that an appropriate tariff schedule be issued immediately to cancel the proposed Charlotte City Coach Lines, Inc., Local Passenger Tariff No. 1-D. N.C.U.C. No. 10, in its entirety.

2. That the Respondent Charlotte City Coach Lines, Inc., be, and the same is, hereby authorized to publish an appropriate tariff schedule providing for increases in its adult tickets from 7 for $2.00 to 5 for $2.00 and in its one-way adult fares by ten (10) cents for each one-way adult fare over those one-way adult fares contained in the present Charlotte City Coach Lines, Inc., Local Passenger Tariff 1-C, N.C.U.C. No. 9, and bring forward its charter coach rates, charges, and provisions which were allowed to become effective in its Tariff No. 1-D, N.C.U.C. No. 10.

3. That increases as otherwise sought in this proceeding, by Respondent, in addition to those hereinabove granted, are hereby denied.

4. That the publication authorized hereby may be made on ten (10) days' notice to the Commission and to the public, but shall otherwise comply with the rules and regulations of this Commission governing the publication, posting and filing of tariff schedules.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

evidence and exhibits, projects that the company's proposed fare increases will result in approximately $663,000 additional revenues during 1974, and in an operating ratio of 88%. The differences between the company's projections and the Staff's projections are primarily due to the use of a different diminution factor to measure the impact of the proposed fare increase upon the decline in the number of passengers carried. Using its diminution factor, the company projects that it will lose 835,000 passengers in 1974 as a result of the adult and adult transfer increases. Using its diminution factor, the Commission Staff projects that the Company will lose only 330,671 passengers in 1974 as a result of the proposed fare increases. The difference between the company's projection of passenger loss and the Staff's projection is 500,000 passengers. The diminution factor used by the company was developed in the late 1940's from the operating experience of intracity passenger carriers throughout the country. The diminution factor used by the Staff was computed from the actual passenger-loss experience of Charlotte City Coach Lines in the year following its last fare increase in 1970. The Commission accepts the diminution factor developed by the Staff.

The Commission approves an increase in adult single fares from 30 cents to 40 cents and the adult tickets from 7 for $2.00 to 5 for $2.00. Using the diminution factor developed by the Staff, the Commission finds and concludes that the company should realize increased gross operating revenues during 1974 of approximately $500,000, and an operating ratio of approximately 93%. The Commission finds this fare increase to be just, reasonable, and compensatory to the company.

The Commission is concerned over the quality of service that Charlotte City Coach Lines provides to its passengers. The large turnout of public witnesses in Charlotte, during a day of inclement weather, demonstrated the interest that the citizens of Charlotte have in the service of the company. Witnesses from all walks of life testified to the problems they encountered in using the company's buses: unreliable service; lack of schedules; rudeness by the drivers; dirty buses; failure of drivers to complete routes. Under the laws of North Carolina, jurisdiction over the operation of Charlotte City Coach Lines is divided between the Utilities Commission and the City of Charlotte. The Commission is responsible for the fixing of rates. The City is primarily responsible for the awarding of the franchise, the approval of routes, and the adequacy of service. The Commission may, however, in fixing the rates of the company, consider the quality of service provided by the company. The Commission has done so in this case. The Order grants an increase of 10 cents in the adult single passenger fare and in adult tickets from 7 for $2.00 to 5 for $2.00, but denies the other fare increases sought by the company.

The Commission is aware of the vital role that Charlotte City Coach Lines plays in the community. The hearing in

tickets from 7 for $2.00 to 5 for $2.00 will be approximately 93%.

17. Passengers using the buses of Charlotte City Coach Lines are experiencing many difficulties in service. Testimony of the public witnesses at the hearing shows the following: The service is not sufficiently dependable; schedules and other information available to the passengers are not readily available; some drivers have been discourteous and rude to the passengers; the management of the company is often unresponsive to customer complaints; there is overcrowding at peak hours.

18. The company has attempted to reverse the passenger decline. During the past three years, the company has placed into service 22 new air-conditioned buses at a cost of $960,000 and has ordered, for delivery in August of 1974, 8 new air-conditioned buses. The company has hired three additional supervisors and a special projects co-ordinator. The company is operating 5% more miles in 1973 than in 1965. The company has made changes in its service in response to the urban renewal program in Charlotte and to the energy crisis.

Based on the above Findings of Fact, the Commission makes the following

## CONCLUSIONS

Charlotte City Coach Lines, Inc., by Application filed with this Commission, is seeking increases in its rates and charges for passenger service in Charlotte. The evidence and exhibits presented by the company and by the Commission Staff lead to the conclusion that the company is faced with substantial operating losses for the year 1974. The reason for these losses is twofold: a continuing decline in the number of passengers who ride the company's buses, and an increase in operating expenses incurred by the company. Since 1969 the number of passengers carried by Charlotte City Coach Lines has declined month-by-month almost without interruption, at a time of increasing fares and deteriorating service. At the same time, the cost of goods and services used by the company in its operations has increased; the increases in the price of fuel alone will add approximately $50,000 to the company's operating expenses in 1974. In 1973 the company's operating ratio was 99.99%. The Commission finds and concludes that this operating ratio is unjust and unfair to the company.

The Commission finds and concludes that Charlotte City Coach Lines will realize a net operating loss of approximately $315,000 under the company's present rate structure; the company's operating ratio in 1974 will be 113%. The company, in its evidence and exhibits, projects that the proposed fare increases will result in approximately $434,000 additional operating revenues during 1974, and in an operating ratio of 94%. The Staff, in its

9. Charlotte City Coach Lines is facing increased operating costs for the year 1974. Wages for hourly employees (union contract) will increase by $137,720; the wages of salaried employees by $7,300. Increases in the cost of goods and services as a result of inflation will amount to $50,790. Payroll taxes will increase by $11,818. Injuries and damages expense will increase by $20,884. Workman's compensation taxes will increase by $1,600, and payroll taxes by $11,818.

10. The company's average fuel cost per gallon has increased substantially. During 1973 the company paid an average of 13.02¢ per gallon (excluding tax) for fuel; in January 1974 the cost per gallon had risen to 19.41¢. The company's fuel costs at current prices will add approximately $50,000 to the company's operating expenses during 1974.

11. Based upon current operating revenue trends and passenger declines, and upon projected increases in operating expenses, Charlotte City Coach Lines will realize a net operating loss in 1974 of approximately $315,000 under its present rate structure. The company's operating ratio for the year will be approximately 113%.

12. Charlotte City Coach Lines needs additional operating revenues in 1974 to offset the projected operating losses during the year.

13. Charlotte City Coach Lines has projected that its proposed fare increases will result in approximately $434,000 additional operating revenues during 1974; the projected operating ratio wil be approximately 94%. The company's projections are based upon a diminution factor developed in the 1940's from the operating experience of intracity passenger carriers throughout the country. (The diminution factor measures the loss of passengers resulting from the adoption of the proposed fare increases.)

14. The Commission Staff has projected that the proposed fare increases will result in approximately $663,000 additional operating revenues during 1974; the operating ratio will be approximately 88%. The Staff's projections were based upon a diminution factor developed from the company's actual experience in passenger declines following its last fare increase in 1970.

15. The diminution factor developed and used by the Staff in this proceeding is a more reasonable and realistic measurement of the impact that the company's proposed fare increases will have on the decline in passengers.

16. An increase in the company's adult single fare from 30¢ to 40¢ will produce approximately $530,000 additional revenues for the company in 1974, based upon the diminution factor developed by the Staff; the company's operating ratio under the 10¢ increase in adult single fare and in adult

## FINDINGS OF FACT

1. Charlotte City Coach Lines, Inc., is engaged in the transportation of passengers for compensation in the City of Charlotte, North Carolina, and is subject to the jurisdiction of this Commission with respect to the fixing of rates and charges.

2. Charlotte City Coach Lines, Inc., seeks authority from the Commission to increase its tariffs and fares as follows: Adult single fare, from 30¢ to 40¢; adult transfers, from 10¢ to 20¢; adult tickets, from 7 for $2.00 to 5 for $2.00; student single fare, from 15¢ to 20¢; student transfer fare, from 5¢ to 10¢; and college passes, from $2.50 to $3.25.

3. In the calendar year 1972 Charlotte City Coach Lines had a net operating revenue of $207,358. The company's operating ratio for the same year was 92.1%. (The operating ratio is the ratio of operating expenses before taxes to operating revenue; if the operating expenses of a company were the same as its operating revenues, the company's operating ratio would be 100%.)

4. In the calendar year 1973 Charlotte City Coach Lines had a net operating revenue of $253.00. The company's operating ratio for the same year was 99.99%.

5. Two factors responsible for the decline in the company's net operating revenues from 1972 to 1973 are the decrease in the number of passengers carried by the company and the increase in the company's operating expenses.

6. During the period January 1966-September 1973, the number of adult passengers riding the buses of Charlotte City Coach Lines reached a peak of 8,609,550 for the twelve months ending January 1969, and then began to decline almost without interruption to 6,773,206 passengers for the twelve months ending September 1973. For the single month of October 1973 the number of passengers riding the company's buses was 575,941; in November 1973, the number of passengers was 538,585; in December 1973, the number was 511,292; and in January 1974, 535,439. The actual annual decline in adult passengers carried during this period was 3.33%; the actual annual decline for the adult cash transfer passenger was 8.70%.

7. Charlotte City Coach Lines has also experienced declines in all of its other classes of fares: adult cash transfer passengers; student revenue passengers; and student transfer passengers.

8. During the period January 1966-September 1973, the number of miles operated by the company annually has slightly increased, from 2,977,333 miles for the twelve months ending January 1966, to 3,138,477 miles for the twelve months ending October 1973.

service. Witnesses gave examples indicating that the service is not sufficiently dependable; that information regarding bus routes, schedules, and other information valuable to the rider is not readily available when needed on the buses or at the bus stops. When schedules are available, they are difficult to understand or are outdated. Some drivers have been discourteous and rude to the passengers; drivers smoke in violation of posted "No Smoking" signs in the bus; the management of the company is often unresponsive and unsympathetic to customer complaints. Services such as making change for riders, especially at the Square, are nonexistent; transfers are accomplished in a manner inconvenient to the passengers; overcrowding at peak hours in morning and evening is too commonplace. The kind of service the passengers of Charlotte City Coach Lines want was expressed by Mrs. Sarah Spencer, who testified: "We need service that takes us where we are to where we want to go, and this service must be frequent, dependable, safe, courteous and economical. Experience tells us that such service does not exist here."

Mr. Hornbuckle and Mr. Poquette testified at length on behalf of the company. Mr. Hornbuckle's testimony dealt with the financial condition of the company. The testimony will be discussed in the Findings of Fact and Conclusions. Mr. Joseph Poquette, the President of Charlotte City Coach Lines, Inc., testified that the principal reason for the decline in passengers on the company buses has been the increased use of the private automobile. The company has attempted to reverse the trend of passenger decline. In the past three years the company has placed into service 22 new air-conditioned buses at a cost of $960,000, and has ordered for delivery in August 1974 eight new air-conditioned buses that will cost $364,800. The company has hired three additional supervisors and a special projects coordinator. The company is operating 5% more miles in 1973 than in 1965. The company has made changes in its service in response to the urban renewal program in Charlotte and the movement of people to the suburbs. As a result of the energy crisis, the company has instituted express service from the Coliseum parking lot to the central business district. A downtown shuttle service has been developed in cooperation with the downtown merchants. Although the company has suffered a continuous decline in passengers, it has been able to keep its declining trend lower than that of cities of comparable size elsewhere. In confronting its losses, the company had two alternatives: to increase its rates or to reduce its service. The company decided to ask for an increase in its rates.

Based on the record in this docket, including the application of the Respondent Charlotte City Coach Lines, Inc., and the evidence and exhibits presented at the hearing, the Commission makes the following

The hearing on the Company's proposed increases was convened on February 19, 1974, in Charlotte. The Respondent Charlotte City Coach Lines, Inc., was present and represented by counsel. The Commission Staff was present and represented by counsel. In support of the proposed tariff increases, the Company offered the testimony and exhibits of the following witnesses: Mr. Joseph G. Poquette, President of City Coach Lines, Inc., of Jacksonville, Florida, and of its subsidiary companies, including Charlotte City Coach Lines, Inc.; Mr. Charles T. Hornbuckle, Vice President of Finance for City Coach Lines and Charlotte City Coach Lines, Inc.; and Mr. Carl Williams, Schedule Service Supervisor, Charlotte City Coach Lines, Inc. The Commission Staff presented two witnesses: Mr. James C. Turner, Staff Accountant; and Mr. James L. Rose, Rate Specialist III, Traffic Division.

The public hearing was well attended, with more than 50 people present on a day of inclement weather. The following citizens testified: Charles Garrison; Mrs. R. E. Pulwiley, who spoke on behalf of the senior citizens; Dorothea Lakin, for the Mecklenburg County Council on Aging; Sarah Spencer, Chairperson for the Association of Better Public Transportation; Bob Morgan; Kathryn Speidel, who presented 1352 petitions signed by senior citizens; Robert Doley, who spoke on behalf of the working people who use the bus; Mrs. Goldie Chernoff, for the Gray Panthers; Edna Hargett, who spoke for the Thomasboro-Hoskins community; Lucille McNeill; Maggie L. Nicholson; and Phillip Garrick. There was no one present at the hearing representing the Charlotte City Council, although the Commission had received, prior to the hearing, a certified copy of a Resolution passed by the Council on January 14, 1974, which strongly opposed the fare increases.

During the course of the hearing, Mr. Hornbuckle, City Coach Vice President, was asked: "What types of people use your service mostly"? He replied, "Well, I would say probably all types of people. Substantially, though, I think there are a lot of our passengers are those who don't have a choice, either because they are too infirm to drive or too young, or just don't have any alternative." Many of the witnesses at the hearing substantiated Mr. Hornbuckle's description. Representing the senior citizens, a number of whom were present, Mrs. Lakin testified: ". . .we have come to the realization that transportation has become an overriding importance in the lives of senior citizens, the great majority of whom live on fixed income." For many senior citizens the bus offers the only means of getting about the city. Mrs. Pulwiley testified: "We have to get to doctors. We have to go to the grocery stores. We have to go to churches, and everywhere we go we have to ride the bus, and then we like to go shopping sometimes. We got to ride the bus." Although all of the witnesses expressed their opposition to the increase in fares, it was significant that their strong opposition to the increases was primarily based on the low level of the company's bus

DOCKET NO. B-242, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Charlotte City Coach Lines, Inc.<br>Tariff Filing Proposing Increases<br>in Passenger Fares and Charges,<br>Effective February 8, 1974. | ORDER GRANTING RATE INCREASE IN PART |

HEARD IN: County Commissioner's Board Meeting Room, 4th Floor, County Office Building 720 East 4th Street, Charlotte, North Carolina, on February 19 and 20, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane.

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr., Esq.
Allen, Steed & Pullen
P. O. Box 2058
Raleigh, North Carolina 27602

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On January 8, 1974, Charlotte City Coach Lines, Inc., filed with the Commission Local Passenger Tariff No. 1-D proposing increases in its tariffs and fares as follows: Adult single fare, from 30¢ to 40¢; adult transfers, from 10¢ to 20¢; adult tickets, from 7 for $2.00 to 5 for $2.00; student single fare, from 15¢ to 20¢; student transfer fare, from 5¢ to 10¢; and college passes from $2.50 to $3.25.

The Commission, being of the opinion that the proposed increases affected the public interest, suspended the tariff, declared the matter a general rate case, instituted an investigation into the lawfulness of the tariff, and set the matter for hearing in Charlotte. A Supplemental Order required Charlotte City Coach Lines, Inc., to give the public appropriate notice of the proposed increases and the date and place of the hearing.

No formal protests or interventions were filed in this docket.

#5; South 1-1/10 mile to N.C. Hwy #2; East 2/10 mile to Cherokee Road in Pinehurst; 5/10 mile to Fields Road; North 3/10 mile to Dundee Road; East 6/10 mile to N.C Hwy #211; East 5/10 mile to traffic circle to N.C Hwy #2; East 2/10 mile to State Road #1843; North approximately 3-6/10 miles to N.C. Hwy #22; North 2/10 mile to Southern Pines Airport and return over same route to N.C. Hwy #2; East approximately 5-2/10 miles to Southern Pines Railroad Station on Broad Street; South to Route #1; approximately 1-4/10 miles; South on Route #1 approximately 2-7/10 miles to Aberdeen; North on Route #5 approximately 1-2/10 mile to J. P. Stevens Company and return over same route to U.S. Hwy #15-501; North four miles to traffic circle and return over same route to Taylortown.

Alternate (1) From traffic circle on U.S. Hwy #15-501 at Pinehurst, North on U.S. Hwy #15-501 approximately 3-4/10 miles to Eastwood and return over same route to traffic circle.

Alternate (2) From Pinehurst where N.C. Hwy #2 intersects N.C. Hwy #5 approximately 5/10 mile to State Road #1205; East 2-3/10 miles to U.S. Hwy #15-501; South approximately 2/10 mile to State Road #1205; East approximately 2-4/10 miles to Broad Street in Southern Pines and return.

The right of Applicant to transport passengers and their baggage in intrastate commerce includes, the right, unless hereafter restricted by an order of this Commission, to engage in charter service under the conditions set out in Rule R2-67. Charter Service of the Rules and Regulations of the North Carolina Utilities Commission.

4. That Mr. Richard Rawlings, the major shareholder of Applicant, has had experience in providing bus transportation service in other areas.

5. That there has been a rapid growth in population and industry in the applied for area.

CONCLUSIONS OF LAW

Based upon the evidence presented, the record as a whole and the foregoing Findings of Fact, the Hearing Commissioner is of the opinion that public convenience and necessity require the proposed service, and that Applicant is fit, willing and able to provide the proposed service, and that Applicant is solvent and financially able to furnish adequate service on a continuing basis. The Hearing Commissioner is, therefore, of the opinion that the Application should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application of Sandhills Stage Line, Incorporated, for authority to operate as a motor passenger common carrier as more particularly described in Exhibit A attached hereto and made a part hereof, be, and the same hereby is, approved.

2. That the Sandhills Stage Line, Incorporated, file with the Commission evidence of insurance, tariffs of fares, rates and charges, lists of equipment, designation of process agent, and otherwise comply with the Rules and Regulations of the Commission and institute operations under the authority acquired herein within thirty (30) days from the date this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This 11th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

EXHIBIT A
Docket No. B-312

Sandhills Stage Line, Incorporated
Pinehurst, North Carolina

Transportation of passengers and their baggage over the following routes serving all intermediate points:

From Leaverne's Supermarket in Taylortown, Beulah Hill Road; South 3/10 mile to N.C. Hwy #211; East 2/10 mile to N.C. Hwy

The Applicant offered the testimony of its principal shareholder, Mr. Richard Rawlings, in support of its application. Mr. Rawlings testified that there had been frequent request made of him to provide the proposed passenger service. He stated that at the present time the Applicant had not established a regular schedule and that the one finally established would be flexible to meet the current demands. The applicant at this time has one London double-decker bus with another one on order. Applicant, in addition, has a back-up Greyhound bus in case of an emergency problem, the witness testified. The Applicant's proposed fares had not been definitely established at the date of the hearing. Mr. Rawlings related that he had had extensive experience in the mechanical as well as managerial aspects of providing passenger bus service and that he was financially solvent and able to furnish adequate service on a continuing basis.

The Applicant then offered the testimony of Mr. Earl Hubbard, Mayor of Southern Pines; Mr. F. M. Sayre, Jr., Executive Vice President of the Sandhills Chamber of Commerce; Mr. Glen Crisman, Manager of Belk's Department Store in Aberdeen, and Mr. David Stein, the owner of a small variety store in Aberdeen, North Carolina. All four of these witnesses testified as to the public need for passenger bus service in the proposed area because of:

1. Energy Crisis (gas shortage)

2. Parking problems that presently exist

3. Rapid increase in population

4. Substantial manufacturing growth

5. Large concentration of elderly retired people

6. At the present time no form of mass transportation exists in the sought for areas.

Upon consideration of the evidence presented in this proceeding, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant currently owns one London double-decker bus and one Greyhound bus as an emergency back-up vehicle.

2. That there is no common carrier bus service being provided over the routes in the present application.

3. That the Applicant has blanket insurance coverage in the amount of $1,000,000.00.

For the Commission Staff:

Jerry B. Fruitt
Associate Commission Attorney
P. O. Box 991
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER: By Application filed with the Commission on October 20, 1973, Sandhills Stage Line, Incorporated (Applicant), Pinehurst, North Carolina, seeks authority to operate as a motor common carrier of passengers and their baggage in the Aberdeen, Pinehurst and Southern Pines, North Carolina areas, over the following North Carolina routes serving all intermediate points:

From Leaverne's Supermarket in Taylortown, Beulah Hill Road; South 3/10 mile to N.C. Hwy #211; East 2/10 mile to N.C. Hwy #5; South 1-1/10 mile to N.C. Hwy #2; East 2/10 mile to Cherokee Road in Pinehurst; 5/10 mile to Fields Road; North 3/10 mile to Dundee Road; East 6/10 mile to N.C. Hwy #211; East 5/10 mile to traffic circle to N.C. Hwy #2; East 2/10 mile to State Road #1843; North approximately 3-6/10 miles to N.C. Hwy #22; North 2/10 mile to Southern Pines Airport and return over same route to N.C. Hwy #2; East approximately 5-2/10 miles to Southern Pines Railroad Station on Broad Street; South to Route #1; approximately 1-4/10 miles; South on Route #1 approximately 2-7/10 miles to Aberdeen; North on Route #5 approximately 1-2/10 mile to J.P. Stevens Company and return over same route to U.S. Hwy #1[5-50]; North four miles to traffic circle and return over same route to Taylortown.

Alternate (1) From traffic circle on U.S. Hwy #1[5-50] at Pinehurst, North on U.S. Hwy #1[5-50] approximately 3-4/10 miles to Eastwood and return over same route to traffic circle.

Alternate (2) From Pinehurst where N.C. Hwy #2 intersects N.C. Hwy #5 approximately 5/10 mile to State Road #1205; East 2-3/10 miles to U.S. Hwy #1[5-50]; South approximately 2/10 mile to State Road #1205; East approximately 2-4/10 miles to Broad Street in Southern Pines and return.

By Order dated December 10, 1973, the Commission set the application for public hearing in Raleigh, North Carolina, on January 24, 1974, and required notice thereof, along with a description of the involved routes and the time and place of hearing, to be published in The Pilot, a weekly newspaper having general circulation in the Aberdeen, Pinehurst and Southern Pines, North Carolina, areas, herein involved.

At the call of the hearing the Applicant was present and represented by counsel. No protests to the authority sought were filed with the Commission nor did any parties appear at the hearing in opposition to the application.

Greyhound Lines, Inc. Although Greyhound serves Huntersville on a flag-stop basis, and although Greyhound has no terminal facilities in Huntersville, Greyhound does provide service three times a day between Huntersville and Charlotte.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Application, as amended, of North Mecklenburg Bus Company, to serve the routes described in its Application, as amended, be, and the same hereby is, denied.

(2) That Robert G. Watkins shall not engage in the transportation of passengers for hire except as he is authorized to do so by Exemption Certificate No. EB-521.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-312

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Sandhills Stage Line, Incorporated<br>Pinehurst, North Carolina -<br>Application for authority to transport Passengers and their Baggage in the Aberdeen, Pinehurst and Southern Pines, North Carolina areas. | RECOMMENDED ORDER GRANTING APPLICATION |

HEARD IN: Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on January 24, 1974 at 10:00 A.M.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Robert L. Gavin
Attorney at Law
Sanford, North Carolina

For the Protestants:

None

## CONCLUSIONS

Under the laws of North Carolina, an Applicant seeking common carrier authority to transport passengers for compensation over the highways of the State must show:

"(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

"(2) That the applicant is fit, willing and able to properly perform the proposed service, and

"(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis."

G. S. 62-262(e); Rule R2-15(a).

In addition, the laws of North Carolina also provide:

"No certificate for the transportation of passengers shall be granted to an applicant proposing to serve a route already served by a previously authorized motor carrier unless and until the Commission shall find from the evidence that the service rendered by such previously authorized motor carrier or carriers on said routes is inadequate to meet the requirements of public convenience and necessity;. . ."

G. S. 62-262(f).

The Commission finds and concludes that the Applicant North Mecklenburg Bus Company has failed to carry the burden of proof that the public convenience and necessity requires the proposed service in addition to the existing Greyhound service. All of the Applicant's witnesses stated that they were in favor of the Application, but only one or two witnesses testified unreservedly that they would use the proposed service. Other witnesses testified that they were unable to use the proposed service due to the nature of their work (Mr. Walters) or the hours of their work (Mr. Rankin and Mr. Todd) or their proximity to their work (Mrs. Stephens). One witness (Mrs. Nichols) stated that she would use the service when she returned to work in Charlotte later this year. Another witness (Mrs. Rankin) testified that she would use the service in the summer. Clearly, this evidence is insufficient to warrant approval of the Application.

Moreover, in ruling upon the fitness of Mr. Watkins to operate the proposed service, the Commission concludes that the action of Mr. Watkins, in knowingly operating a passenger service into Charlotte during April and May in clear-cut violation of the laws of North Carolina, renders him unfit to hold a common carrier certificate.

Finally, an existing authorized carrier is presently serving the Davidson-Charlotte-Huntersville routes, namely,

8.1 miles back to the starting point at Huntersville, N. C. thence, over Highway 115 to Davidson, N. C., and return by the same route."

(2) The assets of the company include a 1966 Chevrolet school bus valued at $3,000 which Mr. Watkins plans to use in his proposed service. The net worth of Mr. Watkins and his wife is approximately $40,000, which includes real estate owned by the couple.

(3) Mr. Watkins currently holds Exemption Certificate EB-521 from this Commission, which allows him to transport workers to the following places of business: Reeves Bros. Florida Steel Corporation, Charlotte; General Time Corporation, Davidson; and Pharr Yarn Corporation, McAdenville.

(4) North Mecklenburg Bus Company proposes to operate its bus during the hours 8:00 to 8:30 A.M. and 5:00 to 5:30 P.M., six or seven days a week depending on need.

(5) Beginning on or about April 15, 1974, and continuing to the actual date of the hearing in this docket, Robert Watkins, the Applicant herein, doing business as North Mecklenburg Bus Company, without previous authority from this Commission and in clear violation of the laws and statutes of the State of North Carolina pertaining to such operations, did in fact operate substantially the same authority applied for in this Application. Mr. Watkins operated said authority knowingly and deliberately in violation of the law, which conduct on his part renders him unfit to hold a common carrier certificate from this Commission.

(6) One or two witnesses for the Applicant would use the proposed service either in going to work or for shopping or pleasure trips into Charlotte. Other witnesses for the Applicant, although they supported the Application, would not use the service or would use it only occasionally.

(7) Greyhound Bus Lines, Inc. is the only common carrier of passengers serving the Davidson-Huntersville-Charlotte route. Greyhound Bus Lines, Inc. operates buses through the Town of Huntersville on a flag-stop basis to and from Davidson, and to and from Charlotte. Greyhound buses leave Huntersville for Charlotte at the following times: 9:30 A.M., 1:15 P.M., and 7:05 P.M. Greyhound leaves Charlotte for Huntersville at 11:00 A.M., 2:20 P.M., and 6:00 P.M. Greyhound does not have a bus station or other terminal facilities in Huntersville. Persons in Huntersville and the surrounding areas who wish to board Greyhound service at Huntersville must flag the Greyhound bus.

from this Commission, and that he knew he was carrying these passengers in violation of the law.

Mr. Watkins presented at least six (6) witnesses in support of his Application: Mr. John Thomas Walters, Mayor of Huntersville, who testified in support of the Application, but who stated that he had no need to ride the bus himself since he was a traveling salesman; Mr. Carey B. Todd, who stated that the community needed the bus service and that he would use it on occasion, but that he was a postal employee who worked from 5:30 A.M. to Noon and would not be able to ride the bus to work; Mrs. Willie Stephens, who supported the proposed service of Mr. Watkins, but did not need the service since she walks to work; Mrs. Ruth Nichols, who would use the proposed service when she returned to work in Charlotte later on in the year; Mr. Kirksey Rankin, who stated that his wife and daughter could use the proposed service, but that his working hours required him to drive a car to work; Mrs. Bannah H. Rankin, a housewife, who would use the service in the summer to go into Charlotte; and Mrs. Patricia Cox, a housewife whose husband used their only car for work, who stated that she would use the service often to visit relatives in Charlotte. The intervenors also presented witnesses; Charlotte City Coach Lines offered the testimony of Mr. Herman Hoose, Transportation Planning Coordinator for the City of Charlotte, and Mr. Kyle Williams, who is in charge of scheduled service for the Coach Lines. Greyhound Lines, Inc. offered the testimony of Mr. L. W. Durand of Winston-Salem, who is familiar with Greyhound service through Huntersville.

Based upon the Application, as amended, of North Mecklenburg Bus Company and the evidence and exhibits presented at the hearing, the Commission makes the following

## FINDINGS OF FACT

(1) North Mecklenburg Bus Company is unincorporated and is owned by Mr. Robert G. Watkins, Route 7, Charlotte, North Carolina. The company has filed Application with the Commission for common carrier authority to transport passengers for compensation over the following routes:

> "From the city limits of Huntersville, N. C., over Gilead Road a distance one mile to McCoy Road a distance of 2.6 miles to Hambright Road, thence over Hambright Road a distance of 1.6 miles to Beatties Ford Road, thence over Beatties Ford Road a distance of 7.7 miles to the city limits of Charlotte, N. C., thence a distance of 4 miles inside the city limits of Charlotte, N. C., over Beatties Ford Road and Trade Street to Mc Dowell Street, thence 5.0 miles over Trade Street, Graham Street and Statesville Avenue to the city limits of Charlotte on Highway 21, thence over Highway 21 a distance of 1.3 miles to Highway 115, thence over Highway 115 a distance of

Appearing for: Continental Southeastern Lines, Inc.

Thomas W. Steed, Jr., Esq.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 27609

Appearing for: Carolina Coach Company

John A. Mraz, Esq.
Mraz, Aycock, Casstevens & Davis
Attorneys at Law
812 Cameron Brown Building
Charlotte, North Carolina 28204

Appearing for: Charlotte City Coach Lines, Inc.

For the Commission's Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER: On March 6, 1974, Robert G. Watkins, d/b/a North Mecklenburg Bus Company (Applicant), filed an Application with the Commission for common carrier authority to transport passengers from Huntersville, Mecklenburg County, North Carolina, to Charlotte and return. Thereafter, on April 24, 1974, Applicant filed an amendment to his Application to add service from Huntersville to Davidson, North Carolina, over Highway 115 and return.

The description of the routes sought by Applicant will be set out in Finding of Fact No. 1. The matter was set for hearing by Commission Order. Notice of the time and place of hearing was mailed to passenger carriers operating in the territory proposed to be served by Applicant. The following companies filed protest to the Application and were given leave to intervene: Charlotte City Coach Lines, Charlotte, N. C.; Greyhound Lines, Inc., Cleveland, Ohio; Continental Southeastern Lines of Charlotte; and Carolina Coach Company, Raleigh, North Carolina.

The matter came on for hearing on May 23, 1974, in the Assembly Room, Town Hall, Huntersville, North Carolina. Mr. Watkins was present on behalf of Applicant. The intervenors and the Commission Staff were represented by counsel. During the course of the hearing, Mr. Watkins admitted under cross-examination that for at least thirty (30) days prior to the hearing, he had been carrying passengers for compensation into Charlotte and return without authority

Applicant to file a new Application at a future date if it desires to do so.

(2) That this docket be closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-315

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of North Mecklenburg Bus Company, Route 7, Box 632-K, Charlotte, North Carolina - Application for Authority to Engage in the Transportation of Passengers Between Charlotte and Huntersville, North Carolina and Intermediate Points. | ) ) ) ) ) ) | RECOMMENDED ORDER DENYING APPLICATION FOR COMMON CARRIER PASSENGER AUTHORITY |

HEARD IN: Assembly Room, Town Hall, Huntersville, North Carolina, on May 23, 1974.

BEFORE: Commissioner Hugh A. Wells, Presiding.

APPEARANCES:

For the Applicant:

Mr. Robert Watkins (For Himself)
Route 7, Box 632-K
Charlotte, North Carolina 28213

For the Protestants:

J. Ruffin Bailey, Esq.
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602

Appearing for: Greyhound Lines, Inc.

R. C. Howison, Jr., Esq.
Joyner & Howison
Attorneys at Law
P. O. Box 109
Raleigh, North Carolina 27602

(4) Coastal plans to purchase seven used buses to commence its operations. These buses will cost approximately $42,000.00.

(5) Mr. Lewis made an Application to the Small Business Administration, a Federal agency, for a loan of $191,000.00 in order to finance the operations of Coastal Transportation Company. This loan, if approved, would be the only source of funds available to Coastal Transportation Company. Mr. Lewis stated at the August 22, 1974 hearing that final action on the loan should take place within six (6) weeks, and that if the loan were approved, Mr. Lewis would contact the Commission of the approval. The Commission, as of the date of this Order, has not received notification from the Applicant concerning the status of the loan.

CONCLUSIONS

Under the laws of North Carolina, an Applicant seeking common carrier authority to transport passengers must show:

"(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

"(2) That the applicant is fit, willing and able to properly perform the proposed service, and

"(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis."

G. S. 62-262(e); Rule R2-15(a).

It is apparent from the evidence presented by Coastal Transportation Company that the Applicant does not have the financial capabilities at this time to undertake the duties and obligations of a common carrier of passengers in the area proposed to be served by it. The Applicant's own evidence shows that a large sum of money -- approximately $42,000 for buses alone -- would be needed to begin operations. Consequently, the Hearing Commissioner is of the opinion, and so concludes, that the Application of Coastal Transportation Company should be denied for failure to meet the statutory requirement that the Applicant be financially able to furnish service on a continuing basis. The Application will be dismissed without prejudice to the Applicant to file another Application at some future date if it desires to do so.

IT IS, THEREFORE, ORDERED:

(1) That the Application of Coastal Transportation Company, as amended, to engage in the transportation of passengers as a common carrier over certain routes described in its Application be, and the same hereby is, denied, and the Application is dismissed without prejudice to the

Seashore would suffer impaired service if the Application were granted to Coastal Transportation Company.

The matter came on for hearing on August 22, 1974, at the Municipal Building in Morehead City, North Carolina. The Applicant was represented by Mr. Edward W. Lewis, the sole owner. Seashore was represented by Mr. David L. Ward, Jr. of New Bern, North Carolina, and the Commission Staff was represented by Mr. Wilson B. Partin, Jr.

Mr. Lewis offered testimony in support of the Application. He also amended the Application to delete mail delivery and the routes to Jacksonville and New Bern from Morehead City; this amendment was allowed. Mr. Oswald Singer, who represented the senior citizens of Carteret County, offered testimony in support of the Application. Seashore offered the testimony and exhibits of Mr. R. C. O'Bryan, the Traffic Manager of Seashore.

Based upon the record in this docket and the evidence adduced at the hearing, the Hearing Commissioner makes the following

## FINDINGS OF FACT

(1) Coastal Transportation Company, 917 Arendell Street, Morehead City, North Carolina, filed Application with the Commission to serve certain routes in Carteret County, including the cities of Beaufort and Morehead City.

(2) Coastal Transportation Company is solely owned by Mr. Edward W. Lewis, 1208 Bridges Street, Morehead City, North Carolina. Mr. Lewis owns and operates a janitorial service.

(3) The Applicant Coastal Transportation Company listed the following assets and liabilities in its Application.

### ASSETS

| | |
|---|---|
| Real Estate | $19,500.00 |
| Rolling Equipment | 3,650.00 |
| Cash on Hand | 57.00 |
| Cash in Bank | 512.50 |
| Other Assets | 360.00 |
| Total | $21,079.50 |

### LIABILITIES

| | |
|---|---|
| Liens on Real Estate | $5,200.00 |
| Liens on Equipment | - |
| Judgments | - |
| Other Liabilities | - |
| Total | $5,200.00 |

|63 a distance of about 3 miles to U.S. 70, then south over 70 a distance of about 5 miles to West Beaufort Road. Then west on W. Beaufort Rd. a distance of 1 mile to Turner St. then south on Turner St. a distance of about 1/2 mile to U.S. 70 and return over U.S. 70 to Morehead City.

"2. From Morehead City over State Road 1176 north a distance of about 3 miles to State Road 1177 South west over a distance of about 3 miles to Rochelle Dr. a distance of 1 block to Pittman Ave. a distance of 1/4 mile to Hodges St. a distance of 1/4 mile to Midyette Ave. a distance of two blocks and return over same route.

"3. From Morehead City over Atlantic Beach Road and Morehead Ave. to Atlantic Beach. Thence east over Fort Macon Rd. a distance of about 5 miles to U.S. Coast Guard Station, Fort Macon, returning over Fort Macon Rd. a distance of about 5 1/2 miles to Salter Path Rd. a distance of about 4 miles to Pine Knoll Shores, continuing on Salter Path Rd. a distance of about 4 miles to Emerald Isle, thence north over the Emerald Isle Bridge to U.S. 24, then west over U.S. 24 a distance of about 7 miles to Swansboro, continuing over U.S. 24 a distance of about 11 miles to Jacksonville, and return over U.S. 24 to Morehead City.

"4. From Morehead City over U.S. 70 to Newport, thence over State Rd. 1247 a distance of about 2 miles to U.S. 70 thence over U.S. 70 a distance of about 4 miles to Havelock continuing over U.S. 70 a distance of about 18 miles to New Bern (Triangle Plaza Shopping Center) and returning over same route.

"5. From Morehead City over U.S. 70 to Beaufort. Thence over U.S. 70 to Havelock a distance of about 22 miles and return over the same route."

By Order of the Commission dated June 13, 1974, the Application was set for hearing. The Applicant was required to publish notice of its Application in a newspaper having a general circulation in the area sought to be served.

On June 19, 1974, Seashore Transportation Company filed Motion for Intervention in this docket and moved for a continuance; the Commission duly ordered that Seashore be allowed to intervene in the docket and that the matter be continued to August 22, 1974, in Morehead City, North Carolina.

On July 10, 1974, Seashore Transportation Company filed a protest to the Application of Coastal Transportation Company, alleging, among other things, that Coastal proposed to offer services now being rendered by Seashore and that

DOCKET NO. B-318

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Coastal Transportation Company, 917<br>Arendell Street, Morehead City,<br>North Carolina - Application for<br>Authority to Engage in the<br>Transportation of Passengers, Their<br>Baggage, Mail and Light Express<br>Between Morehead City, North<br>Carolina, and Various Points and<br>Places in Eastern North Carolina. | ) | RECOMMENDED ORDER DENYING AND DISMISSING APPLICATION |

HEARD IN: The Municipal Board Room, City Hall, 202 South 8th Street, Morehead City, North Carolina, on August 22, 1974, at 9:30 A.M.

BEFORE: Commissioner Hugh A. Wells, Hearing Commissioner.

APPEARANCES:

For the Applicant:

Edward W. Lewis (For Himself)
917 Arendell Street
Morehead City, North Carolina 28557

For the Protestant:

David L. Ward, Jr., Esq.
Ward, Tucker, Ward & Smith, P.A.
310 Broad Street
New Bern, North Carolina 28560

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
One West Morgan Street
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER: On May 30, 1974, Coastal Transportation Company, 917 Arendell Street, Morehead City, North Carolina, filed an Application with the Commission for authority to engage in the transportation of passengers, baggage, mail and light express over the following routes:

"1. From Morehead City over U.S. 70 to Beaufort, thence over an unnumbered road (Turner St.) a distance of about 1/4 mile to Front St. then east on Front St. 1 mile to Live Oak St., a distance of about 5 miles on Live Oak St. to U.S. 70 East, then a distance of 5 miles to State Road 1163 then west over State Rd.

Application. The language of the statute, in the circumstances, is mandatory and not discretionary. N. C. G. S. 62-263(d) reads in pertinent part: "A license shall be issued to any qualified Applicant therefor . . ." (Emphasis Added).

The standard of proof required in an Application for a Broker's License is different from and far less than the standard required in an Application for common carrier or contract carrier authority. The Applicant for a Broker's License does not have to prove that the issuance of such license is required by public convenience and necessity. It is sufficient if the Applicant proves his or her qualifications and that the services as proposed will, in fact, be used. The Commission is not required by the statute to consider the competitive effect that the issuance of a Broker's License will have upon other licensed brokers in the area sought to be served.

For these reasons, the Commission is of the opinion and hereby concludes that the protest filed herein must be disallowed and denied and that the Application ought to be granted.

IT IS, THEREFORE, ORDERED that the Application in Docket No. B-319 be granted and that the Applicant, Anne H. Guy, d/b/a Trekmaker be issued a license to engage in the business of a broker for tours to be conducted throughout and within the State of North Carolina; that the bond offered into evidence at the hearing herein is accepted as valid and sufficient under the provisions of G. S. 62-263 and Commission Rule R2-66(c).

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

2. That the Applicant proposes to offer an intrastate tour service, principally originating in Winston-Salem, for ladies groups to visit various clothing factory outlets throughout the State of North Carolina.

3. That no other individual, group or agency in the State of North Carolina presently offers such a service to the public.

4. That the Applicant has contacted numerous women's clubs, groups, associations and organizations in the Winston-Salem area and has determined that there is great interest on the part of such groups in utilizing the services which she proposes to offer. In addition, the Applicant has traveled in excess of 2,000 miles and visited 97 different clothing factory outlets and has determined that such outlets would be happy to receive and deal with large tour groups of the type which she proposes to organize.

5. That Applicant proposes to use and engage only those motor carriers authorized by this Commission to transport passengers by motor vehicle in intrastate commerce in North Carolina. Three of such licensed common carriers have assured the Applicant that buses would be available for the tours which she proposed to organize.

6. That Applicant is not now and has never been an employee or agent of any such licensed motor common carrier.

7. That service proposed by the Applicant is desired by persons, groups and organizations in the principal community proposed to be served by the Applicant and will be used by the public in such area.

8. That Applicant is fit, willing and able to properly perform the proposed service.

9. That Applicant has filed with the Commission a valid and sufficient bond of the type required by G. S. 62-263(e) and Commission Rule R2-66(c).

Based upon the foregoing Findings of Fact, the Commission now reaches the following

## CONCLUSIONS

It is clear from the record herein that the Applicant has satisfied the statutory requirements in that she is fit, willing and able properly to perform the service proposed by her and to conform to the provisions of the Public Utilities Act as they relate to brokers and the rules, requirements and regulations of this Commission pertaining to brokers. Further it is clear that the proposed service will be consistent with the public interest and policy declared in the Public Utilities Act. Under such circumstances, the Commission has no discretionary authority to deny the

Robert F. Page, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
One West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION: By Application filed with the Commission on August 1, 1974, the Applicant, Anne H. Guy, d/b/a Trekmaker, 2411 Fairway Drive, Winston-Salem, North Carolina, seeks a Broker's License pursuant to N. C. G. S. 62-263 to act as a travel agent for tourists to be conducted throughout and within the State of North Carolina. By Order issued August 13, 1974, the Commission, being of the opinion that such Application was a matter affecting the public interest, assigned the matter for hearing in the Commission Hearing Room at the above-captioned time and place and required that protests, if any, be filed with the Commission on or before September 16, 1974.

On August 20, 1974, a letter of protest was filed on behalf of Dorothy H. Gough, d/b/a Gough Tours, Winston-Salem, North Carolina, by Carl D. Downing, Attorney at Law, White & Crumpler, 2616 Wachovia Building, Winston-Salem, North Carolina. On September 19, 1974, an affidavit attested to by Mrs. Gough was submitted by attorney Downing to the Commission with the request that such affidavit be considered by the Commission during the course of its deliberations in this docket.

The matter came on for hearing at the time and place first above stated. The Applicant offered the testimony of Mrs. Anne H. Guy and introduced into evidence a bond in the amount of $5,000.00 secured by Mrs. Guy in accordance with Commission rules and regulations should her Application be granted. The affidavit of Mrs. Gough, the protestant, was offered and accepted into the record for Commission consideration.

The Applicant moved that the transcript be furnished to the other four Commissioners and that they read same and participate in the decision in order that a Commission Order might be issued, rather than a Recommended Order. Such Motion was granted by the Chairman.

Based upon the foregoing, the verified Application, the matters and things offered into evidence at the hearing and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That the Applicant has had eight (8) years experience in organizing and conducting international tours of groups of varying sizes to Europe, Scandinavia and the Middle East.

(1) That the Application of Circle Tours, Inc., in Docket No. B-320, be, and the same is hereby, approved, and that the Applicant be issued a license to engage in the business of a broker within and throughout the State of North Carolina.

(2) That under the provisions of G. S. 62-263 and Rule R2-66 (c) of the Commission, Applicant shall file with the North Carolina Utilities Commission a bond to be approved by the Commission of not less than $5,000 in such form as will insure the financial responsibility of the Applicant as a broker and will further insure the supplying of authorized transportation in accordance with agreements, contracts and arrangements therefor.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-319

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Anne H. Guy, d/b/a Trekmaker, 2411 Fairway Drive, Winston-Salem, North Carolina 27103 - Application for License to Engage in the Business of a Broker. | ) ) ) ) ) | ORDER GRANTING APPLICATION |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, September 26, 1974, at 2:00 P.M.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Wells, Roney, Deane and Clark to Read the Record and Participate in the Decision.

APPEARANCES:

For the Applicant:

Robert M. Clay, Esq.
Teague, Johnson, Patterson, Dilthey & Clay
Suite 508, First Federal Building
Raleigh, North Carolina 27602

For the Commission Staff:

there were no written protests filed in response to the September 13, 1974, Notice of Hearing.

Applicant offered the testimony of Mr. John S. Hill, Jr., President, and Mrs. Hedwig Huber, Secretary-Treasurer and General Manager. Testimony of these two witnesses tends to show that Applicant holds authority from the Interstate Commerce Commission to engage in operations as a broker; that such license has been held since 1962; that the North Carolina operations would be similar to the five (5) tours authorized on a temporary basis; that the proposed service is desired and will be used by the public as evidenced by the five (5) previously contracted tours; that only those motor carriers authorized by the Commission to transport passengers as common carrier by motor vehicle in intrastate commerce in North Carolina will be used; that Applicant is not a bona fide employee or agent of any motor carrier and they are experienced and able, financially and otherwise to properly perform the proposed service.

Upon consideration of the Application, the evidence presented and the record in this proceeding as a whole, the Hearing Examiner makes the following:

## FINDINGS OF FACT

(1) That Applicant is fit, willing and able to properly perform the proposed service and to conform to the statutory provisions and the Rules and Regulations of the Commission promulgated pursuant thereto.

(2) That the Applicant is not a bona fide employee or agent of any motor carrier.

(3) That the proposed service will be consistent with the public interest and the declared policy as set forth in G. S. 62-2 and 62-259.

(4) That the Applicant proposes to engage only those motor carriers authorized by this Commission to transport passengers as common carriers by motor vehicle in intrastate commerce in North Carolina.

(5) That the proposed service is desired and will be used by the public.

## CONCLUSIONS

Based upon the record, the evidence presented and the foregoing Findings of Fact, the Hearing Examiner concludes that Applicant has borne the burden of proof as required by Statute and that the application for a license to operate as a broker in North Carolina intrastate commerce should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

DOCKET NO. B-320

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Circle Tours, Inc., 4509 Creedmoor Road, Raleigh, North Carolina 27612 - Application for License to Engage in the Business of a Broker in Intrastate Operations Within the Entire State of North Carolina | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING BROKERS LICENSE |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on September 25, 1974

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicant:

John T. Hunter, III
Attorney at Law
P. O. Box 448
Raleigh, North Carolina 27602

Protestants:

None

COORDES, HEARING EXAMINER: By Application filed with the Commission on August 13, 1974, Circle Tours, Inc., 4509 Creedmoor Road, Raleigh, North Carolina 27612, seeks a Brokers License pursuant to G. S. 62-263 and Rule R2-66 of the Commission's Rules and Regulations to act as a travel agent in arranging passenger tours by motor vehicle of passengers and their baggage within the State of North Carolina.

By Petition filed with the Commission on August 21, 1974, Applicant sought a temporary license to engage in the business of a broker within the State of North Carolina for five (5) tours as more specifically set forth in said Petition pending final disposition of instant Application.

By Order issued September 4, 1974, the Commission, approved the Petition for a temporary license and assigned the Application for permanent license for hearing and required that protests, if any, be filed with the Commission on or before September 13, 1974. Copy of this Order was furnished to other Brokers in North Carolina.

Upon the call of this matter for hearing at the captioned time and place the Applicant was present and represented by Counsel. No one was present in the hearing room in opposition to the granting of the license sought herein and

7. The easements for the proposed system are for a twenty (20) year period with the option of renewing the easements for two additional ten (10) year periods.

8. The system is to be paid for by the Applicant.

9. Under the "Agreement and Easement" entered into by the developer and the Applicant it is completely within the discretion of each individual homeowner as to whether or not he uses the Applicant's services.

10. That the Applicant does not seek to transport or convey gas, crude oil or other fluid substance by pipeline for the public for compensation, but on the contrary, the transportation or movement here involved is purely an incidental adjunct to its established private business owned and operated by it, to wit, the distribution of fuel oil.

CONCLUSIONS

That the Applicant failed to carry the burden of proof in establishing that public convenience and necessity require the proposed regulated service in addition to the presently existing unregulated alternatives. Unregulated suppliers can provide heating oil or comparable alternatives to those which the Applicant proposes to offer. Regulation would not effectively manage pricing policies since the applicant proposes to charge the same rates in the applied for area as those charged in his unregulated truck home oil delivery service. In addition, in the present case, one of the main characteristics of a utility is missing. The proposed service would not create the typical situation where a regulated monopoly exists since the residents of the subdivisions have available alternate means of securing heating oil or other heating sources. Therefore, based upon the record, the evidence presented and the Findings of Fact in this particular case, the Commission concludes that the operation proposed by the Applicant is not sufficiently dissimilar from available unregulated services to warrant its regulation. Thus, a Certificate of Public Convenience and Necessity is not required under the facts in this case.

IT IS, THEREFORE, ORDERED that the Application of Lytle Oil Company, Inc., T/A Lytle Service Company, 902 South Lee Street, Whiteville, North Carolina, for a Certificate of Public Convenience and Necessity be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This 11th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

At the call of the hearing a representative of Applicant was present and represented by counsel. There were no Protestants.

The Applicant offered the testimony of Mr. Gerald P. Matthews, P. E. of Raleigh, North Carolina and Mr. John C. Plasky of Whiteville, North Carolina.

Mr. Matthews, Technical Director of the North Carolina Oil Jobbers Association, testified that he had designed the Applicant's proposed system and that the system as planned would meet all Federal and State safety and design standards. The proposed system also contains a "fail safe" characteristic which protects against sudden drops in pressure caused by ruptures or other malfunctions in the main lines. Mr. Matthews further testified that the type system proposed by the Applicant was safer than the past practice of individual home storage tanks and that there would be cost savings to the consumer since he would only pay for oil as it was used. Mr. Matthews concluded that the proposed oil distribution system is an improvement over past methods and would be an asset to a community.

Mr. Plasky, General Manager of Lytle Oil Company, Inc., also testified in support of the application. He testified that the applicant company had extensive experience in supplying home heating oil and that the applicant was fit, willing and financially able to provide the applied for service.

## FINDINGS OF FACT

1. The Applicant's proposed system is in compliance with all Federal and State design and safety requirements.

2. The Applicant is proposing to provide piped heating oil service to a total of 87 potential customers in Lakeland Village Subdivision, Whiteville, North Carolina.

3. The residents of Lakeland Village have available alternate means of securing heating oil as well as other heating sources, and that the Applicant only has an exclusive right for piped heating oil distribution in Lakeland Village.

4. The Applicant proposes to charge the same rate to customers on the piped heating oil system in Lakeland Village as that charged to its other customers receiving individual home truck delivery service.

5. The Applicant's proposed customers will be homeowners in Lakeland Village. None of these potential customers will be tenants of the Applicant.

6. No provisions are included in the application for charging tap-on-fees.

DOCKET NO. P-1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Lytle Oil Company, Inc., T/A Lytle Service Company, 902 South Lee Street, Whiteville, North Carolina, for a Certificate of Public Convenience and Necessity to provide Oil Utility Service in the Lakeland Village Subdivision, Whiteville, North Carolina, and for Approval of Rate | ) | ORDER DENYING APPLICATION |

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, March 19, 1974, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Presiding, Commissioners Ben E. Roney and Tenney I. Deane, Jr.; with Commissioner Hugh A. Wells to read the record and participate in decision.

APPEARANCES:

For the Applicant:

Mr. J. B. Lee
Powell, Lee & Lee
Attorneys at Law
108 Pinkney Street
Whiteville, North Carolina

For the Commission Staff:

Mr. Jerry B. Fruitt
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On January 10, 1974, the Applicant, Lytle Oil Company, Inc., T/A Lytle Service Company filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide oil utility service in the Lakeland Village Subdivision, Whiteville, North Carolina, and for approval of rates.

By Order issued January 23, 1974, the Commission set the matter for public hearing and required the Applicant to publish notice of the scheduled hearing. The required notice was advertised in The News Reporter, Whiteville, North Carolina. No protests were filed.

The term "force majeure" as employed above shall mean acts of God, extreme weather conditions, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakages or accidents to machinery, lines of pipe or the Company's peak shaving plants, freezing of wells or lines of pipe, partial or complete curtailment of deliveries to the Company by its suppliers, reduction in gas pressure by its suppliers, inability to obtain rights-of-way or permits or materials, equipment, or supplies for use in the Company's peak shaving plants, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the Company and which by the exercise of due diligence the Company is unable to prevent or overcome. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Company, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts when such course is inadvisable in the discretion of the Company.

3. Curtailment of Gas Service

Service under this schedule is subject to curtailment or discontinuance as ordered or as prescribed by a duly constituted governmental authority having jurisdiction over either or both the Company and the customer or in accordance with any order of priorities which may be deemed practicable under existing conditions by the Company. The Company shall not be liable for any damages that may result to customers or any other person, firm, or corporation by reason of the Company's curtailing service in accordance with the provisions of this paragraph.

4. Limitations on Sale of Gas

Notwithstanding any other provision of this rate schedule, the availability of gas under this schedule may be limited because of insufficient gas available to the Company, in which case, gas service will be available only in accordance with the order of priorities prescribed by duly constituted governmental authority having jurisdiction over either or both the Company and the customer.

for protection of higher priority customer requirements, the Company will notify customer and all gas bought by the customer pursuant to this rate schedule shall thereafter until the customer otherwise is notified by Company be On-Peak Emergency Service at a rate of $.40064 per hundred cubic feet.

Payment of Bills

Bills are net and due upon receipt. Bills become past due 15 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the North Carolina Utilities Commission - Docket No. G-9, Sub 137
Revised
Issued: August 30, 1974
Effective: October 1, 1974

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SPECIAL PROVISIONS

As Applicable to Rate Schedules #101 through #112

1. Governmental and Company Regulations

Service under this rate schedule is subject to all lawful orders, rules and regulations of duly constituted governmental authorities having jurisdiction over either or both Company or customer, including any orders of the North Carolina Utilities Commission requiring Company to curtail or discontinue service hereunder or setting forth priorities for such curtailment or discontinuance of service. In addition, service under this rate schedule is subject to such reasonable rates and regulations as the Company may prescribe for the protection of itself and its customers.

2. Force Majeure

In the event the Company is unable, wholly or in part, by reason of force majeure to carry out its obligations to provide service under this schedule the obligations of the Company so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

Bills are net and due upon receipt. Bills become past due |5 days after bill date.

Rate Schedule Subject to Change

The rates, terms and conditions set forth in this rate schedule are subject to the Special Provisions on the reverse side hereof and to change at any time and from time to time by the Company with the approval of the North Carolina Utilities Commission as provided by law.

Issued by J. David Pickard, President
Issued to comply with authority granted by the North Carolina Utilities Commission - Docket No. G-9, Sub |37 Revised
Issued: August 30, |974
Effective: October |, |974

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RATE SCHEDULE #||2
EMERGENCY SERVICE

Applicability and Character of Service

Gas Service under this rate schedule may be available in the area served by the Company in the State of North Carolina to any non-residential customer who would otherwise be curtailed under any other of the Company's rate schedules if such customer has no standby or alternate energy source or finds it impossible to continue operations on his standby or alternate energy source as a result of some bona fide existing or threatened emergency. All emergency gas service is of a discretionary nature and implies no present nor future obligation of the Company to any customer to provide such service on either a temporary or continuing basis. Deliveries of gas hereunder shall be made pursuant only to advance operating arrangements between the Company's authorized personnel and the customer and shall be subject to curtailment and interruption at any time should the Company deem it necessary.

Rate

Off-Peak Emergency Service

If the Company has gas available for sale as emergency gas from its regular allocated storage volumes or some pipeline source other than its regular Contract Demand Service from Transcontinental Gas Pipe Line Corporation, such gas shall be at a rate of $.20064 per hundred cubic feet.

On-Peak Emergency Service

If it should become necessary, in the Company's opinion, to operate its peak shaving facilities, to inject Liquefied Natural Gas into its system or to inject gas into storage

Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
For: Carolina Crane Corporation

For the Protestants:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601
For: Everette Truck Lines, Inc.
Clarkson Brothers Machinery Haulers, Inc.

H. P. Taylor, Jr.
Attorney at Law
Box 593
Wadesboro, North Carolina 28170
For: Home Transportation Company, Inc.
Yarborough Transfer Company
Moss Trucking Company, Inc.
McLeod Trucking & Rigging Company, Inc.

PAGE, HEARING EXAMINER: By application filed with the Commission on April 19, 1974, Carolina Crane Corporation, Route 8, Box 114, Raleigh, North Carolina, seeks authority to operate as an irregular route common carrier in the transportation of Group 2, Heavy Commodities, from all points and places throughout the State of North Carolina to all points and places throughout the State of North Carolina.

Notice was published in the Calendar of Hearings issued May 2, 1974, setting the matter for hearing at the time and place first stated above, and giving notice of the commodity and territory authority being scught and the manner and method of filing protests or interventions in the cause.

On May 20, 1974, a protest and motion for leave to intervene was filed by Vaughan S. Winborne, Attorney for Everette Truck Lines, Inc., P. O. Box 145, Washington, North Carolina 27889, and Clarkson Brothers Machinery Haulers, Inc., P. O. Box 25, Cowpens, South Carolina 29330. On June 10, 1974, protests and motion for leave to intervene in the cause was filed by H. P. Taylor, Jr., Attorney for Home Transportation Company, Inc., P. O. Box 6425, Station A, Marietta, Georgia 30062; Yarborough Transfer Company, 1500 Doune Street, Winston Salem, North Carolina 27107; Moss Trucking Company, Inc., P. O. Box 8409, Charlotte, North Carolina 28208; and McLeod Trucking and Rigging Company, Inc., P. O. Box 8409, Charlotte, North Carolina 28208. Such protests and motions for leave to intervene were allowed by Commission Orders issued on June 12, 1974, and June 19, 1974, respectively. The Applicant offered the testimony of B. Robert Williamson, Gregory Poole, Jr., Storey Hamilton,

John Burress, Joe Harris, Bill Watkins, and Earl Johnson, Jr. The protestants offered the testimony of Woodrow Everette, Gilbert T. Jones, Thomas Nix and Charles Eugene Holland. A synopsis of such testimony follows:

Mr. B. Robert Williamson testified that he is a Vice President of North Carolina Equipment Company with primary responsibility in equipment sales; that he had general supervision over the Traffic Department of North Carolina Equipment Company, the section of his company that arranges for the transportation of its equipment; that his company deals primarily in heavy construction machinery of all types out of North Carolina offices located in Raleigh, Winston-Salem, Greensboro, Fayetteville, Wilmington and Greenville; that North Carolina Equipment Company sells primarily to big job contractors who are not confined to the areas wherein their home offices are located, but have jobs all over the State of North Carolina; that he is familiar with the operation of Carolina Crane Corporation and his company has used and presently uses Carolina Crane for the transportation of heavy commodities; that the service rendered to his company by Carolina Crane has been excellent; that he understood that Carolina Crane's present authority was restricted to a haul which either originates or terminates in Wake County; that such restrictions do not meet the needs of North Carolina Equipment Company with respect to the demand that it wishes to make on Carolina Crane; that his company has a need for the services of Carolina Crane Corporation statewide over and above the services presently available from other carriers; that when service is unavailable or beyond the scope of authority of Carolina Crane, his company has to wait for needed service; that his company has some trucks and trailers of its own, but they are not adequate to do all the company's hauling, so the company is compelled to use common carriers for a certain percentage of its equipment hauls; that North Carolina Equipment Company has used and will use Moss Trucking Company or any other company that could give them the quickest service, but for the most part Moss had been unable to meet the time schedules imposed on North Carolina Equipment by its customers; that most of his company's experience with Home Transportation involves interstate moves from outside the State of North Carolina into the State of North Carolina and North Carolina Equipment has had no intrastate experience with either Home Transportation Company, Yarborough Transportation Company, Everett Truck Lines, or Clarkson Brothers Machinery Haulers; that he personally has never been approached by any of the protestants seeking to secure hauling business of North Carolina Equipment Company for themselves; and that in his opinion there is a need for the services for Carolina Crane Corporation to serve between points and places throughout the State of North Carolina, such need being over and above the existing, authorized service available to his company at the present time; that his company uses common carriers for approximately 10 to 15 percent of its movements, using its own equipment or the customers equipment for the balance of

the moves; that North Carolina Equipment Company's demands on the common carriers are based upon demands made upon North Carolina Equipment by its customers, who, when they want service, want such service almost instantaneously; that Carolina Crane Corporation is presently hauling approximately 50% of North Carolina Equipment Company's business that moves by common carrier; that North Carolina Equipment Company moves certain of its commodities by common carrier between 100 and 150 times per year, approximately half of which movements either originate or terminate in Raleigh; that he would see no need for additional authorized carrier service if his company was able to get service on the day that it called for such service; that it is vital in his business to be able to get moving service on the same day that it was called for; that to the best of his knowledge, his company has never called on Carolina Crane Corporation and failed to receive service the same day.

Mr. Gregory Poole, Jr., testified that he is President of Gregory Poole Equipment Company, with offices in Raleigh, Wilmington, Washington and Edenton, North Carolina; that he was present to testify on behalf of the Sales and Service Department, Heavy Construction Equipment Division of Gregory Poole Equipment Company; that his company has used the moving services of Carolina Crane Corporation since Carolina Crane entered the hauling business, and that such services, within the scope of their present authority, have been very satisfactory; that he was familiar with the restrictions on the operating authority of Carolina Crane and that such restrictions operate as an inconvenience to his company with respect to the use which his company wishes to make of Carolina Crane's services; that his company uses Moss and C. C. Mangum for intrastate hauls and Home, Gregory and others for interstate hauls; that his company has had difficulty obtaining transportation service for equipment that does not originate in or is not destined to Wake County; that in his opinion, because of the demand of the construction industry and contractors upon the equipment dealers of the state, North Carolina is definitely entitled to have better heavy commodity hauling service from common carriers than it is presently getting; that his company owns some of its own hauling equipment, but is unable to furnish the numbers and types of equipment needed to satisfy all its customers' demands; that despite the enormous expense of new hauling equipment, his company is considering purchasing additional sophisticated hauling equipment because it cannot get the service it needs from the presently authorized common carriers of heavy commodities; that in his opinion the available service of common carriers to haul heavy commodities is inadequate at the present time and has been inadequate for at least ten years; that in his opinion Everette Truck Lines does not have the special equipment necessary to haul the heavy commodities sold by Gregory Poole which its own equipment is unable to handle; in allocating its hauling business which cannot be handled by its own equipment, his company awards the business to whichever carrier can service the account the quickest; that

his company is required to call on common carriers to get equipment moved some 100 times a year and of such 100 moves, 15 to 20 of them originate or terminate in Wake County; that Gregory Poole Equipment Company's need for common carrier service involved two separate aspects - one, the carrier to be used must have the specialized, sophisticated equipment needed to haul overweight, overheight, or oversized loads, and - two, the carrier to be chosen would have to have such equipment available when required by Gregory Poole to meet the needs of its customers; that the problem with the present service available, except for Carolina Crane, was meeting the latter of these two requirements; that the objective of the carriers in their business is to maximize the investment and get the maximum utilization out of their equipment, but such objectives do not meet the needs of Gregory Poole and its customers; that 24 hours is a reasonable length of time for the common carriers to get a piece of equipment moved after the initial request is made; that Moss Trucking Company has done a good job when Gregory Poole could get them; that his company's experience with Home Transportation Company has been purely interstate; that when a customer calls upon his company to supply a piece of equipment which cannot be supplied because of the lack of a carrier, the prospective customer goes somewhere else to get his equipment.

Mr. Storey Hamilton, Manager of Construction Procurement Services with Carolina Power & Light Company, testified that he was the CP&L official responsible for expediting construction equipment, inventory and transfer of construction equipment from one site to another site and for warehousing and site procurement; that under his supervision were a number of power plant construction projects underway throughout the State of North Carolina in various locations such as Asheville, Roxboro, Lumberton, Moncure, New Hill, Goldsboro, two sites in Wilmington, and Southport; that at the various plant sites, there are general contractors to whom he delegates the responsibility for the movement of equipment from one job site to another job site; that the contractors, who use the common carriers to a great extent in getting the equipment moved from one job site to another have experienced delays in the movement of equipment; that some CP&L owned equipment has been moved by Carolina Crane and the services performed by Carolina Crane were of good quality; that it would be a convenience to CP&L and would help to meet the need of CP&L for movement of equipment between job sites if the application of Carolina Crane were granted to expand its authority; that any delays in movement of equipment from job site to job site was detrimental to CP&L's efforts to maintain its construction program of new plants on schedule so as to meet the needs of its utility customers within the State of North Carolina; that CP&L does not have or own the type of equipment that is required to move heavy construction equipment which it owns such as cranes, bulldozers, etc.; that to the best of his knowledge, the general contractors employed by CP&L have no heavy commodity transportation equipment of their own; that

because of its territorial restriction, CP&L has only been able to use Carolina Crane for transportation to or from its New Hill, Wake County, construction site; that in his opinion, a reasonable time for a carrier to have equipment on the site to receive a particular shipment after receiving the initial request from the shipper should be no more than eight hours; that the general contractors entrusted by CP&L with the responsibility of moving CP&L equipment from job site to job site reported to him that the delays in such moves were caused by the contractors inability to get trucks, but that he did not know himself why the trucks were not available; that of the 10 to 12 shipments per month which CP&L contractors make of CP&L equipment, two or three of such shipments are problem cases, involving delays of two to three days; that CP&L eguipment has been moved by Moss Trucking Company and in his opinion Moss is very capable, reputable and competent; that in his opinion it would be in the best interest of CP&L and its contractors to have available as many common carriers as possible to move equipment immediately; that the more specialized and sophisticated trailer and heavy commodity hauling equipment which is available, the more such availability would enhance the possibility of CP&L meeting its construction schedule; and, that it is important in North Carolina to have common carriers with the type of equipment available to move the heavy commodities promptly and efficiently.

Mr. John Burress, President of J. W. Burress, Inc., a distributor of construction and industrial machinery from offices in Raleigh, Winston-Salem and Charlotte testified that his company had a twenty-five ton lowboy trailer which could handle most of their smaller equipment sold, but could not handle loads that were oversized as to height, width or weight; that his company, in addition to its sales program, is extensively engaged in the business of renting heavy equipment and commodities to general contractors throughout the State of North Carolina; that he is familiar with the authority presently held by Carolina Crane Corporation and has found Carolina Crane service to be very satisfactory to the extent that the Applicant is authorized to serve the needs of J. W. Burress, Inc.; that the transportation equipment which his company has is used primarily for the convenience of J. W. Burress and its customers, but wherever possible, his company likes to ship its equipment on the common carrier; that in his business, the likelihood of making a sale or rental is quite often dependent on the company's ability to ship the equipment promptly to the customer; that his company has experienced delays in using the common carriers in meeting the demands of its customers as to time of delivery; that this has been a general problem in the industry which he served for years; that in his opinion there is a need over and above the service that is presently authorized and available to his company for the Applicant to be allowed to extend its service territory throughout the State of North Carolina; that in his opinion it is necessary for the authority sought by Carolina Crane to be granted in order to meet the demands of J. W. Burress,

Inc., and that, if such authority were granted, J. W. Burress would use the services of Carolina Crane, statewide; that 15 to 20 percent of the total shipping requirements of his company annually are for oversized loads, and such percentage is increasing every year; that within a week of the hearing, one of Burress's customers in Plymouth, North Carolina, had an emergency requirement which Moss Trucking Company could not meet and the Applicant, Carolina Crane, did meet; that Moss Trucking Company and McLeod Trucking and Rigging Company are competent, professional common carrier people with excellent equipment in their inventory; that the only experience his company has had with Home Transportation Company is in interstate hauls, not intrastate hauls; that his company has used Yarborough Trucking Company on occasion; and that in his opinion there is enough business to fully occupy the presently existing authorized carriers and Carolina Crane as a statewide hauler.

Henry Joe Harris, Parts and Office Manager, Raleigh Division, Interstate Equipment Company, testified that he did most of the acquiring and dispatching of heavy construction equipment, road equipment, asphalt equipment plant and crushing plant for his company, and that his company's transportation requirements call for handling by specialized carriers of heavy commodities; that his company has used the services of Carolina Crane Corporation and found them to be excellent; that his company owns one tractor and one lowboy, located at the home office in Statesville, which his company tries to use as often as possible; that in his opinion there is a need for the service of Carolina Crane Corporation between points and places throughout the State of North Carolina in addition to the service already authorized, existing and available to Interstate Equipment Company; that his company required the services of a common carrier at least 45 times during the course of the previous year; that to the best of his knowledge, Carolina Crane and C. C. Mangum have the most specialized heavy commodity equipment in the Raleigh area; and, that the principal concern of his company, is to have available another carrier based in Raleigh with authority to haul without restrictions throughout the State of North Carolina, principally in eastern North Carolina.

Mr. W. A. Watkins, Vice President of the Industrial Division of Gregory Poole Equipment Company, testified that his division needed the specialized type of equipment owned by Carolina Crane in order to transport the high masted forklift trucks which it sells and rents; that he has used the services of Carolina Crane Corporation within the limits of its restricted authority and has found such service to be adequate; that the other carriers available, because of the limited equipment which they have or the limited availability of suitable equipment, have been unable to render satisfactory service to the industrial division of Gregory Poole; that his division has a need for the statewide service of Carolina Crane in addition to the present authorized carriers available to serve the

division's needs in connection with the hauling of forklifts; that without another carrier available to haul forklifts around from point to point in eastern North Carolina, it will be necessary for his company to waste valuable equipment rental days tearing the equipment down and putting it back together again; that in his opinion, there is a need for the services of Carolina Crane Corporation to transport heavy commodities between points and places throughout the State of North Carolina in addition to the services which are presently authorized and available; that the forklift or industrial division of Gregory Poole Equipment Company is a separate entity, with separate headquarters, from the construction division of Gregory Poole Equipment Company concerning which Mr. Poole testified previously; that he has had delays of up to a week to a week and a half in getting deliveries made by the presently authorized carriers; that Moss, Yarborough and Home do not send regular representatives to call on him to solicit shipments of Gregory Poole industrial equipment.

Mr. Earl Johnson, Jr., the President and one of the principal shareholders of Carolina Crane Corporation, testified that his company had been in business for approximately twelve years, is the present holder of North Carolina Utilities Commission Certificate No. C-929 which it acquired some years back from Warren Transfer Company; that he has continually operated under this certificate since its acquisition according to the Rules and Regulations of the North Carolina Utilities Commission; that he has received numerous requests and demands from the shipping public to handle shipments of industrial and construction machinery beyond the scope of his present authority; that the present restrictions on his authority makes his company less valuable to his shippers than he would desire and requires the company to incur many miles of one-way or deadhead moves; that as a result of the under-utilization of Carolina Crane equipment, the common carrier end of his business lost money last year and probably the year before that; the specialized and sophisticated equipment which he owns and uses in his common carrier business is so expensive that it must be utilized as much as possible or the business will suffer a loss; that he has no present authority from the Interstate Commerce Commission to haul heavy commodities on an interstate basis and does not propose to seek such rights; that his company proposes to try to service principally the shorthaul market; that his company is in a favorable financial position to acquire additional equipment if requirements were made upon the company by its shippers to provide additional equipment under the authority being sought; that his company has a continuous training course in the method and manner of handling this specialized equipment and heavy commodities hauled; that in his opinion, Carolina Crane is as competent as any of the protestants to provide services within the territory requested; during the last fiscal year Carolina Crane's total operating revenues were $87,265.61 and its expenses on transportation were $113,875.00; that he hopes the principal amount of his

business will come from shippers who would otherwise buy their own equipment but who will refrain from buying such equipment and use his proposed expanded services instead; that the offices which were recently opened by Carolina Crane in Greensboro and Charlotte were opened as a portion of Carolina Crane's equipment rental operation, but could and would be used for the transportation operations, if the expanded authority is approved by the Commission. With this witness the Applicant rested his case.

Mr. Woodrow Everette, President of Everette Truck Lines, Inc., Washington, North Carolina, one of the protestants, testified that his company is presently a franchised common carrier of heavy commodities throughout the State of North Carolina and had a large inventory of equipment to satisfy the needs of shippers throughout the State; that he actively solicits hauling business from North Carolina Equipment Company and Gregory Poole Equipment Company; that he has not previously solicited business from Carolina Power & Light Company, J. W. Burress, Inc., or Interstate Equipment Company; that his drivers are also agents authorized to solicit business wherever they make deliveries; that his company had lost a large amount of business over the preceding years because many of the machinery companies that his company was handling traffic for had purchased their own hauling equipment to haul their own commodities; that he had passed up the opportunity to make favorable buys on additional used transportation equipment, because his company did not have the business to justify such additional purposes; that his figures for intrastate revenues for February, March, April and May of 1974 were considerably less than the comparable figures for February, March, April and May of 1973; that in his opinion, the granting of any additional authority would be harmful to his business and revenues; that in his opinion there is no need for an additional heavy commodities hauler to be authorized in the area of eastern North Carolina for traffic moving east or west, including the entire State of North Carolina at the present time; that his business is listed in the telephone books in North Carolina in Washington, Belhaven, Greenville and Windsor; that he will accept collect calls from customers from anywhere in the State of North Carolina or from interstate customers; that to the extent that the Everette Truck Lines' Annual Report filed with the Commission for the year 1973 shows that all revenues were generated through transportation of forest products and no revenues were generated for heavy commodities, such annual report is erroneous; that it is not customary in the construction industry for shippers to ask for or receive instantaneous service and some shippers will give as much as three to four days or a week's notice prior to the time shipment is to be made; that he planned to contact those shippers who testified on behalf of the Applicant which are not regularly being contacted by his company at the present time; and that at no time during the present year has his heavy commodity equipment been fully utilized.

Mr. Gilbert T. Jones, Vice President of Sales and Commerce for Home Transportation Company, Inc., testified that under its Certificate No. C-896, his company holds authority from this Commission to transport heavy commodities between all points and places within the State of North Carolina; that they have continuously exercised such authority since it was granted by the Utilities Commission; that his company owns and maintains one of the widest varieties of both trailers and power equipment of any heavy specialized carried in the southeast; that his company maintains a full service terminal at Charlotte, North Carolina, and a trailer drop at Kernersville, North Carolina; that equipment owned and operated by his company primarily in interstate commerce can be diverted for use in North Carclina intrastate operations if the need arises; that his company maintains a full time salesman in Charlotte with the responsibility to solicit and generate interstate and intrastate traffic from the States of North Carolina, South Carolina and Virginia; that to the best of his knowledge, Home Transportation has had no intrastate shipping traffic from any of the shippers testifying in support of Carolina Crane's application; that his company maintains telephone listings in Charlotte and Kernersville and advertises generally in various trucking guides and traffic directories; that his company stands ready, willing and able to provide heavy equipment service in North Carolina and in attempting to expand its business in this area, has recently hired a specialist to direct a division entitled "Heavy Machinery and Contractor Division of Home Transportation"; that the specialized sophisticated equipment which is required to haul heavy commodities is so expensive that common carriers owning such equipment have to make sure it stays busy in order to pay for itself and the shipping public generally knows this fact; that manufacturers of heavy equipment, who use Home's services for interstate hauls from the manufacturing plant to a dealer's showroom, generally try to give Home a week's notice on special equipment to haul these commodities; such shippers know that neither Home nor any other carrier is going to have specialized equipment sitting on a lot waiting for the shipper to call for it, because the investment in such equipment is so heavy that if it stays idle long the carrier will be forced out of business; that if the shippers who testified in support of Carolina Crane's application will give Home a reasonable amount of notice like the manufacturers do, that Home will be able to provide the services requested within a reasonable time; that it is not economically feasible for Home or any other carrier to pattern its business on the basis of serving emergency customers primarily, but Home does attempt to meet special needs when emergencies do arise from its customers; that his company's Charlotte terminal is losing money on intrastate operations because the facilities and equipment provided thereat for intrastate services are not being fully utilized and consequently, the overhead outweighs the revenue; that he personally made no visits in 1973 to North Carolina for the purpose of checking on intrastate traffic and intrastate sales in North Carolina; that he does not know conclusively

whether or not his company has any trailers licensed in the State of North Carolina, but assumes that they do; that his company did, in fact, solicit and obtain $26,121.00 in North Carolina intrastate traffic revenues during the year 1973, and that if his company's annual report shows that all the revenues generated by Home in North Carolina during the year 1973 were earned under tariffs published with the Interstate Commerce Commission (i.e., interstate revenues) and no revenues whatsoever were generated under intrastate tariffs on file with the North Carolina Utilities Commission, then, to that extent, the annual report for 1973 operations filed by Home with the North Carolina Utilities Commission is erroneous.

Mr. Thomas Nix, Assistant to the President of Yarborough Transfer Company, testified that his company was in the business of rigging and hauling of heavy commodities in North Carolina intrastate commerce; that the equipment owned by Yarborough is sufficient to handle any or all of the type shipments testified to by the shipper witnesses in support of Carolina Crane's application; that Yarborough has a principal office in Winston-Salem and maintains another terminal in Charlotte; that his company also operates in the State of Virginia; that without the amount of revenues generated by North Carolina intrastate hauling operations, his company would have to go out of business in North Carolina, since the rigging work could not pay for the two terminals, equipment and personnel presently being maintained by Yarborough in North Carolina; that if the expenses, tractors and trailers owned by Yarborough are not kept on the road at least two-thirds of the time, the company is unable to make any money on such equipment; that his company advertises in both newspapers and magazines; that Yarborough has called on and solicited the business of all of the shipper witnesses who testified in support of the application; that in his opinion there is no need for an additional statewide common carrier of heavy commodities in North Carolina because there are too many trucks for too many companies running empty; that of all the requests which Yarborough receives for its services, ninety percent of such requests are dispatched by Yarborough immediately; that any carrier is in a better position to provide service in an area where it has a terminal located, but substantial business must be generated in a local area prior to placing a terminal in such an area; that from the standpoint of the public as contrasted with the economic interest of the carrier, it would be desirable to have a terminal in every county in North Carolina, but that such a situation would be uneconomical; that it is Yarborough's position that North Carolina at present is fully covered with available, competent, franchised heavy commodity haulers, and that Yarborough does not want additional competition; and, that he is unable to testify whether or not Yarborough's 1973 annual report to the North Carolina Utilities Commission shows no revenues generated in hauling heavy commodities, because he has not seen such report.

Mr. Charles Eugene Holland, Traffic Manager of both Moss Trucking Company and McLeod Trucking and Rigging Company, testified that under their respective operating certificates in North Carolina (C-278 and C-563), both Moss and McLeod had authority from the North Carolina Utilities Commission to transport heavy commodities in all points and places within the State of North Carolina; that both Moss and McLeod have home offices in Charlotte, North Carolina and that Moss, in addition, has a rented facility on which to locate equipment in Raleigh; that in addition, the companies had trailer drop points in Laurinburg, Wilmington, Greensboro and Rocky Mount; that both companies were controlled by a central dispatch system based in Charlotte, have telephone listings in Raleigh which directly tie into the Charlotte dispatching office without the necessity of paying a toll charge; that in addition both companies accept collect calls and advertise that they accept collect calls from anybody anywhere within the State of North Carolina; that Moss and McLeod both have equipment available sufficient to meet the needs of all the witnesses who testified in support of the application; that the equipment owned by Moss and McLeod had to be operated at 85% capacity merely to break even; that neither Moss or McLeod is able to operate the equipment owned by them at capacity and therefore, in his opinion, there is no need at the present time for an additional statewide heavy commodity intrastate hauler in North Carolina; that if there is a need for additional service in North Carolina, his companies stand ready, willing and able to purchase whatever new equipment is needed to service this new demand; that in his opinion pickup service two to three hours after demand is initially made is unreasonable, but that pickup within 24 hours is reasonable; that normally his company's shippers give him at least 24 hours notice; that Moss and McLeod salesmen solicit business from all of the shipper witnesses who testified in support of Carolina Crane's application; that in the last three months neither Moss nor McLeod has received a single request for service that they were unable to perform in the time limits requested on intrastate traffic; that at the present time the shipping public of North Carolina, with the present carriers and their equipment and their operating authority has available to it adequate service for heavy commodity transportation within a reasonable period of time; that if Carolina Crane were granted the operating authority which it seeks, it would forestall and possibly prevent Moss and McLeod from being able to open a terminal in Raleigh, which they are nearly able to do now on the basis of the business now available in Raleigh; that Moss and McLeod would like to have more business in the Wake County area; that Moss and McLeod have grown at the rate of 15 to 20 percent per year for the last six to eight years, in spite of the fact that the amount of private carriage available has also increased over that period of time; that the equipment maintained by Moss and McLeod in the Raleigh area is presently operating at about 85% of capacity; and that shippers who own their own equipment, in seeking to maximize the use of their own hauling equipment, will give the common

carriers less time than is reasonable for the carriers to make pickup and delivery of the requested shipments.

Based upon the foregoing, the verified application, the equipment lists and certificates and scopes of authority presently held by the Applicant and by the protestants, which are matters of record at this Commission and the other matters and things comprising the entire record in this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. That the Applicant, Carolina Crane Corporation, is a North Carolina corporation with franchised authority from this Commission to engage in intrastate commerce in North Carolina in the carriage of Group 2, Heavy Commodities, from points and places in Wake County to points and places throughout the State of North Carolina and from points and places throughout the State of North Carolina to points and places in Wake County.

2. That the Applicant is seeking to remove the restriction on his present territorial rights, i.e., to remove the restriction that requires his present hauls to either originate or terminate in Wake County. The Applicant wishes to have the authority to transport Group 2, Heavy Commodities, from points and places throughout the State of North Carolina to points and places throughout the State of North Carolina.

3. Each of the Applicants, Everette Truck Lines, Inc., Clarkson Brothers Machinery Haulers, Inc., Home Transportation Company, Yarborough Transfer Company, Moss Trucking Company, Inc., and McLeod Trucking and Rigging Company, Inc., are business entities or corporations organized or domesticated under the laws of the State of North Carolina and each presently holds certificated authority from this Commission to engage in intrastate commerce in North Carolina in the carriage of Group 2, Heavy Commodities, from points and places throughout the State of North Carolina to points and places throughout the State of North Carolina, without territorial restrictions.

4. That the Applicant has, for a number of years, been a substantial carrier of heavy commodities under the terms of the certificate which it presently holds, which certificate was originally leased from Warren Brothers, Inc., and subsequently purchased from them and owned by the Applicant in its own name.

5. That the Applicant has equipment in a suitable amount and of a suitable type to service the needs of shipper witnesses who testified in support of the application.

6. That the Applicant has recently expanded its operations, principally as a portion of its crane rental business, into Charlotte and into Greensboro.

7. That the Applicant is fit, willing and able to engage in the business of an intrastate carrier of Group 2, Heavy Commodities, throughout the State of North Carolina as proposed in the application.

8. That the Applicant is solvent and financially able to furnish such service adequately and on a continuing basis.

9. That the shipper witnesses, who testified in support of the application, have presented convincing evidence of difficulties which they have encountered in obtaining adequate transportation services from the existing, authorized carriers. Such inadequacies result principally from the unavailability of sufficient eguipment held by the present carriers to meet the demands placed upon the shipper witnesses by their customers. Such shippers constitute a substantial part of the "public" whose "convenience and necessity" must be determined herein.

|0. That the public convenience and necessity require the proposed service in addition to existing, authorized transportation service.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

The determination in this proceeding is governed by G. S. 62-262, and by applicable Commission rules, including Rule R2-|5(a). The testimony of the witnesses and the verified application received into evidence establish that the Applicant, having successfully operated for years in intrastate commerce as a carrier of Group 2, Heavy Commodities, is fit, willing and able to properly perform the service proposed in the application and further, that the Applicant is solvent and financially able to furnish such service adequately and on a continuing basis.

The contested issue in this matter is whether public convenience and necessity require the service proposed by Applicant on an unrestricted, statewide basis in addition to services presently existing and authorized on a statewide basis for the carriage of Group 2, Heavy Commodities.

The Supreme Court of North Carolina has indicated that, "The doctrine of convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 NC 43, 52, |32 SE 2d 249 (|963). The Court has explained that, "Public convenience and necessity is primarily an administrative question with a number of imponderables to be taken into consideration." State ex rel. Utilities Commission v. Queen City Coach Company, 4 NC App. ||6, |23, |66 SE 2d 44| (|969).

The Courts have set some limits, however, on the administrative determinations indicating that, "If the proposed operation under the certificate sought would serious endanger or impair the operations of existing carriers contrary to the public interest, the certificate should not be issued." State ex rel. Utilities Commission v. Queen City Coach Company, supra. In the case at hand, there is no evidence that the proposed operation would seriously endanger or impair the operations of existing carriers. The evidence indicates that as to Everette Truck Lines, that it is receiving such business as it is capable of handling from Gregory Poole Equipment and North Carolina Equipment Company; and as to the other shipper witnesses, the evidence indicates that Everett was unaware of their existences as heavy commodity shippers prior to the date of hearing. No witnesses from Clarkson Brothers appeared to testify what effect, if any, the granting of the requested authority would have on its business. The evidence for the other four protestants generally indicates that they are performing substantial business and earning substantial and increasing revenues in North Carolina and that they have either recently opened or are proposing at the present time to open new terminal facilities and that they have either recently purchased or propose in the near future tc purchase additional equipment to meet an increasing public demand. There is a specific section of the statute [G. S. 62-262(f)] which requires the Commission to make additional findings of fact for the protection of motor carriers of passengers. This statute does not apply in this case of motor carriers of commodities in goods. However, even in the bus field, the North Carolina Supreme Court has held that the special statutory section does not purport to protect existing authorized carriers against all competition but is designed to protect them cnly against ruinous competition. State v. Queen City Coach Company, 233 NC ||9, 63 SE 2d ||3 (|95|).

It is clear that "necessity" refers to "reasonably necessary" and not "absolutely imperative" and that "any service or improvement which is desirable for the public welfare and highly important to the public convenience may be properly regarded as necessary." State v. Carolina Coach Company, supra. The Hearing Examiner concludes in this case that the expanded service which Carolina Crane proposes to offer is desirable for the public welfare and highly important to the public convenience and, therefore, is required by public convenience and necessity. The Hearing Examiner concludes that the Applicant, Carolina Crane Corporation, has established by the greater weight of the evidence that there is a need for an additional common carrier of heavy commodities on a statewide basis as sought by Carolina Crane in its application.

IT IS, THEREFORE, ORDERED:

|. That the application by Carolina Crane Corporation for a certificate of public convenience and necessity from this Commission to operate in intrastate in North Carolina

as an irregular route common carrier of Group 2, Heavy Commodities, throughout the State of North Carolina be, and the same is hereby, allowed.

2. That the certificate presently held by the Applicant shall be amended to conform with the territorial description contained in the Exhibit B attached hereto.

3. That to the extent it has not done so, Carolina Crane shall file with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of adequate insurance coverage, and otherwise comply with the rules and regulations of this Commission concerning its expanded authority and that, thereafter, operations shall begin under the new authority as soon as possible, but in no event later than thirty (30) days from the date this Order becomes final.

4. That the authorization herein set forth shall constitute a certificate until formal certificate or formal certificate amendment shall have been issued and transmitted to the Applicant authorizing the expanded transportation services herein described.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1381, Sub 2

Carolina Crane Corporation
Raleigh-Durham Highway
Route 8, Box 114
Raleigh, North Carolina 27612

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 2, Heavy Commodities, as follows:

From all points and places within the State of North Carolina to all points and places throughout the State of North Carolina.

DOCKET NO. T-948, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Central Carolina Bonded Warehouse, Inc.,<br>P. O. Box 162, Durham, North Carolina -<br>Application for Contract Carrier Authority<br>to Transport Group 21, Drugs and Drug Sun-<br>dries, Within a Seventy-Five (75) Mile<br>Radius of ICN Pharmaceutical, Inc., Located<br>on Ebenezer Road, Wake County, North<br>Carolina | ) | RECOMMENDED<br>ORDER<br>GRANTING<br>AUTHORITY |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina 27602, on Friday, June 14, 1974, at 2:00 p.m.

BEFORE: E. Gregory Stott, Hearing Examiner

APPEARANCES:

For the Applicant:

W. Paul Pulley, Jr., and
Elisabeth S. Petersen
Attorneys at Law
P. O. Box 1167 - 111 Corcoran Street
Durham, North Carolina 27702
Appearing for: Central Carolina Bonded Warehouse, Inc.

For the Protestants:

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: Observer Transportation Company
Mid-State Delivery Service, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601
Appearing for: Thomas Oliver Harper, Jr., d/b/a Harper Trucking Co.

STOTT, HEARING EXAMINER. This matter arose upon the filing with this Commission on May 3, 1974, of an application by Central Carolina Bonded Warehouse, Inc., P. O. Box 162, 804 Angier Avenue, Durham, North Carolina, for authority to transport Group 21, Drugs and Drug Sundries, within a seventy-five (75) mile radius of ICN

Pharmaceutical, Inc., plant location on Ebenezer Road, P. O. Box 23|, Wake County, Raleigh, North Carolina.

This matter was published in the Commission's Calendar of Hearings dated May |6, |974, setting forth the commodities and territory description and setting this matter for hearing in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June |4, |974, at 2:00 p.m.

Timely protests were filed by Thomas Oliver Harper, d/b/a Harper Trucking Company, P. O. Box 2568, Raleigh, North Carolina, and by Order dated June |2, |974, said protest was allowed. Further timely protests were filed on June 3, |974, by Observer Transportation Company, |600 West Independence Boulevard, P. O. Box ||23, Charlotte, North Carolina, and by Mid-State Delivery Service, Inc., 6|4 Eugene Court, Greensboro, North Carolina, and said protests were allowed at the time of hearing.

On June 4, |974, protest was filed by Carolina Delivery Service, Inc., and by letter dated June ||, |974, Attorney for Carolina Delivery Service, Inc., requested his protest be withdrawn. The Motion by Carolina Delivery Service, Inc., requesting that it be allowed to withdraw was granted at the time of hearing.

Applicant offered the testimony of Mr. Ollie N. Yergan, Manager and principal stockholder of Central Carolina Bonded Warehouse, Inc., who testified regarding Central Carolina Bonded Warehouse's present authority and the services they are presently offering. He further testified that he wishes to perform the same services for ICN Pharmaceutical, Inc., that he performs for Peabody's Drugs which was purchased by the ICN Pharmaceutical corporation.

Mr. Tom Sanders, Vice President, ICN Pharaceutical, Inc., testified regarding the corporate relationship between Peabody and ICN Pharmaceutical. He further testified regarding the need of ICN Pharmaceutical of the contract carrier services of Central Carolina Bonded Warehouse, Inc.

Mr. Thomas Harper, Jr., owner of Harper Trucking Company testified that he presently has authority to transport goods into the areas in which Central Carolina Bonded Warehouse, Inc., is requesting authority to transport, and that he is ready, willing and able to handle the needs of ICN Pharmaceutical, Inc. Mr. Harper further testified that if this proposed authority is granted it could endanger his operation because of the shipments that might be taken away from his company.

Prior to a decision being made in this matter, the Applicant and Protestants agreed to certain stipulations which would narrow the scope of the authority that Central Carolina Bonded Warehouse, Inc., is requesting, and upon narrowing of the said scope of operations, the Protestant

would remove his objection to the granting of said authority.

Based on the testimony given, the exhibits presented, and the evidence adduced, this Examiner makes the following

## FINDINGS OF FACT

1. That Applicant, Central Carolina Bonded Warehouse, Inc., seeks authority to haul drugs and drug sundries, Group 24, as a contract carrier on a daily scheduled basis with the point of origin at ICN Pharmaceutical, Inc., facility on Ebenezer Road, Wake County, North Carolina, to the specific points and places listed below:

a. All ICN Pharmaceutical, Inc., customers in the following North Carolina counties: Durham, Orange, Guilford, Chatham, Person, Alamance, Vance and Granville.

b. All ICN Pharmaceutical, Inc., customers in the Towns of Cary and Apex.

c. All return deliveries or routes from above said points to ICN Pharmaceutical, Inc., the point of origin.

2. That the above changes in the contract carrier's authority sought by the application are acceptable to the Protestant, Thomas Oliver Harper, Jr., d/b/a as Harper Trucking Company, in that said changes will not compete with his contract carrier authority Permit No. P-34; will not duplicate his services to ICN Pharmaceutical, Inc.; will not impair efficient public service of any responsible carrier or impair the use of the highways by the general public, as said contract services are for a specific service tailored to the needs of the shipper and performed by the Applicant for many years; are concomitant with the public interest and policy of the North Carolina Utilities Commission as defined in G. S. 62-2.

3. That the Applicant is fit, willing and able to perform said services as proposed in the application, and that a valid contract for said services exists between Central Carolina Bonded Warehouse, Inc., and ICN Pharmaceutical, Inc.

## CONCLUSIONS

Based upon the record, the evidence presented and the foregoing Findings of Fact, this Hearing Examiner concludes that the Applicant has borne the burden of proof required by statute and that the authority sought should be granted.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Central Carolina Bonded Warehouse, Inc., P. O. Box 162, 804 Angier Avenue, Durham, North Carolina 27702, be, and is hereby, granted a contract carrier permit in accordance with Exhibit A attached hereto and made a part hereof.

2. That Central Carolina Bonded Warehouse, Inc., file with this Commission evidence of the required insurance, list of equipment, schedule of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-948, SUB 5

EXHIBIT A

Central Carolina Bonded Warehouse, Inc.
P. O. Box 162 - 804 Angier Avenue
Durham, North Carolina 27702

Contract Carrier Authority

Transportation of Group 21, Drugs and Drug Sundries, as a contract carrier on a daily scheduled basis with the point of origin at ICN Pharmaceutical, Inc., facility on Ebenezer Road, Wake County, North Carolina, to the specific points and places listed below:

a. All ICN Pharmaceutical, Inc., customers in the following North Carolina counties: Durham, Orange, Guilford, Chatham, Person, Alamance, Vance and Granville.

b. All ICN Pharmaceutical, Inc., customers in the Towns of Cary and Apex.

c. All return deliveries or routes from above said points to ICN Pharmaceutical, Inc., the said point of origin.

DOCKET NO. T-948, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Central Carolina Bonded Warehouse, Inc.<br>P. O. Box 162, Durham, North Carolina -<br>Application for Contract Carrier Authority to Transport Group 21, Drugs and<br>Drug Sundries, Within a Seventy-Five (75)<br>Mile Radius of ICN Pharmaceutical, Inc.,<br>Located on Ebenezer Road, Wake County,<br>North Carolina | ) | ERRATA<br>ORDER |

BY THE COMMISSION: It has come to the attention of the Commission that Ordering Paragraph No. 3 was deleted from Recommended Order Granting Authority in the above captioned matter dated October 29, 1974. The Commission is of the opinion, and finds and concludes, that this error should be corrected by amending said Order to include Ordering Paragraph No. 3, and

IT IS, THEREFORE, ORDERED:

1. That Recommended Order of October 29, 1974, in the above captioned matter be, and hereby is, amended to include Ordering Paragraph No. 3 which shall read:

> "3. That the contract carrier authority for the transportation of drugs and drug sundries under individual bilateral contract with Peabody Drug Company from the City of Durham to points and places within a radius of seventy-five (75) miles thereof, returning damaged or rejected shipments, described in Certificate CP-19, be, and the same hereby is, cancelled."

2. That except as herein amended, the Recommended Order of the Commission dated October 29, 1974, shall be and remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of November, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-245, SUB 12
DOCKET NO. T-698, SUB 4
DOCKET NO. T-139, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Docket No. T-245, Sub 12 - Cromartie Transport Company, 8 E. South Carolina Avenue, P. O. Box 123, Wilmington, North Carolina 28401 - Application for Authority to Transport Group 21, Liquid Nitrogen and Liquid Nitrogen Materials, in bulk in tank vehicles, between points in New Hanover County and all points in North Carolina

Docket No. T-698, Sub 4 - Infinger Transportation Company, Inc., 2811 Carner Avenue, P. O. Box 7398, Charleston Heights, Charleston, South Carolina 29405 - Application for authority to transport Group 21, Liquid Nitrogen and Liquid Nitrogen Materials, in bulk, in tank vehicles, between points and places in New Hanover County, on the one hand, and, on the other, points and places in North Carolina

Docket No. T-139, Sub 16 - M & M Tank Lines, Inc., P. O. Box 30006, Washington, D. C. - Application for Common Carrier Authority over irregular routes for the transportation of Group 21, Liquid Nitrogen and Liquid Nitrogen Materials, in bulk, in tank vehicles, between points in New Hanover County and all points in North Carolina

ORDER

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on November 9, 1973, and January 17, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners Ben E. Roney and Hugh A. Wells on November 9, 1973

Commissioners Ben E. Roney and Tenney I. Deane with the other Commissioners participating by reading the record on January 17, 1974.

APPEARANCES:

For the Applicant Cromartie Transport Company

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For the Applicant Infinger Transportation Company

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For the Applicant M & M Tank Lines, Inc.

J. Ruffin Bailey
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Appearing for: M & M Tank Lines, Inc.
O'Boyle Tank Lines, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
Attorney of Record for:
M & M Tank Lines, Inc.,
O'Boyle Tank Lines, Inc.

For the Protestants in Docket Nos. T-245, Sub 12 and T-698, Sub 4

Tom Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina
For: Kenan Transport Company
Maybelle Transport Company
Central Transport Inc.
East Coast Transport, Inc.

For the Protestants in Docket No. T-139, Sub 16

Tom W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina
For: Kenan Transport Company
Maybelle Transport Company
Central Transport Inc.
East Coast Transport, Inc.
Tidewater Transit Co., Inc.

For the Commission Staff:

John R. Molm
Associate Commission Attorney
P. O. Box 991
Raleigh, North Carolina

BY THE COMMISSION: By application filed with the Commission on August 27, 1973, Cromartie Transport Company, Wilmington, North Carolina, seeks authority to transport Group 21, liquid nitrogen and liquid nitrogen materials in bulk in tank trucks between points in New Hanover County and all points in North Carolina; and by application filed with the Commission on September 14, 1973, Infinger Transportation Company, Inc., Charleston Heights, Charleston, South Carolina, seeks authority to transport Group 21, liquid nitrogen and liquid nitrogen materials in bulk in tank trucks between points and places in New Hanover County on the one hand, and points and places in North Carolina on the other.

Notices of the applications setting forth the description of the authority sought and setting hearing for November 7, 1973, in the matter of Cromartie and in the matter of Infinger on November 9, 1973, were given in the Commission's Calendar of September 6, 1973, and October 1, 1973, respectively.

Protests to Docket Nos. T-245, Sub 12, T-698, Sub 4, and T-139, Sub 16, were filed by Kenan Transport Company, Durham, N. C., Maybelle Transport Company, Lexington, N. C., Central Transport, Inc., High Point, N. C., and East Coast Transport Company, Goldsboro, N. C. Tidewater Transit Company, Inc., Kinston, N. C., filed protest to Docket No. T-139, Sub 16. All protests were allowed by the Commission.

Motion was filed with the Commission on November 2, 1973, by Cromartie, agreed to by Infinger, to consolidate the hearings in these two applications, and an Order allowing Motion to Continue and setting consolidated hearings for this matter was issued by the Commission on November 2, 1973.

By application filed with the Commission on October 29, 1973, M & M Tank Lines, Inc., P. O. Box 20006, Washington, D. C., seeks common carrier authority over irregular routes for the transportation of Group 21, liquid nitrogen and liquid nitrogen materials, in bulk, in tank vehicles, between points in New Hanover County and all points in North Carolina. This applicant holds authority for commodities between points in North Carolina on and East of U. S. Highway No. 1. M & M Tank Lines seeks to broaden the territory of its authority to encompass the area from New Hanover County to all points and places in North Carolina.

Notice of the application containing a description of the authority applied for and setting the matter for hearing at this time and place was given in the Commission's Calendar of Hearings issued on November 8, 1973.

Protests and Motions for Intervention have been filed, and allowed by this Commission, by Kenan Transport Company, Durham, North Carolina, and Maybelle Transport Company, Lexington, North Carolina; Central Transport, Inc., High

Point, North Carolina; and East Coast Transport, Inc., Goldsboro, North Carolina.

By Motion filed at the January 17, 1974 hearing, the Commission consolidated the record in Docket No. T-698, Sub 4, and T-245, Sub 12, heard on November 9, 1973, with the record in Docket No. T-139, Sub 16.

At the call of the hearings, applicants were present and represented by counsel, as were the protestants.

Mr. L. M. Cromartie, applicant Cromartie Transport Company (CROMARTIE), testified to and introduced exhibits indicating that the applicant was solvent and financially able to furnish adequate service. The testimony with respect to fitness and ability to properly perform the proposed service was extensive. He testified that Cromartie has hauled liquid nitrogen for 14 years, that every year Cromartie has leased its equipment to other haulers that had authority to haul liquid nitrogen, and that for the past two years Cromartie has hauled exclusively for W. R. Grace Company. He testified as to his knowledge of the seasonal movements of liquid nitrogen.

Mr. Cromartie testified as to his ability to coordinate the movement of liquid nitrogen with the slack season for the movement of petroleum and black strap molasses. He testified as to the Cromartie terminal located in Wilmington with facilities available to clean and otherwise prepare the tanks to haul liquid nitrogen. He further testified that it was not feasible for a hauler to purchase equipment only to haul liquid nitrogen. Upon cross-examination, Mr. Cromartie pointed out that his application would not add more equipment than that available for hauling during the year 1973, but that his application would add another carrier with authority to haul liquid nitrogen.

Mr. Richard R. Infinger, applicant Infinger Transportation Company, Inc., (INFINGER) introduced and testified with respect to exhibits that indicated the applicant was financially able to furnish adequate service. He testified that Infinger was experienced in hauling liquid nitrogen, that Infinger's equipment was available between seasonal movements of other products and that Infinger's terminal was located in Wilmington. He further testified that Infinger had the resources available to acquire additional equipment and was willing to do so.

Mr. Michael A. Grimm, applicant M & M Tank Lines, M & M was no longer losing money. He testified that M & M was experienced in hauling liquid nitrogen for both W. R. Grace and Swift Chemical Company, that M & M presently has authority to haul liquid nitrogen between points and places on and east of U. S. Highway No. 1. Upon cross-examination, Mr. Grimm testified that M & M had recently withdrawn from the Wilmington area, but that a sub-terminal was located at Jacksonville. The reasons given for withdrawing were the

large size of the terminal, the expense of operating it and the inadequate demand for M & M's equipment in New Hanover County to justify the continuation of this large terminal. The sub-terminal located at Jacksonville was described as a terminal without major maintenance facilities. Mr. Grimm testified that an outside equipment repair center was located across the street from their sub-terminal in Jacksonville where maintenance facilities were available. He further testified that as to cleaning facilities, M & M would either deadhead the truck to Greensboro and back, or use cleaning facilities of other trucking terminals.

Mr. W. Harry Sikes, Regional Traffic Manager, W. R. Grace Company, testified as to public need for the authority sought. He testified that the need for small movements of liquid nitrogen arises in October to November, February to March 1st, mid-March, that the peak season for the movement of liquid nitrogen arises from mid-April to mid-June, and that except during the peak season two haulers not involved in this proceeding handle all shipments. He testified that 50% of the liquid nitrogen solution moves during the peak season, but that it was not feasible for a hauler to purchase equipment to haul only liquid nitrogen. Thus, he testified that W. R. Grace needs as many authorized haulers as they could be furnished.

Mr. Sikes testified as to W. R. Grace's inability to plan any better, testifying that a full day was required to transmit the order and that a majority of orders come on the day before the requested delivery date. He further testified that W. R. Grace and Company formerly promised next day delivery. He testified as to the substantial number of carry-overs W. R. Grace accumulated during the peak season.

Mr. Sikes testified that late deliveries were adversely affecting the relationship with W. R. Grace and Company and the national accounts. He testified that during the past two years W. R. Grace and Company encountered problems with delivery because of shortages of equipment. He testified as to contacts with each of the protestants; that Maybelle has not, and W. R. Grace and Company's dispatcher was told that Maybelle would not, send equipment into Wilmington; that East Coast Transport's haulers were tied up hauling fuel; that Tidewater's equipment was not always available; that Central Transport had the ability but not the equipment; and that Kenan Transport, although a long standing helper, did not always have the equipment available when needed.

In his testimony, Mr. Sikes stated that the several factors engendering a shortage of equipment were the number of competitors drawing upon existing authorized haulers and the present scarcities resulting in more tankers hauling over longer distances, thereby taking a tank out of service for a couple of days.

Mr. Sikes testified that the existing carriers would not be able to meet W. R. Grace's demands during the upcoming season. He further testified that he could use all the equipment furnished to him by both applicants and that he would continue to use all the services the existing common carriers could furnish to W. R. Grace and Company.

With respect to the showing by M & M Tank Lines of the specific public need for additional authority west of U. S. Highway No. 1, Mr. Sikes testified as to W. R. Grace's need for flexibility because of present fuel shortages and because of the distribution of the product. With respect to the pattern of movement, Mr. Sikes testified that he could not definitely say that during the peak season there were shipments to the western part of the state, that the majority of the solution was delivered to the east of U. S. Highway No. 1, and that Grace terminals at Fayetteville and Elmwood served the western part of the state until their stock was depleted.

Mr. James Anderson, distribution and purchasing manager for Swift Chemical Company, testified that Swift encountered delays during the peak season. He testified that Swift had difficulty in getting equipment during the peak season to go west of U. S. Highway No. 1, and that it definitely would be an advantage to have M & M Tank Lines move west of Highway No. 1. He further testified that Swift was experiencing less demand for liquid nitrogen while, at the same time, experiencing a shortage in supply of the solution.

The protestant's testimony tended to show that there was no public demand and need for the proposed authority in addition to the existing service. Mr. W. H. Kimball, Vice-President Marketing, Kenan Transport Company, testified as to the equipment available to Kenan from two sources; one, idle equipment resulting from petroleum shortages and two, equipment owned by Laney Tank Lines, a wholly-owned subsidiary of Kenan. He testified that Kenan would be willing to place more equipment in Wilmington. Even with that, Mr. Kimball testified, on a particular day he did not think anybody could handle all of the traffic.

Mr. James Swing, Vice-President and General Manager, Maybelle Transport Company, testified that there are days when no one has enough equipment. He testified that he required two days' notice as to what was needed, but admitted, upon cross-examination, that customer's demand is determined by weather conditions over which W. R. Grace and Company had no control. He testified that he had not solicited W. R. Grace and Company before November, and that he had never hauled out of New Hanover County, but was willing to, even though he would deadhead one way.

Mr. Richard E. Shaw, Vice-President and General Manager, Central Transport, Inc., testified that although he has equipment available he had never specifically solicited W.

R. Grace and Company. He testified that during 1973 he had not hauled liquid nitrogen intrastate and that he had hauled only two loads in 1972.

Mr. Wesley T. McAffee, Secretary, Treasurer and General Manager of East Coast Transport Company, testified that he has idle equipment available and that W. R. Grace and Company needs better planning. He further testified that East Coast had no facilities in Wilmington and that he had not hauled a single load for W. R. Grace and Company during 1973.

Upon consideration of the evidence presented in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Cromartie is financially able to furnish adequate service on a continuing basis.

2. Cromartie's experience with hauling liquid nitrogen is extensive.

3. Cromartie's hauling of liquid nitrogen is coordinated with the movement of other products hauled by Cromartie.

4. Cromartie's facilities located in Wilmington are adequate to maintain and clean equipment for the purpose of hauling liquid nitrogen; Cromartie's equipment can be readily conditioned to haul liquid nitrogen.

5. Infinger is financially able to furnish adequate service on a continuing basis.

6. Infinger has experience with hauling liquid nitrogen.

7. Infinger's hauling of liquid nitrogen is coordinated with the movement of other products hauled by Infinger.

8. Infinger's equipment is adequate, and Infinger has the resources to purchase additional equipment.

9. Infinger's facilities located in Wilmington are adequate to maintain and clean equipment in preparation for the hauling of liquid nitrogen.

10. Since O'Boyle Tank Lines assumed control of M & M Tank Lines, M & M apparently no longer has financial difficulties.

11. M & M is experienced in the hauling of liquid nitrogen.

12. M & M does not maintain any facilities in Wilmington, and its facilities in Jacksonville cannot clean and repair the tanks in preparation for the hauling of liquid nitrogen.

13. W. R. Grace and Company experienced delays in the shipment of liquid nitrogen as indicated by the number of carry-overs accumulated by W. R. Grace during the peak season.

14. Fifty percent of the liquid nitrogen solution moves during the peak season.

15. It is not feasible for existing authorized carriers to purchase additional equipment solely for the purpose of hauling liquid nitrogen.

16. W. R. Grace and Company plans as well as any company that is dependent upon weather conditions.

17. Existing authorized carriers have proven unable to meet the demand for the movement of liquid nitrogen during the peak season.

18. Shipments to the western part of the State were not shown to contribute to the carry-overs accumulated during the peak season.

19. More than fifty percent of all shipments of liquid nitrogen were to the east of U. S. Highway No. 1.

20. W. R. Grace and Company's storage facilities located at Fayetteville and Elmwood adequately serve the western part of the State until their stock is depleted.

CONCLUSIONS OF LAW

1. That applicants Cromartie Transport Company and Infinger Transportation Company, Inc., have established that a public demand and need exists for the proposed service in addition to the existing service, that the applicants are fit, willing and able to properly perform the proposed service, and that the applicants are solvent and financially able to furnish adequate service on a continuing basis.

2. That applicant M & M Tank Lines has not established that a public demand and need exists for the proposed service to the west of U. S. Highway No. 1 in North Carolina, in addition to the existing service to that portion of the State.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Cromartie Transport Company and Infinger Transportation Company, Inc., be, and are hereby, granted a common carrier certificate in accordance with Exhibit B attached hereto and made a part hereof.

2. That M & M Tank Lines be, and is hereby, denied an extension of its common carrier certificate.

3. That Cromartie Transport Company and Infinger Transportation Company, Inc., file with the Commission evidence of the required insurance, lists of equipment, tariff of rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority acquired herein within thirty (30) days from the date of the Order.

4. That this Order shall constitute a certificate until a formal certificate shall have been issued to the applicants.

ISSUED BY ORDER OF THE COMMISSION.

This 6th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-245, SUB 12 Cromartie Transport Company
8 E. South Carolina Avenue
P. O. Box 123
Wilmington, North Carolina 2840

DOCKET NO. T-698, SUB 4 Infinger Transportation Company, Inc.
2811 Carner Avenue
P. O. Box 7398
Charleston Heights
Charleston, South Carolina 29405

EXHIBIT B

Irregular Route Common Carrier Transportation of Group 21, Liquid Nitrogen and Liquid Nitrogen Materials, in Bulk, in Tank Vehicles, between Points and Places in New Hanover County, on the one hand, and on the other, Points and Places in North Carolina.

DOCKET NO. T-1709

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Wayne Stewart, t/a Eastern Courier, 353 South Wilmington Street, Raleigh, North Carolina 27603 - Application for Contract Carrier Permit | ) ) ) ) | RECOMMENDED ORDER GRANTING PERMIT |

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on July 8, 1974

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicant:

Richard O. Gamble
Johnson, Gamble & Shearon
Attorneys at Law
P. O. Box 1777
Raleigh, North Carolina 27602

Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina
For: Purolator Courier Corp.

James M. Kimzey
Kimzey, Mackie and Smith
Attorneys at Law
P. O. Box 150
Raleigh, North Carolina 27602
For: Financial Courier Corporation

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
For: Observer Transportation Company
Carolina Delivery Service Company, Inc.
Mid-State Delivery Service, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601
For: Harper Trucking Company

COORDES, HEARING EXAMINER: By application filed with the Commission on May 14, 1974, Wayne Stewart, t/a Eastern Courier, 3535 South Wilmington Street, Raleigh, North Carolina 27603, seeks authority to operate as a contract carrier in North Carolina intrastate commerce transporting as follows:

"Group 1, General Commodities

Group 20, Motion Picture Film and Special Services

Group 21:

(1) Commercial papers, documents, written instruments and inter-office communications, except coin, currency and negotiable securities ordinarily used by banks and banking institutions, between banks and banking institutions and branches thereof, pursuant to bilateral contract and banking institutions.

(2) Checks, business papers, records and audit and accounting media of all kinds (except plant removals), bank checks, check books, drafts and other bank stationery pursuant to individual bilateral contracts or agreements.

(3) Whole human blood and blood derivatives.

(4) Data processing reports (payrolls, not including coin, currency and negotiable securities), cards, machine parts, customer supplies, incoming customer packages to and from bus stations and Raleigh-Durham Airport and advertising media.

Territory Description:

The territory within which Applicant proposes to operate as a contract carrier is bounded on the North by Rocky Mount, Henderson, Durham, Burlington, Greensboro and Winston-Salem; on the West by Statesville and Charlotte; on the South by Albemarle, Fayetteville, Goldsboro and Kinston; and on the East by Kinston, Greenville and Tarboro, said territory to specifically include all towns and cities mentioned above and all other towns and cities included within the boundaries of this territory."

Notice of the application, together with a description of the authority sought along with the time and place of hearing was published in the Commission's Calendar of Hearings, issued May 16, 1974. Timely protests to the authority sought were filed by counsel for and on behalf of Purolator Courier Corp., Financial Courier Corporation, Observer Transportation Company, Carolina Delivery Service Company, Inc., Mid-State Delivery Service, Inc., and Harper Trucking Company.

Upon call of this matter for hearing at the captioned time and place, Applicant was present and represented by counsel. Each of the above-listed Protestants were present in person or by/and through counsel.

Counsel for Applicant submitted an amendment to the original application as follows:

"1. Group 1, General Commodities, be deleted.

2. Group 20, Motion Picture Film and Special Services, be deleted.

3. Group 21, Other Specific Commodities, Subparagraphs, 1, 2 and 3, be deleted.

4. That Subparagraph 4 under Group 21, Other Specific Commodities, be amended tc read as follows: Data processing reports, payrolls, cards, commercial papers, documents, written instruments (none of the above commodities shall be carried between banks or banking institutions or branches thereof, and shall not include coin, currency, and negotiable securities), machine parts, customer supplies, metal parts or raw materials, advertising material; and small packages and U.S. Mail to and from bus stations, Raleigh-Durham Airport and Post Offices; the foregoing does not include drugs, medicines and auto parts and accessories.

   The above proposed services will include emergency calls not on a regular basis from other for-hire carriers only, who are authorized to serve banks and banking institutions.

   The above proposed services will include on-call trips from contract shippers originating within a 50-mile radius of Raleigh, North Carolina and terminating in the area described below.

   The contract carrier services proposed would be limited to a 50-mile radius of Raleigh, North Carolina, except for emergency calls from other for-hire carriers and irregular trips or on-call trips from contract shippers except banks and banking institutions originating within that area and terminating within that area bounded on the North by Rocky Mount, Henderson, Durham, Burlington, Greensboro and Winston-Salem; on the West by Statesville and Charlotte; on the South by Albemarle, Fayetteville, Goldsboro and Kinston; and on the East by Kinston, Greenville and Tarboro, said territory to specifically include all other cities and towns within the boundaries of this territory.

   All items proposed by the Applicant to be transported would be pursuant to bilateral contracts.

5. Except as amended above, all other parts of the application shall remain the same."

Inasmuch as the amendment was restrictive in nature, it was accepted by the Hearing Examiner and the application amended accordingly. Upon the acceptance of the amendment, each of the Protestants withdrew from the proceeding and the hearing continued on the application as amended.

The Applicant offered testimony as to his qualifications, business experience and financial ability to perform the transportation service required by the contract authority he seeks to acquire. His testimony indicates that he presently is doing business as Eastern Courier under Certificate of Exemption No. E-|7792 issued by this Commission and is providing a for-hire courier service within the City of Raleigh and its surrounding commercial zone. He also testified that he has received requests for specialized courier service that he cannot provide in that pick up and/or delivery points are outside the Raleigh commercial zone and that the service he proposes to offer is an extension of his specialized courier service to points beyond the commercial zone of Raleigh.

In addition, Applicant offered the testimony of Mr. Curtis Schatte, Jr., Traffic Supervisor, Flow Control Division, Rockwell International, Raleigh, North Carolina; Mr. Bell Wade, Co-owner, Surtronics, Raleigh, North Carolina; Mr. Michael D. Grissom, D.S.C. Manager, Computer Management Corporation, Raleigh, North Carolina, and Mr. Larry Martin, Tepper Tie Division, Rheem Manufacturing Company, Apex, North Carolina. Counsel for Applicant also presented signed contracts between each of the above-named companies and Applicant for Applicant's service.

Based upon the testimony offered, the evidence adduced and the contracts presented at the hearing, the Hearing Examiner makes the following:

## FINDINGS OF FACT

(|) That Applicant, Wayne Stewart, t/a Eastern Courier is the holder of Certificate of Exemption No. E-|7792 under which he is providing a specialized courier service within the City of Raleigh and its surrounding commercial zone.

(2) That Applicant is fit, willing and able to provide the service herein proposed as a contract carrier.

(3) That written contracts with each supporting shipper have been filed with the Commission by Applicant.

(4) That the proposed operation conforms to the definition of a contract carrier as contained in the Public Utilities Act.

(5) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers.

(6) That the proposed service will not unreasonably impair the use of the highways by the public.

(7) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

(8) That the entire service as proposed by Applicant in the amended application has not been justified, but that service as proposed to fit the specific needs of the four (4) supporting shippers has been justified.

CONCLUSIONS

Based upon the record, the evidence presented and the foregoing findings of fact, the Hearing Examiner concludes that the Applicant has borne the burden of proof required by statute only with respect to the needs of the four (4) supporting shippers and that their needs should be served and that the application in all other respects should be denied.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Wayne Stewart, t/a Eastern Courier be, and he is hereby, granted a contract carrier permit in accordance with Exhibit A attached hereto and made a part hereof, and that the application in all other respects is hereby denied.

(2) That Wayne Stewart, t/a Eastern Courier, file with the Commission evidence of the required insurance, list of equipment, schedule of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this Order becomes final.

(3) That unless Applicant complies with the requirements set forth in Decretal Paragraph 2 above and begins operating, as authorized, within a period of thirty (30) days after this Order becomes final, unless the time is extended by the Commission upon written request, the operating rights granted herein will cease and determine.

(4) That upon beginning the contract carrier operation herein authorized, Exemption Certificate No. T792, now held by Eastern Courier, will be, and the same is hereby, cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of November, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1709

Eastern Courier
Wayne Stewart, t/a
3535 South Wilmington Street

Raleigh, North Carolina

EXHIBIT A

Contract Carrier Authority

Transportation of Group 21, Other Specific Commodities, viz: Data Processing reports, payrolls, cards, commercial papers, documents, written instruments (none of the above commodities shall be carried between banks or banking institutions or branches thereof, and shall not include coin, currency, and negotiable securities), machine parts, customer supplies, metal parts or raw materials, advertising material; and small packages and U.S. Mail to and from bus stations, Raleigh-Durham Airport and Post Offices; the foregoing does not include drugs, medicines and auto parts and accessories, under individual bilateral contract with Flow Control Division-Rockwell International, Raleigh, North Carolina; Surtronics, Inc., Raleigh, North Carolina; Computer Management Corporation, Raleigh, North Carolina, and Tepper Tie Division, Rheem Manufacturing Company, Apex, North Carolina, as follows:

(a) Between points and places within a 50-mile radius of Raleigh, North Carolina, and

(b) Between (a) above and points and places within the Counties of Granville, Durham, Orange, Alamance, Guilford, Forsyth, Davie, Iredell, Mecklenburg, Stanly, Montgomery, Moore, Hoke, Cumberland, that part of Sampson County lying on and north of U. S. Highway 13, Wayne, Lenoir, Pitt, Edgecombe, Nash, Franklin, Vance, Wilson, Johnston, Harnett, Wake, Lee, Chatham, Randolph, Davidson, Rowan and Cabarrus.

NOTE: The authority shown in (a) and (b) above is considered as one authority and may not be separated for any purpose.

DOCKET NO. T-676, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Estes Express Lines, 1405 Gordon Avenue, Richmond, Virginia 23234 - Petition for Temporary Suspension of Irregular Route Common Carrier Authority to Serve Brunswick and Columbus Counties. | ) ) ) ) | RECOMMENDED ORDER ALLOWING PETITION |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on November 21, 1973, at 10:00 A.M.

BEFORE: Commissioners Hugh A. Wells (Presiding), and Tenney I. Deane, Jr.

APPEARANCES:

For the Applicant - Respondent:

Tom Steed, Jr., Esq.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 27609

For the Respondents:

Carroll B. Jackson
Hemingway Transport, Inc.
438 Dartmouth Street
New Bedford, Massachusetts 02740

Robert B. Sweatman
Supervisor - Commerce
McLean Trucking Company
P. O. Box 2|3
Winston-Salem, North Carolina 27|02

C. H. Swanson
Overnite Transportation Company
P. O. Box |2|6
Richmond, Virginia 23209

Carl M. Leslie
Burris Express, Inc.
P. O. Drawer 700
Albemarle, North Carolina 2800|

John V. Luckadoo
Thurston Motor Lines
P. O. Box |0638
Charlotte, North Carolina 2820|

Jasper Weathers
Standard Trucking Company
4800 North Boulevard
Raleigh, North Carolina 27604

For the Commission Staff:

E. Gregory Stott, Esq.
Associate Commission Attorney
Ruffin Building
P. O. Box 99|
Raleigh, North Carolina 27602

BY THE COMMISSION: By Application filed with the Commission on July 6, |973, Estes Express Lines, (Estes or Applicant), |405 Gordon Avenue, Richmond, Virginia, 23234

seeks authority to temporarily suspend operations under its irregular route common carrier authority in Brunswick and Columbus Counties, North Carolina, for a period of six months. Upon consideration of Estes' petition, the Commission concluded that the matter of suspending motor freight carrier service as above described was a matter affecting the public interest and by its Order in this Docket dated July 24, 1973, set Estes' petition for hearing October 18, 1973. Said Order placed the burden of proof on Estes to show the total of motor carrier service available in Brunswick and Columbus Counties and to prove that adequate service would exist if Estes were to temporarily suspend service to said counties. The Order further provided that the Burris Express, Inc. (Burris), General Motor Lines, Inc. (General), Hemingway Transport, Inc. (Hemingway), McLean Trucking Company, Inc. (McLean), Overnite Transportation Company (Overnite), Standard Trucking Company (Standard) and Thurston Motor Lines (Thurston) be joined as parties and attend the hearing and show the Commission if they are ready, willing and able to provide the necessary service in Brunswick and Columbus Counties if Applicant were allowed to temporarily suspend service to said counties.

By Order in this Docket dated August 8, 1973, the hearing was continued to November 21, 1973. Notice of the continued hearing along with a brief description of the purpose thereof was published in the Commission's Calendar of Hearings dated August 15, 1973.

Upon the call of this matter for hearing at the captioned time and place, Applicant was present and represented by counsel. Representatives of every motor carrier made party to this proceeding as set forth in the seventh decretal paragraph of the Order in this Docket dated July 24, 1973, were present except General Motor Lines, Inc.

Applicant-Respondent Estes, through Mr. Joe W. Sherrill, presented testimony and exhibits which tend to show that service to Brunswick and Columbus Counties is provided through its Wilmington terminal; that the number of intrastate shipments handled to points in these two counties decreased approximately 31 percent, during the study period June, 1972 through June, 1973; that the number of intrastate shipments originating at points in said counties decreased approximately 48 percent during the same period; that these two counties are sparsely populated requiring operating mileage disproportionate to revenues; that no increase in traffic volume is foreseen in this area; that the November, 1973 fuel quotas have been cut to 50 percent of last year's supply, resulting in a critical fuel situation and that there is in excess of fifty (50) motor carriers authorized to serve all or part of the subject counties.

Respondents Burris, Hemingway, McLean, Overnite, Standard and Thurston presented testimony and exhibits of their officials and traffic officers pertinent to their respective

operations and service to, from and within the subject counties. The testimony of these witnesses tends to show that their respective companies are ready, willing and able to serve Brunswick and Columbus Counties to the extent of their respective authorities and will provide such service if the instant application is approved.

The Commission Staff presented an exhibit relative to the number of carriers presently authorized to serve Brunswick and Columbus Counties.

Based upon the evidence presented and the record in this proceeding as a whole, the Commission makes the following

FINDINGS OF FACT

(1) That Applicant's certificate requires service be provided Brunswick and Columbus Counties, North Carolina.

(2) That the number of intrastate shipments destined to and originating in said counties have decreased 31 and 48 percent respectively.

(3) That no increase in the volume of traffic available in these counties is foreseen.

(4) That adequate motor carrier service will exist if Estes is allowed to temporarily suspend service to said counties.

(5) That Respondents Burris, Hemingway, McLean, Overnite, Standard and Thurston are ready, willing and able to provide the necessary service in Brunswick and Columbus Counties.

CONCLUSIONS

G. S. 62-112(b) provides that "any franchise may be suspended or revoked, in whole or in part, in the discretion of the Commission, upon application of the holder thereof; ...". Estes has made such an application to the Commission for authority to suspend a portion of its certificate. Based upon this application, the public hearing held thereon and the foregoing Findings of Fact, the Commission concludes that Estes has borne the burden of proof placed upon it by the Commission's order in this Docket dated July 24, 1973, and has shown the amount of motor carrier service available in Brunswick and Columbus Counties and that adequate service will exist in the event it is allowed to temporarily suspend service to said counties.

The Commission further concludes that the other carriers present at the hearing, as hereinbefore named, have shown that they are ready, willing and able to provide the necessary service to Brunswick and Columbus Counties and that the application of Estes to temporarily suspend service to these counties should be approved as herein modified.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Estes Express Lines, be, and the same is hereby, authorized to suspend its operations in Brunswick and Columbus Counties, North Carolina, on a temporary basis, pending further order of the Commission.

(2) That the suspension herein authorized shall become effective on the date this Order becomes final.

(3) That proper tariff publication shall be made reflecting said suspension.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of February, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Golden Eagle Homes, Inc., U. S. Highway 1, South, Aberdeen, North Carolina 28315 - Application for Authority to Operate as a Common Carrier Transporting Group 13, Motor Vehicles, and Group 21, Mobile Homes, Between Points and Places in Moore and Hoke Counties, North Carolina | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING AUTHORITY |

HEARD IN: The Conference Room of the Moore County Library Building, Carthage, North Carolina, on Wednesday, August 7, 1974, at 10:00 a.m.

BEFORE: Robert F. Page, Hearing Examiner

APPEARANCES:

For the Applicant:

E. O. Brogden, Jr.
Attorney at Law
P. O. Box 231
Southern Pines, North Carolina 28387

For the Protestants:

None

For the Commission Staff:

None

PAGE, HEARING EXAMINER: By application filed with the Commission on June 3, 1974, Golden Eagle Homes, Inc., seeks irregular route common carrier authority to engage in the transportation of Group 13, Motor Vehicles, and Group 21, Mobile Homes, in the adjoining counties of Moore and Hoke.

Notice of the application, along with the time and place of the hearing, together with a brief description of the authority sought, was published in the Commission's Calendar of Hearings issued June 6, 1974. The Notice contained the method, time and place of filing protests or interventions to the proposed authority. No protests or motions for leave to intervene were filed with the Commission.

The Hearing was held at the time and place captioned above. The Applicant was present and represented by counsel. The Applicant offered the testimony of Mr. James A. Dunevant, Jr., its President and Treasurer. In addition, the Applicant offered the testimony of public witnesses as to the need for additional irregular route common carrier mobile home moving service in the two-county area in addition to the presently existing services. Those witnesses were as follows: Buford Hudson, Jesse E. Gore, Frank Smith, James Wilkerson, William Key, Glade Goforth, Floyd Dunn, and Ranell Thompson. No persons appeared or offered testimony in opposition to the granting and issuance of the authority sought in the application.

Mr. James A. Dunevant, Jr., testified that he was President and Treasurer of the Applicant, Golden Eagle Homes, Inc.; that he had served in such capacity for the preceding one and one-half years and had several years experience prior to that in the mobile home business; that the Applicant sold mobile homes in both Moore and Hoke Counties; that the information concerning the financial responsibility and equipment of the Applicant as contained in the application was true and correct to the best of his knowledge; that there are fifteen (15) mobile home parks in the Southern Pines area of Moore County alone; that there are seven (7) mobile home sales lots in Moore County and one (1) mobile home sales lot in Hoke County; that since the beginning of its business, the Applicant had received numerous phone calls and requests not only from other mobile home sales lots and mobile home parks, but also from many members of the public generally to move mobile homes within the two-county region of Moore and Hoke Counties; that although Golden Eagle Homes, Inc., had the equipment and did, in fact, move the trailers which it initially sold off its sales lots, it lacked the requisite authority to move trailers for other sales and rental outlets and members of the public generally; that he had no need for authority to move Group 13, Motor Vehicles, but only Group 21, Mobile Homes, since that was the entire business of Golden Eagle Homes, Inc.; that 90% of the calls which he receives are for moves within the local area, not usually in excess of

twenty-five (25) miles to points and places within either Moore County or Hoke County; that the closest authorized carriers, to the best of his knowledge and information, were the Morgan Drive Away terminals in Fayetteville and Charlotte, the Transit and National terminals in Fayetteville and the Long Moving Service in Rockingham; that the nearest of these are some forty (40) miles from the area in which Golden Eagle Homes, Inc., proposes to operate and the most distant, some one hundred (100) miles away; and that in his opinion there was a definite need for the type of service in the two-county area which the Applicant proposes to offer in addition to those services presently available from franchised carriers.

Mr. Buford Hudson testified that he owns a mobile home sales lot, Allen Motor Company; that he has been in business at his present location for five (5) years and sells fifty (50) to one hundred (100) units per year; that for the past several years he has received numerous inquiries from customers and members of the public generally requesting moves within the Moore County and Hoke County local area; that those requests vary from month to month from a low of one to two requests per month to a high of ten to twelve per month; that, in his opinion, the needs of the people in the Moore and Hoke County area for short-haul mobile home moves are not being met by the existing carriers and that there is a definite need for the authority requested by the Applicant in addition to present authorized service; and, that there is an especially critical need for a local man in the local area who is capable of performing take down and setup service, which in his opinion the Applicant is well qualified to do.

Mr. Jesse E. Gore testified that he is in the business of leasing spaces in a small mobile home park; that he is familiar with the Applicant, Golden Eagle Homes, Inc., and feels that the Applicant is qualified to render the type of service proposed in the application; that he has had in the previous two years several occasions where he was asked to locate a mobile home mover for persons moving into or out of his mobile home park; that in his opinion, there is a definite need for the service proposed by the Applicant in addition to those services presently available.

Mr. Frank Smith testified that he is a licensed electrical contractor; that he has spent the previous two years working with homes setup by Golden Eagle Homes, Inc.; that in his opinion the work performed by Golden Eagle Homes is of good quality and above average; and that there are probably ten mobile home parks within a five to six mile radius of the Town of Aberdeen.

Mr. James Wilkerson testified that he is in the mobile home rental business; that he owns seven mobile homes for rent and leases the spaces whereupon the homes sit; that he has a need three or four times a year to have one of his homes moved; that by using the present service he has had

delays in getting his moves effected; and that, in his opinion, there is a definite need for the service proposed by the Applicant, Golden Eagle Homes, Inc., in the Moore County-Hoke County area.

Mr. William Key testified that he has been in the mobile home setup business for a period of some six years; that he does not move mobile homes himself, but hires the moves out and then does the setup work when the move is completed; that he gets eight to ten calls per month from persons in the Moore County-Hoke County area wishing a short haul mobile home move; that he is familiar with the Applicant's work and is well satisfied with such work; and, that there is a need for the service as proposed by the Applicant in Moore County.

Mr. Glade Goforth, an assistant to Mr. Key, was tendered as a witness in support of the testimony offered by Mr. Key.

Mr. Floyd Dunn testified that he is a Sanitation Engineer for Moore County; that there are at least sixty-five mobile home parks in Moore County alone; that these parks vary in size from six mobile homes to sixty mobile homes per park; that there are at least as many homes setup on an individual lot basis as there are in mobile home parks; that, in his opinion, there is a need for the services proposed by the Applicant over and above the presently existing services, since to his knowledge within the recent past moves of mobile homes have been made by farm tractors, by wreckers, and by other illegal means since no other form of transportation was available to or known to the individuals desiring the moves.

Finally, Mr. Ranell Thompson, another public witness was tendered and he adopted the testimony given by all previous witnesses concerning the quality of Applicant's services and the need in the Moore County-Hoke County area for an additional carrier of mobile homes. At the conclusion of the oral testimony, the Applicant secured and offered into evidence a copy of its Articles of Incorporation, which was accepted into evidence herein. The information contained in the verified application was entered into evidence without objection.

Based upon the verified application, the testimony adduced at the hearing and upon all the evidence constituting the record in this cause, the Hearing Examiner makes the following

## FINDINGS OF FACT

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service.

2. That the Applicant is fit, willing and able to perform the proposed service.

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

Based upon the foregoing Findings of Fact, the Hearing Examiner now reaches the following

CONCLUSIONS

The determination in this proceeding is governed by N. C. G. S. 62-262 and by applicable Commission Rules, including Rule R2-15(a). The testimony of the witnesses and the verified application received into evidence establishes that the Applicant is fit, willing and able to properly perform the proposed service and that the Applicant is solvent and financially able to furnish adequate service on a continuing basis. The evidence as a whole establishes clearly that there is a need for additional common carrier mobile home moving service within the area sought by this application. This need is especially great for takedown service, short haul service and setup service. In light of all the evidence introduced, the Hearing Examiner concludes that the local short haul service proposed by the Applicant, Golden Eagle Homes, Inc., is desirable for the public welfare and highly important to the public convenience and, accordingly, is required by the public convenience and necessity and should, therefore, be established by Order of this Commission.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Golden Eagle Homes, Inc., be, and hereby is, granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto.

2. That operations shall begin under this authority when Applicant has filed with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of which should be accomplished within thirty (30) days from the effective date of this Order.

3. That the authorization herein set forth shall constitute a certificate until a formal certificate shall have been issued and transmitted to the Applicant authorizing the transportation herein described.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of August, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1711

Golden Eagle Homes, Inc.
U. S. Highway No. 1, South
Aberdeen, North Carolina 28315

EXHIBIT B

Irregular Route Common Carrier

Transportation of Group 21, Mobile Homes, between all points and places within the Counties of Moore and Hoke.

DOCKET NO. T-1689

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Grady Horse Transportation, Inc.,<br>P. O. Box 238, Unionville, Pennsylvania-<br>Application for Authority to Transport<br>Horses along Irregular Routes From and<br>to All Points and Places Within the<br>State of North Carolina | ) | RECOMMENDED<br>ORDER GRANTING<br>APPLICATION |

HEARD IN: The Commission Hearing Room, One West Morgan Street, Ruffin Building, Raleigh, North Carolina, on March 8, 1973, at 10:00 a.m.

BEFORE: Robert F. Page, Hearing Examiner

APPEARANCES:

For the Applicant:

William B. Crews, Jr.
Attorney at Law
P. O. Drawer 1675
Southern Pines, North Carolina

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
Ruffin Building, P. O. Box 991
Raleigh, North Carolina 27602

PAGE, HEARING EXAMINER: By application filed with this Commission on January 2, 1974, the Applicant, Grady Horse Transportation, Inc., seeks authority to operate in intrastate commerce in North Carolina as a motor common carrier of property transporting as follows:

COMMODITY AND TERRITORY
Group 11: Livestock, over irregular routes from and to all points and places

within the State of North Carolina.

Notice of the application was published in the Commission's Calendar of Hearings issued on January 17, 1974, said Notice giving a description of the authority sought and the time and place of the hearing and requiring that protests and interventions, if any, be filed at least ten (10) days prior to the date of hearing. No protests or petitions for leave to intervene were received.

The Applicant offered the testimony of its President and majority shareholder, Mr. Michael E. Grady, who is also the principal employee of the corporation. Applicant also offered the testimony of Mr. M. L. White and Mr. E. W. Phillips, prospective users of the proposed transportation service, concerning the need and demand for such service by the public. All of the witnesses for Applicant were cross-examined by the Attorney for the Commission Staff.

Mr. Grady testified that he had been in the business of transporting horses for some three (3) years and that he had ten years experience prior thereto in transporting horses which were his own personal property. He stated that he owned two International-Harvester Airline Trucks capable of hauling seven (7) horses each, and one medium sized truck or van capable of transporting four (4) horses, with a similar sized truck under option. He testified that he presently operates in Pennsylvania under authority granted by the Public Service Commission of that State and that he was leasing, with option to purchase, the interstate certificate rights of Clatterbuck Horse Transportation of Warrenton, Virginia. He testified that his vehicles were in operation 285 days last year and that many of his movements were either into or from North Carolina on an interstate basis. He stated that there was a need and demand for his services, principally in the Southern Pines area by three (3) separate and distinct groups of horse owners and trainers; i.e., Show Horses, Race Horses, and Trotting Horses. Among other points within North Carolina needing service of the type proposed are Southern Pines, Sedgefield, Raleigh, Tryon and Tanglewood. To the best of Mr. Grady's knowledge, no other North Carolina intrastate property carriers are now rendering the type of service which he proposes. His corporation is now in the process of receiving permission from the Secretary of State's office to transact business in North Carolina as a foreign corporation.

Mr. White testified that, having come from Pennsylvania some three years ago, he is a professional horseman and trainer presently living in Southern Pines. He stated that he had been engaged in such occupation for twelve (12) years. He testified that he had known Mr. Grady for thirteen (13) years and that, in his opinion, Mr. Grady was extremely well qualified to operate the type of service proposed by Applicant and that he had used such service and was well satisfied with same. He stated that there is no similar service being offered in the Southern Pines area and

that the only person to his knowledge offering a similar service lived in Winston-Salem and did not come to Southern Pines. He described his need for Applicant's proposed service as "desperate."

Mr. Phillips testified that he was the manager of the Jim McKinnon Horse Farm in Southern Pines; that he had known Applicant's chief officer, Mr. Grady, for two years and had used the interstate services offered by Applicant, being well pleased with same. He stated that there is a need and demand for such services in the Southern Pines area which is not being met by any other certificated carrier.

All three witnesses testified to the tremendous growth in the raising, stabling, and training of horses in the Southern Pines area over the last five years. Such growth is projected to continue into the foreseeable future. Absent willing and capable haulers such as Applicant, horse owners and shippers will be forced to lease equipment and drive the animals themselves, as many are now doing.

Upon consideration of the verified application and evidence adduced at the hearing, the Examiner now makes the following

FINDINGS OF FACT

1. There is a public need and demand for, and public convenience and necessity requires, the services offered by Applicant in addition to existing authorized services. There is no similar service whatsoever being offered from the Southern Pines area on an intrastate basis.

2. Applicant, because of his ability, experience, equipment, and facilities, is fit, willing and able to properly perform the authorized service.

3. The Applicant is solvent and is financially able and is otherwise qualified to furnish adequate service on a continuing basis under the authority sought hereunder.

Based upon these Findings of Fact, the Examiner reaches the following

CONCLUSION

There is a public need and demand, which can best be met by Applicant, for the type of services which he proposes to render under the authority sought hereunder. Public convenience and necessity require that such authority be issued.

IT IS, THEREFORE, ORDERED

1. That Grady Horse Transportation, Inc., P. O. Box 328, Unionville, Pennsylvania, be, and is hereby, granted a

common carrier certificate in accordance with Exhibit B attached hereto.

2. That Grady Horse Transportation, Inc., shall, if such has not already been finalized, secure from the Office of the Secretary of State, the appropriate license to do business within the State of North Carolina as an out-of-state corporation and shall furnish to this Commission a copy of such license.

3. That Grady Horse Transportation, Inc., shall file with this Commission evidence of the required insurance, lists of equipment, tariffs of rates and charges, designation of Process Agent, and otherwise comply with the rules and regulations of the Commission and shall institute operations under the authority acquired herein within thirty (30) days from the date this Order becomes final.

4. That this Order, upon becoming final, shall constitute a certificate until a formal certificate shall have been issued to the Applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1689

Grady Horse Transportation, Inc.
P. O. Box 328
Unionville, Pennsylvania

EXHIBIT B

Irregular Route Common Carrier

Transportation of Group II, Livestock, over irregular routes from any and all points and places within the State of North Carolina to and between any and all other points and places within the State of North Carolina

DOCKET NO. T-521, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Raleigh, North Carolina, Application to Amend Contract Carrier Permit No. P-31 to Add Owens, | ) ORDER APPROVING OWENS, MINOR & BODECKER, INC. AS |

Minor & Bodeker, Inc., As An Additional Contracting Party and Shipper. ) A CONTRACTING SHIPPER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina on February 7, 1974.

BEFORE: Chairman Marvin R. Wooten, Commissioner Hugh A. Wells, Presiding, and Commissioner Tenney I. Deane, Jr.

APPEARANCES:

For the Applicant:

Vaughan S. Winborne, Esq.
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601

For the Protestants:

David H. Permar, Esq.
Hatch, Little, Bunn, Jones, Few & Berry
Attorneys at Law
Box 527
Raleigh, North Carolina
Appearing for:
Burris Express, Inc.
Estes Express Lines
Thurston Motor Lines, Inc.

John D. Xanthos, Esq.
Attorney at Law
507 N.C.N.B. Building
Burlington, North Carolina 27215
Appearing for:
Mid-State Delivery Service, Inc.

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On September 11, 1973, Thomas Oliver Harper, d/b/a Harper Trucking Company, applied to the Commission for emergency, temporary authority to add Owens, Minor & Bodeker, Inc. of Wilson, North Carolina, as a contracting party and shipper. On the same date, Harper filed Application for permanent authority to add Owens, Minor & Bodeker as a contracting party and shipper. Attached to the Applications was a copy of the contract entered into by Harper and by Owens, Minor & Bodeker. Also, there was a letter from W. Frank Fife, Executive Vice

President and General Manager of Owens, Minor & Bodeker, supporting Harper's Application. The letter stated in part:

> "Our present contract carrier has submitted a letter of termination effective September 1973. No other type of existing transportation will fill our hospital and drugstore accounts needs."

On September 13, 1973, the Commission granted Harper's petition for temporary emergency authority pending final determination of his Application for permanent authority.

Notice of Harper's Application in this docket was published in the Commission's Calendar of Hearings issued October 1, 1973.

Thereafter, the following common carriers by motor vehicle filed protests and motions for intervention in this docket: Burris Express, Inc. of Albemarle, North Carolina; Estes Express Lines of Richmond, Virginia; Thurston Motor Lines of Charlotte, North Carolina; Carolina Delivery Service of Charlotte, North Carolina; and Mid-State Delivery Service, Inc. of Greensboro, North Carolina. All of these protests and interventions were allowed by subsequent orders of the Commission. The matter came on for hearing on February 7, 1974, at the Commission Hearing Room in Raleigh. On the previous day, the Commission heard Docket No. T-521, Sub 14, an Application by Harper Trucking Company for emergency and permanent authority to expand his area of coverage in western North Carolina; further reference to the Order issued in that docket will be made in this Order.

The Applicant Harper was present and represented by counsel. Protestants Burris, Estes, and Thurston were represented by counsel; counsel for Mid-State was excused at his request, but the protest of Mid-State was allowed to remain as a part of the record. The protest of Carolina Delivery Service was dismissed on the ground that it was not represented at the hearing.

Counsel for the protestants, Mr. Permar, entered an objection to the Order granting emergency authority on the ground that no notice was given to the protestants as required by law. The motion was denied.

The Applicant Thomas O. Harper offered the following evidence in support of his Application. Mr. W. F. Fife, who is Executive Vice President of Owens, Minor & Bodeker, and General Manager of the Wilson Division, testified on behalf of his company. Owens, Minor & Bodeker handles commodities normally found in a drugstore -- drugs, medicines, cosmetics, and sundries. The company's volume of business in Wilson is in excess of $6,000,000. Its radius of service is about 100 miles of Wilson. Prior to September 1974, Owens, Minor & Bodeker used the service of Wilson Merchants Delivery Service, a contract carrier, who terminated its service with Owens, Minor & Bodeker during that month.

Thereafter, Owens, Minor & Bodeker contracted with Mr. Harper for the services of Harper Trucking Company; the company also began operating its own fleet of eight (8) vehicles for deliveries over a short distance. Owens, Minor & Bodeker is in the health business and enables even the smallest drugstore in its service area to get merchandise that is available at any big store. Owens, Minor & Bodeker deals primarily with independent retail drugstores whose biggest competition comes from the chain stores. Consequently, Owens, Minor & Bodeker must provide rapid service that will enable these independent drugstores to be competitive with the chain stores.

Almost all of Owens, Minor & Bodeker's shipments are less than 100 pounds in weight; they are parcel-post type shipments and do not require large equipment. Owens, Minor & Bodeker does not want to be in the trucking business. They entered into a contract with Mr. Harper even though Harper serves the competitors of Owens, Minor & Bodeker. Mr. Fife would like for Harper to continue to serve Owens, Minor & Bodeker. In his experience, the general common carriers cannot provide the service his company needs; they are not able to come within 24 hours of Owens, Minor & Bodeker's service needs. Owens, Minor & Bodeker needs one-day service as well as Saturday delivery; Saturday is one of their largest delivery days. Harper has provided this service. The big problem with the common carriers is that of Saturday delivery. Owens, Minor & Bodeker does 60% of its business on Monday and Friday, with all of the Friday orders being handled on Saturday. If Harper is unable to get the permanent authority, Owens, Minor & Bodeker will continue to operate its own fleet.

Mr. Thomas Oliver Harper testified in support of his Application. He is doing business as an individual under the name of Harper Trucking Company, and he holds contract carrier authority granted by the North Carolina Utilities Commission. In September 1973, he entered into a contract with Owens, Minor & Bodeker, which is on file with the Commission. He applied for emergency authority to haul for Owens, Minor & Bodeker pursuant to this contract, and he has been hauling for Owens, Minor & Bodeker since such emergency authority was granted. Harper has a man in Wilson who picks up Owens, Minor & Bodeker's shipments there and brings them to Raleigh for loading on trucks for delivery. Owens, Minor & Bodeker desires the pickups to be made around 6:00 P.M., sometime as late as 7:00 P.M.; Owens, Minor & Bodeker desires delivery the next day as early as possible. Harper's service is geared to this arrangement. He makes practically 100% next-day delivery. His 16 units are two-ton straight trucks and require 14 full-time drivers. He charges Owens, Minor & Bodeker the same rates he is charging any other contracting party for the type of merchandise being hauled. On cross-examination, Mr. Harper stated that he presently holds nine (9) contracts with shippers. He makes quite a few deliveries to areas Owens, Minor & Bodeker would have a difficult time getting deliveries to -- towns

such as Sea Level, Stovall, Sunbury, Elizabeth City, Columbia, Plymouth, Bayboro and Tabor City. He is in these towns everyday of the week with the exception of Sea Level. He serves 50 or 60 towns for Owens, Minor & Bodeker on a daily basis, including Saturday.

At the close of Mr. Harper's case, Mr. Permar, the attorney for the protestants, made a motion to dismiss Harper's Application. The motion to dismiss was denied.

Mr. Joe W. Sherrill, Traffic Manager for Estes Express Lines, testified on behalf of that company. Mr. Sherrill stated that Estes has regular route authority in eastern North Carolina, beginning in Murfreesboro on Route 158 and going down to Stumpy Point, North Carolina, serving one or two off-route points such as Gatesville and South Mills. Estes has irregular route authority to serve all points on and east of Marion, North Carolina. Estes has terminals located at Elizabeth City, Jacksonville, Washington, Wilmington and Wilson. Estes has a terminal at Wilson that operates on a 24-hour-day basis and has loading facilities for 50 vehicles. They have domiciled at that terminal 40 tractors, 9 straight trucks, and 75 trailers. Their employees are: drivers, 26; platform men, 25; office personnel, 19. Estes has empty vehicles going out of Wilson every night. The reason is that more freight is being consumed in eastern North Carolina than is being shipped out of eastern North Carolina. He is actively soliciting business in eastern North Carolina, including that of Owens, Minor & Bodeker.

Based on the record in this docket and on the evidence and exhibits adduced at the hearing, the Commission makes the following

## FINDINGS OF FACT

(1) Thomas Oliver Harper, d/b/a Harper Trucking Company, holds contract carrier authority, as set forth in Contract Carrier Permit P-31, to transport, within a 150-mile radius of Raleigh, North Carolina, drugs, medicines and such merchandise as is customarily sold in wholesale and retail drugstores.

(2) By Application filed with this Commission, Harper seeks emergency and permanent authority to add Owens, Minor & Bodeker of Wilson, North Carolina, a drug wholesaler, as a contracting shipper. Harper is currently hauling drugs and medicines under contract for Owens, Minor & Bodeker pursuant to an Order granting Harper emergency authority, pending final determination of his Application for permanent authority.

(3) Harper currently has 16 trucks in operation requiring 14 full-time drivers. As of March 28, 1973, Harper's balance sheet listed current assets of $7,100, property

assets (including carrier property) of $67,400, liabilities of $36,700 and a net worth of $36,800.

(4) Harper Trucking Company currently has contracts with nine (9) shippers.

(5) Owens, Minor & Bodeker, a wholesale drug firm, handles commodities such as drugs, medicines, cosmetics and various sundries that are usually sold in retail drugstores. The firm operates within a 100-mile radius of Wilson, North Carolina.

(6) Owens, Minor & Bodeker sells primarily to independent drugstores, which are in competition with the chain stores; in order to effectively compete with the chain stores, the independent drugstores must have ready and prompt access to the products sold by Owens, Minor & Bodeker.

(7) In order to serve its drugstore customers effectively, Owens, Minor & Bodeker needs next-day delivery service of its products, as well as Saturday deliveries; 60% of its business is on Monday and Friday, with all of the Friday business being delivered on Saturday.

(8) Harper Trucking Company conducts its operations in such a manner that it is able to give next-day delivery service to the customers of Owens, Minor & Bodeker almost 100% of the time; Harper also gives Owens, Minor & Bodeker Saturday delivery service. Moreover, Harper makes deliveries into the fringe communities of Owens, Minor & Bodeker's service area. Common carrier service in Owens, Minor & Bodeker's area of operation does not provide the type of special service needed by the company.

(9) Estes Trucking Company has regular route authority in eastern North Carolina as well as irregular route authority to serve all points on and east of Marion, North Carolina. Estes has a number of terminals throughout North Carolina, including one at Wilson that operates 24 hours a day. Estes is actively seeking business in eastern North Carolina.

## CONCLUSIONS

In order to prevail on its Application, Harper Trucking Company has the burden of proof to show that its contracting shipper, Owens, Minor & Bodeker, has a need for a specific type of service not otherwise available by existing means of transportation. [N.C.U.C. Rule R2-15(b)]. Harper Trucking Company has met this burden of proof. Owens, Minor & Bodeker is a wholesale drug firm that sells drugs and medicines primarily to independent drug stores throughout eastern North Carolina. These drugstores are in competition with the chain stores, and in order to survive, these drugstores must have ready and prompt access to drugs, medicines, and sundries. Owens, Minor & Bodeker is aware of the needs of these independent drugstores and attempts to meet these needs by next-day and Saturday delivery of its

commodities to its customers. Harper Trucking Company is able to provide Owens, Minor & Bodeker with next-day delivery in almost 100% of the cases, as well as Saturday delivery. Harper's evidence demonstrates that it is fit, willing and able to provide the service that Owens, Minor & Bodeker needs. There is no evidence in the record that any existing means of transportation can provide Owens, Minor & Bodeker with the specific type of service that it needs to serve the independent drugstores.

The Commission notes that Harper Trucking Company has contracts with more than seven (7) shippers; however, the Commission has the discretion to allow Harper to serve more than seven (7) shippers if the Commission finds that public interest so requires. In approving Harper's contract with Owens, Minor & Bodeker, the Commission takes into consideration the following:

(1) The items to be carried under the contract with Owens, Minor & Bodeker are drugs and medicines;

(2) The service Harper will provide for Owens, Minor & Bodeker is identical to service that Harper is providing for his other drug company shippers;

(3) The contract with Owens, Minor & Bodeker will not change or enlarge the territory Harper is already authorized to serve;

(4) The needs of Owens, Minor & Bodeker require the service that Harper is especially fitted to provide;

(5) Harper's proposed operations conform with the statutory definition of a contract carrier;

(6) Harper's contract with Owens, Minor & Bodeker will not unreasonably impair the public service of other carriers certificated by this Commission; and

(7) There is a public policy which encourages competition in the drug retail business and the survival of the independent drugstores.

It is noted that in the Harper Trucking Company Docket No. T-521, Sub 14, the Commission (by Order issued on this date) redefined the western boundary line of Harper Trucking Company's area of operations.

IT IS, THEREFORE, ORDERED:

(1) That Contract Carrier Permit No. P-31, heretofore issued to Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Raleigh, North Carolina be, and the same is, hereby amended to include Owens, Minor & Bodeker as a contracting shipper.

(2) That Permit No. P-31 issued to Thomas Oliver Harper, d/b/a Harper Trucking Company be, and the same is, hereby amended to include the authority more particularly described in Exhibit A attached hereto and made a part hereof.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

SCOPE OF OPERATIONS

DOCKET NO. T-521

Harper Trucking Company P-31
Thomas Oliver Harper, Jr., d/b/a
Raleigh, North Carolina

Contract Carrier Authority

EXHIBIT A

(1) Transportation of drugs, medicines, and such merchandise as is customarily sold by wholesale and retail drugstores under bilateral contract with Owens, Minor & Bodeker, Inc., Wilson, North Carolina, between points and places within a 150-mile radius of Raleigh, North Carolina.

DOCKET NO. T-1699

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
J & J Freight Distribution Services, Inc., ) RECOMMENDED
1713 North Tryon Street, Charlotte, North ) ORDER
Carolina - Application for Contract Carrier ) GRANTING
Permit ) PERMIT

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 2, 1974, at 10:00 A.M.

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Mitchell, Burns & Smith

Attorneys at Law
P. O. Box 1406
Raleigh, North Carolina 27602

Protestants:

None

COORDES, HEARING EXAMINER: By application filed with the Commission on March 11, 1974, in Docket No. T-1699, J & J Freight Distribution Services, Inc., (hereinafter referred to as "J & J" or "Applicant") seeks authority to engage in the transportation of commodities under Group 21, as follows: Miscellaneous clothing, wearing apparel and toilet preparations from Matthews, North Carolina, and a radius of five miles thereof of Family Dollar Stores in Guilford, Forsyth, Catawba, Lincoln, Cleveland, Rowan, Gaston, Davidson, Rutherford, McDowell, Alexander and Iredell Counties as a contract carrier under an individual written contract with the shipper, Family Dollar Stores, Inc.

Notice of the application showing the time and place of hearing was given in the Commission's Calendar of Hearings issued March 20, 1974. No Protests were filed within the time permitted for filing protest and no one appeared in opposition to the application at the time of hearing.

The Applicant offered the testimony of two witnesses, J. F. Jones and Roy W. White.

Mr. Jones' evidence tended to show that he is President of J & J, a North Carolina Corporation and that he, his wife, Aimee T. Jones and J. O. Canipe are the sole officers, directors and stockholders of J & J; that he has been engaged in the trucking business for 16 years with various trucking companies, that J & J is now engaged in performing exempt transportation in Charlotte and in the commercial zone of Charlotte under an exemption certificate issued to it by this Commission; that he became familiar with the fact that the trucking needs of Family Dollar Stores, Inc., were not being met by existing authorized carriers while he was employed by Akers Motor Lines; that he is familiar with the present needs of Family Dollar and proposes to provide the service to it as provided in a contract between J & J and Family Dollar Stores, Inc., which was received in evidence; that he now has six (6) tractors, ten (10) trailers and two (2) straight van trucks which he proposes to dedicate to the shipping needs of the shipper; that he is otherwise financially able to provide the service requested; that the rates proposed to be charged are the rates of common carriers providing similar service.

Mr. Roy W. White testified that he is Director of Distribution of Family Dollar Stores, Inc., and that as such, he is in charge of securing adequate transportation for the property of his company from its warehouse at Matthews, North Carolina, to the Family Dollar Stores in the

counties set forth above; that the shipments are generally less than truck load shipments, of light weight and in many containers; that in the transportation of the commodities set out in the application he needs next day deliveries in a single movement and he needs prompt pickup to avoid confusion at his loading docks but he has been unable to secure this service from existing common carriers; that the freight is not regarded as desirable to common carriers; and that he believes the proposed service will meet his company's needs.

Upon consideration of the application and the evidence adduced, a portion of which is set out above, the Hearing Examiner makes the following:

FINDINGS OF FACT

(1) That the applicant, J & J Freight Distribution Services, Inc., is a North Carolina Corporation holding no intrastate operating authority but is engaged in transportation within the commercial zone of Charlotte as an exempt carrier. Applicant holds Exemption Certificate No. 18756 from this Commission.

(2) That the applicant proposes to engage in the transportation of miscellaneous clothing, wearing apparel, and toilet preparations from Matthews, North Carolina, and a radius of five miles from Matthews to Family Dollar Stores in Guilford, Forsyth, Catawba, Lincoln, Cleveland, Rowan, Gaston, Davidson, Iredell, McDowell, Rutherford and Alexander Counties under written contract with one shipper, Family Dollar Stores, Inc.

(3) That the proposed operations conform with the definition of a contract carrier in the Public Utilities Act.

(4) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under existing certificates, or rail carriers.

(5) That the proposed service will not unreasonably impair the use of the highways by the general public.

(6) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

(7) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

(8) That the Applicant owns the equipment necessary to serve the Matthews warehouse of the Family Dollar Stores, Inc.

CONCLUSIONS

The applicant has shown that there is a need for its services as a contract carrier for Family Dollar Stores, Inc., in the area described in the application. Applicant has further shown that existing authorized common carriers have not been able to provide the specialized service required by this Shipper and that applicant is ready, willing and able to provide the needed service. Applicant has, therefore, borne the burden of proof required by statute for the granting of the contract carrier authority sought herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That J & J Freight Distribution Services, Inc., 1713 North Tryon Street, Charlotte, North Carolina, be and it is hereby, granted a contract carrier permit in accordance with Exhibit A attached hereto and made a part hereof.

(2) That J & J Freight Distribution Services, Inc., file with the Commission evidence of the required insurance, list of equipment, schedule of minimum rates and charges, designation of process agent, and otherwise comply with the rules and regulations of the North Carolina Utilities Commission, and institute operations under the authority herein acquired within thirty (30) days from the date that this Order becomes final.

(3) That the authorization herein set forth shall constitute a permit until a formal permit shall have been issued and transmitted to the Applicant authorizing the transportation herein described.

(4) That the Applicant will surrender its Exempt Certificate No. 18756 to the Commission for cancellation when this Order is final.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1699

J & J Freight Distribution Services, Inc.
1713 North Tryon Street
Charlotte, North Carolina

EXHIBIT A

Contract Carrier Authority

Transportation of Group 21, Other Specific Commodities, viz: Miscellaneous clothing, wearing apparel and toilet preparations from Matthews, North Carolina, and a five-mile radius thereof to Family Dollar Stores in Guilford, Forsyth, Catawba, Lincoln, Cleveland, Rowan, Gaston, Davidson, Rutherford, McDowell, Alexander and Iredell Counties under bilateral written contract with Family Dollar Stores, Inc.

DOCKET NO. T-1682

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service, 1401 Woodbriar, Greensboro, North Carolina - Application for Contract Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, Between Certain Points in North Carolina. | ) | ORDER GRANTING AUTHORITY |

HEARD IN: The Library of the Commission, One West Morgan Street, Raleigh, North Carolina, on Tuesday, January 22, 1974, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten (Presiding), With Commissioners Hugh A. Wells, Ben E. Roney and Tenney I. Deane, Jr., to Participate in the Decision of the Matter After Receiving Report Thereon Per Stipulation.

APPEARANCES:

For the Applicant:

Marion G. Follin, III
Smith, Carrington, Patterson, Follin & Curtis
Attorneys at Law
704 Southeastern Building
Greensboro, North Carolina

For the Protestants:

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
For: State Motor Lines, Inc.
Wall Trucking Company, Inc.
Colonial Motor Freight Line, Inc.

BY THE COMMISSION: By application filed on October 22, 1973, Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service, Greensboro, North Carolina (Applicant), seeks a Contract Carrier Permit to transport Group 16, Furniture Factory Goods and Supplies in the territory described as:

"Transport furniture to retail stores located in High Point and Greensboro from manufacturer's plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell, and Davie Counties on a route from Greensboro on U. S. Highway 85 to Lexington; thence Highway 64 to Mocksville; thence Highway 40 to a point west of Marion, North Carolina."

Notice of the application was given in Commission's Calendar of Hearings issued on November 8, 1973. In apt time protests were filed received by the Commission from State Motor Lines, Inc., Hickory, North Carolina; Wall Trucking Company, Inc., High Point, North Carolina; and Colonial Motor Freight Line, Inc., High Point, North Carolina, and said protests and interventions were allowed by Commission Order dated January 17, 1974.

Upon call of this matter for hearing, the Applicant moved the Commission for authority to amend its said application to read as follows:

"Group 21: New Furniture - Transport new furniture from manufacturers' plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell and Davie Counties to retail store sites of customers Boyles Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc., and Black's Furniture Co., in High Point, North Carolina, under written bi-lateral contracts with Boyles Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc., and Black's Furniture Co.; and the return of rejected or returned products and/or damaged shipments to such manufacturers' plants."

The Motion to Amend the Application was filed in writing, and by agreement of the parties, it was agreed to add Black's Furniture Co. to the list of customers with which contracts were to be submitted. Based upon the agreement and stipulation of the parties, the amendment was thus allowed.

Upon the allowance of the Motion to Amend the Application in accordance with the stipulation by the parties, all Protestants requested and were granted leave to withdraw from the case.

The Applicant offered the testimony of himself and L. F. Boyles, of Boyles Furniture Sales, Inc., High Point, North Carolina, tendered an additional cumulative customer and presented three affidavits from other contracting customers. The testimony in this case indicates that there is a need for the contract carrier service of the Applicant for the furniture stores indicated in the record. The testimony further indicates that the need on behalf of these customers for a specialized carrier is great, in that experience with common carriers has presented numerous damage problems, as well as slow, delayed and late delivery, which adversely affects the operations of each and everyone of the

contracting parties with the Applicant herein. The service which the Applicant here proposes to perform is specialized in the handling of furniture and the prompt delivery of the same. The evidence further indicates that the Applicant is prompt and active in the business of movement of furniture in the area here involved and the evidence supports the application and the fitness and ability of the Applicant to perform the service, as well as the need for this service by the business firms contracting with the Applicant.

From the evidence presented and the record in this matter as a whole, the Commission is of the opinion and makes the following

## FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier and will not unreasonably impair the efficient service of common carriers operating under certificates or common carriers by rail.

2. That the proposed service will not unreasonably impair the use of the highway by the public.

3. That the Applicant owns and/or has made arrangements to obtain the necessary equipment and has the experience necessary for the operations as specified in the amendment.

4. That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier and such operations will be consistent with the public interest and the State's Transportation Policy as required by law.

5. That the contract carrier service under bilateral written contract with five individual businesses for the commodities and in the territory described in Exhibit A attached hereto and made a part hereof will be consistent with the public interest.

6. That the proposed operations will tend to effectuate the declared policy of the applicable law.

## CONCLUSIONS

The Commission concludes that the Applicant has satisfied the burden of proof required for the granting of the authority sought as amended, as described in Exhibit A attached hereto and made a part hereof and that the application as set forth in Exhibit A should be approved and the authority granted.

The Commission further concludes that the uncontradicted evidence in this case supports the public need for the granting of the authority herein under bilateral contract with Boyles Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co.,

Inc., and Black's Furniture Co., and that said contracts in the total number of five having heretofore been filed with the Commission should be and the same are approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service, 140 Woodbriar, Greensboro, North Carolina, be, and he is, hereby granted a Contract Carrier Permit in accordance with Exhibit A attached hereto and made a part hereof.

2. That the operations herein approved be commenced only when the Applicant has filed with the Commission his schedule of minimum rates and charges and complied with all the rules and regulations of the North Carolina Utilities Commission, all of which shall be done within thirty (30) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of January, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1682

Horace E. Kindle
d/b/a Kindle Pick-Up and Delivery Service
140 Woodbriar
Greensboro, North Carolina

EXHIBIT A

Contract Carrier Authority

Transportation of Group 21: New Furniture, in a territory described as: "Transport new furniture from manufacturers' plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell and Davie Counties to retail store sites of customers Boyles Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc. and Black's Furniture Co., in High Point, North Carolina, under written bilateral contracts with Boyles Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc., and Black's Furniture Co.; and the return of rejected or returned products and/or damaged shipments to such manufacturers' plants."

DOCKET NO. T-1682, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service, 1401 Woodbriar, Greensboro, North Carolina 27405 - Application for Additional Contract Carrier Operating Authority | ) | RECOMMENDED ORDER GRANTING APPLICATION |

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on Tuesday, September 17, 1974, at 2 p.m.

BEFORE: Hearing Examiner John R. Molm

APPEARANCES:

For the Applicant:

Marion G. Follin, III
Smith, Carrington, Patterson, Follin & Curtis
Attorneys at Law
704 Southeastern Building
Greensboro, North Carolina

For the Protestants:

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
For: State Motor Lines, Inc.

BY HEARING EXAMINER MOLM: By Application filed on June 7, 1974, Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service, Greensboro, North Carolina (hereinafter called "Applicant"), seeks to extend the scope of its contract carrier authority as granted by this Commission by Order issued January 30, 1974. The contract carrier authority approved by the Commission was as follows:

Transportation of Group 21: New Furniture, in a territory described as: "Transport new furniture from manufacturer's plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell, and Davie Counties to retail store sites of customers Boyle's Furniture Sales, Inc., Paramount Furniture Company, Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc., and Black's Furniture Co., in High Point, North Carolina, under written bilateral contracts with Boyle's Furniture Sales, Inc., Paramount Furniture Co., Inc., Wayside Interiors, Young's Furniture and Rugs Co., Inc., and Black's Furniture Co.; and the return of rejected or returned

products and/or damaged shipments to such manufacturer's plants."

Applicant seeks to add three shippers and to delete another, Wayside Interiors, so that the contract carrier authority would read as follows:

Transportation of Group 2|: New Furniture, in a territory described as: "Transport new furniture from manufacturer's plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell, Davie, Mitchell, Guilford, Davidson and Forsyth Counties to retail store sites of customers Boyle's Furniture Sales, Inc., Paramount Furniture Company, Inc., Young's Furniture and Rugs Co., Inc., and Black's Furniture Co., in High Point, North Carolina, and Guilford Galleries, Inc., in Greensboro, North Carolina, Hendricks Furniture, Inc., in Mocksville, North Carolina, and Blackwelder's Furniture Company in Statesville, North Carolina, under written bilateral contracts with Boyle's Furniture Sales, Inc., Paramount Furniture Co., Inc., Young's Furniture and Rugs Co., Inc., Black's Furniture Co., Inc., Guilford Galleries, Inc., and Hendricks Furniture, Inc., and Blackwelder's Furniture Co; and the return of rejected or returned products to such manufacturer's plants."

Notice of the application was provided in the Calendar of Hearings issued on June 27, |974. A Protest and Motion for Intervention was filed by State Motor Lines, Inc., (Protestant), P. O. Drawer 4|87, Longview Station, Hickory, North Carolina, said protest and intervention allowed by the Commission in an Order issued July ||, |974.

On August 20, |974, the Hearing Examiner issued a Recommended Order dismissing the application concluding that the Applicant had failed to meet his burden of proof in that an application to extend the scope of contract carrier authority requires proof that one or more shippers have a need for a specific type of service not otherwise available by existing means of transportation. On September 4, |974, the Hearing Examiner issued an Order setting the matter for rehearing.

It was agreed to by the parties that the entire record in this matter shall consist of the hearing of August |2, |974, and the hearing of September |7, |974.

At the September |7, |974, hearing, the Applicant offered the testimony of Horace E. Kindle who testified that he undertakes to provide complete service to his customers with precaution and promptness. The Applicant also offered the testimony of Mr. Robert S. Lockhart, Vice President of Operations, Guilford Galleries, who testified as to the experience Guilford Galleries has had with common carriers in the transportation of furniture from the manufacturers to its retail store located in Greensboro, North Carolina.

From the evidence presented and the entire record consisting of the hearings held on August 12, 1974, and September 17, 1974, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Guilford Galleries has experienced considerable delay in the transportation by common carriers of furniture from the manufacturer's plant to Guilford Galleries retail store located in Greensboro, North Carolina.

2. That Guilford Galleries has received furniture in damaged condition for several reasons, one of which is that common carriers often carry furniture and goods other than furniture in the same load.

3. That Guilford Galleries has experienced difficulty in returning such damaged furniture to the manufacturer.

4. That Guilford Galleries believes that business with Kindle Pick-Up and Delivery will result in prompt delivery because there is no terminal unloading and loading between the pick up of the furniture of the manufacturing plant and the delivery of said furniture to Guilford Galleries.

5. That the Applicant is experienced in the handling of furniture, that he will refuse acceptance of furniture at the manufacturer's plant if anything is apparently defective, and that he will promptly return damaged furniture to the manufacturer's plant.

6. That three (3) shippers, Guilford Galleries, Inc., Hendricks Furniture, Inc., and Blackwelder's Furniture Company, have executed contracts with Kindle Pick-Up and Delivery Service for the transportation of furniture from manufacturing plants to the shippers' retail stores.

7. That the revenue derived from Protestant's business with Blackwelder's Furniture Company as a common carrier amounted to 6.8 per cent of its total intrastate revenue for the month of May, 1974.

8. That the revenue derived from Protestant's business with Guilford Galleries, Inc., and Hendricks Furniture, Inc., tend to be small in amount, if any at all.

CONCLUSIONS

1. The Applicant has entered into and filed with the Commission written contracts with three shippers - Guilford Galleries, Inc., Hendricks Furniture, Inc., and Blackwelder's Furniture Company - for the transportation of furniture from manufacturing plants to the shippers' retail store.

2. The Applicant offers a specific type of service not otherwise available by existing means of transportation in

that his deliveries are prompt, that he has authority to refuse furniture at the manufacturer's plant if apparently defective, and that he will promptly return furniture to the manufacturer's plant if found defective by the shipper. That the three (3) shippers enumerated above have expressed their need for this specific type of service by executing contracts with Kindle Pick-Up and Delivery Service. It does appear, however, that Protestant, State Motor Lines, Inc., is adequately providing transportation of furniture for Blackwelder's Furniture Company located in Statesville, North Carolina.

3. The Applicant has proved that Guilford Galleries, Inc. and Hendricks Furniture, Inc. have a need for the specific type of service provided by Kindle Pick-Up and Delivery Service that is not otherwise available by existing means of transportation. The Applicant has failed, however, to prove this need with respect to Blackwelder's Furniture Company located in Statesville, North Carolina.

IT IS, THEREFORE, ORDERED that the Application of Horace E. Kindle, d/b/a Kindle Pick-Up and Delivery Service to extend its scope of authority by the addition of two shippers, Guilford Galleries Inc., and Hendricks Furniture, Inc., be and hereby is, granted.

ISSUED BY ORDER OF THE COMMISSION.

This 27th day of September, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1682, Sub 1

Horace E. Kindle
d/b/a Kindle Pick-Up and Delivery Service
1401 Woodbriar
Greensboro, North Carolina 27405

EXHIBIT "A"

Contract Carrier Authority

Transportation of Group 21: New Furniture, in a territory described as: "Transport new furniture from manufacturer's plants in McDowell, Burke, Caldwell, Alexander, Catawba, Iredell, Davie, Mitchell, Guilford, Davidson and Forsyth Counties to retail store sites of customers Boyle's Furniture Sales, Inc., Paramount Furniture Company, Inc., Young's Furniture and Rugs Co., Inc., and Black's Furniture Co., in High Point, North Carolina, and Guilford Galleries, Inc., in Greensboro, North Carolina, and Hendricks Furniture, Inc., in Mocksville, North Carolina, under

written bilateral contracts with Boyle's Furniture Sales, Inc., Paramount Furniture Co., Inc., Young's Furniture and Rugs Co., Inc., Black's Furniture Co., Inc., Guilford Galleries, Inc., and Hendricks Furniture Inc., and the return of rejected or returned products to such manufacturer's plants."

DOCKET NO. T-1685, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Howard Herlee Lisk, d/b/a Howard Lisk, Route 1, Box 166, Wadesboro, North Carolina, Application for Contract Carrier Permit. ) RECOMMENDED ORDER GRANTING PERMIT

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on March 7, 1974 at 10:00 A.M.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Mr. Henry T. Drake
Jones and Drake, Attorneys
W. Wade Street
Wadesboro, North Carolina

For the Commission:

Mr. Jerry B. Fruitt
Associate Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

Protestants:

None

RONEY, HEARING COMMISSIONER: By application filed with the Commission on December 10, 1973, Howard Herlee Lisk, d/b/a Howard Lisk, Route 1, Box 166, Wadesboro, North Carolina, seeks authority to operate as a contract carrier under a bilateral contract with Carolina Concrete Pipe Company transporting as follows:

> Group 2, Heavy commodities, and Group 21, finished concrete products including septic tanks, manholes, concrete slabs, and other pre-cast concrete products. All points in North Carolina.

Upon the call of this matter for hearing at the captioned time and place, applicant was present and represented by counsel. No one gave notice or appeared at the hearing in opposition to the granting of the contract carrier authority sought herein.

The applicant offered the testimony of Mr. Howard Lisk and Mr. Richard Johnson, Operations Manager of Carolina

Concrete Pipe Company of Charlotte, North Carolina. Mr. Lisk testified that he was financially able, experienced, physically fit and willing to perform the requested authority. Mr. Johnson testified that in transporting Carolina Concrete Pipe Company's products that special handling and equipment is required and that common carriers are unable to provide this service. Mr. Johnson further explained that the applicant and Carolina Concrete had entered into a bilateral contract whereby applicant would provide this specialized service for Carolina Concrete at a reasonable rate as set forth in their bilateral contract which was admitted into evidence as applicant's exhibit #1. The applicant presented no evidence to support his application for Group 2, Heavy Commodities.

Based upon the information contained in the verified application in the files of the Commission in this docket, and the evidence adduced at the public hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the applicant is experienced in the trucking business.

2. That the applicant has contracted to perform a specialized transportation service.

3. That the applicant plans to use specialized equipment in providing the service.

4. That the applicant is financially able to furnish adequate service on a continuing basis.

5. That no common carrier appeared able to perform the specialized transportation service.

CONCLUSION

The Hearing Commissioner concludes that the applicant has met the burden of proof required by G. S. 62-262 and has satisfactorily shown; that public convenience and necessity require the proposed service for Group 21 products in addition to existing authorized transportation service, that the applicant is fit, willing, and able to properly perform the proposed Group 21 service, and that the applicant is solvent and financially able to furnish adequate service on a continuing basis. The Hearing Commissioner also concludes that no evidence or need was presented for granting authority as to Group 2, heavy commodities, therefore, the application should be denied as to Group 2 products but granted as to Group 21.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Howard Herlee Lisk, d/b/a Howard Lisk, Route 1, Box 166, Wadesboro, North Carolina, be, and the same hereby

is, granted a contract carrier permit in accordance with Exhibit A attached hereto and made a part hereof, and that the application in all other respects is hereby denied.

2. That Howard Lisk file with the Commission evidence of the required insurance, lists of equipment, schedule of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This 19th day of March, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1685, SUB 1

Howard Herlee Lisk, d/b/a Howard Lisk
Route 1, Box 166
Wadesboro, North Carolina

EXHIBIT A

CONTRACT CARRIER AUTHORITY

Transportation of Group 21, other specific commodities, viz: finished concrete products including septic tanks, manholes, concrete slabs and other pre-cast concrete products under bilateral contract with Carolina Concrete Pipe Company from Charlotte, N. C., to all points and places within North Carolina with return of damages or rejected products.

DOCKET NO. T-1268, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Merchant's Pick-Up & Delivery Service, Inc., Road 1184, P. O. Box 9941, Burlington, North Carolina 27215 - Application for Contract Carrier Authority to Engage in the Transportation of Group 21, Toilet Preparations, Compounds, Waxes, Polishes, Brushes and Other Similar Items, Between all Points and Places in the State of North Carclina. | ) ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING CONTRACT OPERATING RIGHTS |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, On Thursday, May 2, 1974, at 2:00 p.m.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

W. Clary Holt
Sanders, Holt & Spencer
P. O. Drawer 59
Burlington, North Carolina 27215

For the Protestant:

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing For: West Brothers Transfer & Storage, Inc.

WOOTEN, HEARING COMMISSIONER: This matter arose upon the filing of an application by Merchant's Pick-Up & Delivery Service, Inc., on March 13, 1974, in which the Applicant seeks contract carrier authority in accordance with the following commodity and territory description:

"Group 21, Toilet Preparations, Compounds, Waxes, Polishes, Brushes and Premiums of General Merchandise such as Irons, Blankets, and Similar Items which are Shipper's Gifts to its Dealers, for the account of Stanley Home Products, Inc., over Irregular Routes, from all Points and Places within the State of North Carolina to all Points and Places within the State of North Carolina."

Notice of the application, giving a description of the commodity and territory for which authority is sought, and setting hearing for this time and place was given in the March 20, 1974, issue of the Commission's Calendar of Hearings. On April 10, 1974, a protest was filed on behalf of West Brothers Transfer and Storage, Inc., 1020 East Whitaker Mill Road (P. O. Box 6365), Raleigh, North Carolina 27608. By Order dated April 22, 1974, such protest and intervention was allowed by the Commission. The matter was called for hearing at the time and place indicated above. At the call of the case for hearing the Protestant, by and through its counsel, moved that it be allowed to withdraw its protest. Such motion was then allowed.

The Applicant, Merchant's Pick-Up & Delivery Service, Inc., offered the testimony of its President and Treasurer, Carl B. Coley, and the testimony of George Whitney, Distribution Manager, Richmond area, Stanley Home Products.

Based upon the verified application, the testimony offered at the hearing, and the official records of the Commission relating to this matter, the Hearing Commissioner now makes the following

FINDINGS OF FACT

1. That the Applicant, Merchant's Pick-Up & Delivery Service, Inc., currently conducts intrastate transportation operations in accordance with Contract Carrier Permit No. NCCT28 and interstate operations in accordance with Interstate Contract Carrier Permit No. MC|26|95.

2. That the operations proposed in the application herein conform with the definition of a contract carrier as contained in G. S. 62-3(8).

3. That the shipper herein, Stanley Home Products, Inc., has a need for a specific type of service not otherwise available by existing means of transportation and has entered into and filed with the Commission a written contract with the Applicant for said service, which contract provides for rates higher than those charged by common carriers for similar service.

4. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

5. That the proposed service will not unreasonably impair the use of the highways by the general public.

6. That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

7. That the proposed operations will be consistent with the public interest and the policy declared in Chapter 62.

Based upon the foregoing Findings of Fact, the Hearing Commissioner now reaches the following

CONCLUSIONS

In light of the criteria set forth in G. S. 62-262, the Hearing Commissioner concludes that the Applicant has borne the burden of proof in establishing the need for a specific type service not otherwise available by existing means of transportation and that the requested permit should be issued.

IT IS, THEREFORE, ORDERED

That the Contract Carrier Permit heretofore issued to Merchant's Pick-Up & Delivery Service, Inc., be, and hereby is, amended to include the authorization set forth in Exhibit "A" attached hereto.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1268, SUB 3

Merchant's Pick-Up & Delivery Service, Inc.
Road 1184, P. O. Box 941
Burlington, North Carolina 27215

Contract Carrier Authority

EXHIBIT A

Group 21, Toilet Preparations, Compounds, Waxes, Polishes, Brushes, and Premiums of General Merchandise such as Irons, Blankets, and Similar Items which are Shipper's Gifts to its Dealers, for the account of Stanley Home Products, Inc., over Irregular Routes, from all Points and Places within the State of North Carolina to all Points and Places within the State of North Carolina.

DOCKET NO. T-1693

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of Application of Russell D. Rorer, Lot 27, Carolina Sands Mobile Home Park, Spring Lake, North Carolina, to Transport Group 21, Mobile Homes or Housetrailers, from Points and Places in Cumberland County to all Points and Places in North Carolina and from Points and Places in North Carolina to Points and Places in Cumberland County | RECOMMENDED ORDER DENYING APPLICATION IN PART; GRANTING APPLICATION IN PART |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, April 5, 1974, at 10:00 a.m.

BEFORE: Robert F. Page, Hearing Examiner

APPEARANCES:

For the Applicant:

Clawson L. Williams, Jr.
Attorney at Law
P. O. Box 96
Sanford, North Carolina

For the Protestants:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
Box 535
Eden, North Carolina
Appearing for: Morgan Drive Away, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
Appearing for: Transit Homes, Inc.

PAGE, HEARING EXAMINER: By application filed with the Commission on January 28, 1974, the Applicant, Russell D. Rorer, seeks a Certificate of Public Convenience and Necessity from this Commission to operate as a common carrier over irregular routes transporting Group 21, Mobile Homes, from points and places in Cumberland County to all points and places in North Carolina and from points and places in North Carolina to points and places in Cumberland County.

Notice of the application, together with a description of the authority sought and data concerning the time and place of this hearing was published in the Commission's Calendar of Hearings issued February 15, 1974. Such Calendar required any person or organization wishing to protest the application or to intervene in these proceedings to file such protests or intervention with the Commission in accordance with Commission Rule R1-11 at least ten (10) days prior to the hearing. Timely protests to the authority sought were filed by counsel for and on behalf of Morgan Drive Away, Inc., and Transit Homes, Inc. Both protests, in essence, alleged that the granting of the authority requested in this application is not justified by public convenience and necessity and would have an adverse affect on the business of the protestants, who are both presently authorized by this Commission to perform, within the requested territory, services identical to those requested in the application. No other protests or interventions have been received by the Commission.

At the call of the hearing, at the time and place hereinabove specified, Applicant was present and was represented by counsel, as were the protestants.

The Applicant offered testimony as to his qualifications, business experience, and financial ability to perform the transportation service required for the authority he sought to acquire. He further testified concerning public convenience and necessity as follows: That he receives calls lots of times from individuals and dealers to move mobile homes to various points within the State of North Carolina; that many of these requested moves are not within the scope of the exempted authority which he presently holds from this Commission under Exemption Certificate #E-|7473; that three (3) of the six (6) witnesses brought by the Applicant to testify for him have had occasions to request him to make moves for them that he could not make; that if he were granted the authority requested he would exercise such authority and, if necessary, would acquire additional equipment to perform the services under said authority; that four (4) carriers, to wit - Morgan, National, Transit, and Benny Williams - have statewide authority to move mobile homes and, in addition, have terminals in the City of Fayetteville; that his present equipment is in use under his exempt certificate almost everyday of the week, and that 85 percent of such use is for operations under his exemption certificate as contrasted with hauls of his own personal property; that in the year |973, the Applicant made approximately 250 moves for persons other than himself; that the Applicant engages, to a slight extent, in the mobile home repair business; that 75 percent of the moves which Applicant makes are from mobile home sales lots and 25 percent of such moves are for individuals who privately contact him.

In addition, the Applicant offered the testimony of Mr. Percy Hall, Mr. Tom Rose, Mr. Bob Pruitt, Mr. Charles Conley and Mr. William Collins.

Mr. Percy Hall testified that he was in the real estate and mobile home park operating business; that he was formerly in mobile home sales; that in connection with his business as a mobile home park operator he had a need to move mobile homes almost anywhere in the State of North Carolina; that he has used the local service of Mr. Rorer, the Applicant, and he has been satisfied with said service; that he would use the Applicant's services under the authority applied for if such authority were granted; that he recalls on occasion having as much as four to five or six days delay in getting a mobile home moved by using one of the carriers presently authorized to move mobile homes throughout the State of North Carolina; that he would like to get service more rapidly than he has been able to get service by the presently authorized carriers; that in his opinion, the present service could be improved; that a large percentage of the mobile homes with which he deals are owned or occupied by persons connected with the United States Army at Fort Bragg, North Carolina; that because of the limitations of his presently existing exempt authority, Mr. Rorer cannot move persons who desire to have their mobile homes moved from a mobile home park in Spring Lake to points

and places in Cumberland and Harnett Counties toward Lillington, where several rural mobile home parks are located; that he has twice required the service of a mobile home mover during the year 1974; that he has arranged four intrastate movements of mobile homes for persons living in the trailer park that he operates during the year 1974; that legal restrictions on the movement of mobile homes could add to or could contribute to delays in getting mobile homes moved at any time; that such restrictions are outside the control of any mover, including the Applicant; that because of the deposit requirements at the mobile home parks which he operates, he knows usually two weeks to thirty days in advance before one of his tenants is going to move; that once in the last six months, he was unable to get a trailer moved as soon as he wanted it moved, but on that occasion he gave the mover only two days notice; that on that occasion he did not tell the mover that any emergency was involved; that on that occasion, he initially called Morgan Drive Away and they referred him to Transit Homes, who moved the trailer seven days later; that Mr. Rorer's place of business is located approximately two miles from the mobile home park which he operates; that the terminals of Morgan and Transit are located approximately thirteen miles from his mobile home park; that the Fayetteville - Spring Lake area needs another intrastate carrier, somebody who can move homes thirty or forty miles; that in general, it is not the long hauls but the short hauls that he has difficulty in arranging to have moved; that he has difficulty in obtaining setup service from Morgan Drive Away or any of the other carriers which he uses, other than the Applicant, Mr. Rorer; that to his knowledge there is a substantial amount of mobile home movement from Cumberland County to the adjoining counties of Harnett, Hoke and Lee; that part of his difficulty in obtaining setup service from Morgan and Transit was that he had not contracted separately for such services from them.

Mr. Tom Rose testified that he is the Manager of Southern Fountain Mobile Home Sales lot in Fayetteville; that every time a mobile home is sold off of his lot or one of the other three Southern Fountain lots in the State of North Carolina, the mobile home sold has to be moved and that Southern Fountain does not maintain its own equipment to make such moves; that the other sales lots are located in Rocky Mount, Wilmington, and Jacksonville; that on many occasions personnel of Southern Fountain on one sales lot will sell a home which is actually located on a separate Southern Fountain sales lot and the home will have to be moved to a third separate location; that on several occasions, he has had difficulty in obtaining the type of transportation needed in his business; that on one occasion in October of 1973 when he had to have a home moved from Fayetteville to Moyock, North Carolina, which is located near the Virginia border in the northeastern corner of North Carolina, he used the services of Transit Homes, Inc.; that, on that occasion, because of an act of God one-half of the double-wide unit was destroyed and a month and one-half

elapsed before the home was completely installed to the customer's satisfaction; that during the month of April, 1974, in attempting to get a home moved from Fayetteville to Elizabeth City, he called both Transit and Morgan, but on the morning of the hearing three days had elapsed since he called them and neither had, at that time, given him a date by which the home could be moved; that during the month of February, he sold three homes from Southern Fountain's Jacksonville sales lot which had to be moved to Cumberland County and, though he called both Transit and Morgan, he was unable to get the homes moved when he wanted them moved; that he would like to have "same day" service if possible, but that in his opinion, "adequate service" would be a move made within three or four days after the mover is called; that in his opinion, as it concerned Southern Fountain and its needs, there are not enough movers in the Fayetteville area to provide adequate service; that within the limitations of his exempt certificate, Mr. Rorer has moved several mobile homes for Southern Fountain and such service has been satisfactory; that if Mr. Rorer were granted the rights he has applied for, Southern Fountain would use his service under those rights; that there are 48 mobile home sales dealers in Cumberland County; that North Carolina is rated number three or number four in the nation in selling mobile homes; that within the State of North Carolina, Charlotte is the biggest sales area and Fayetteville and Raleigh run neck and neck for second as far as sales or total mobile homes in the area are concerned; that a portion of the difficulties in completing the Moyock move described earlier, was a disagreement concerning liability insurance; that since September of 1973, there have been 35 sales of mobile homes made from the Fayetteville sales lot of Southern Fountain; that of those 35, twelve were sold during the year 1974 in January, February and March; that of these twelve homes sold in 1974, four were moved to places within Cumberland County, one to New Hanover County, and one to Jacksonville, one to Robeson County, three into Harnett County, and one into Hoke County; that for most of these moves, it was necessary for him to use equipment owned by United Mobile Homes of Fayetteville; that the reason he had to use the other dealer's equipment is because the regulated carriers did not have anything available.

Mr. Bob Pruitt testified that he was the owner and manager of a 35-lot mobile home park in Spring Lake, North Carolina; that he owns 27 of the trailers located in the park; that he does a lot of buying of repossessed mobile homes and, in connection therewith, has a need for transportation of mobile homes; that he assists persons who own their own trailers within his mobile home park in getting their trailers moved; that when he buys a repossessed trailer, he needs to have a mover go immediately to the trailer as soon as he is notified that his bid is accepted, because of the danger of break-ins and vandalism; that he has used the services of the Applicant, Mr. Rorer, and is 100 percent satisfied with them; Mr. Rorer takes two trucks, picks up the trailer and moves it, bringing along the blocks and the

oil drum, which saves a lot of money; none of the other movers that he has used provide the service of hauling the blocks and oil drums; that there are thousands of mobile homes in Cumberland County; that based on his experience in the mobile home park business over a period of some sixteen years, it is his opinion that there is a need for additional moving service in the Cumberland County area and that there is certainly room for improvement in the present service; that he bases his opinion upon calls that he receives from people who need mobile homes moved and who cannot get them moved; that if Mr. Rorer is granted the rights which he has applied for, he would use him for his intrastate needs in hauling trailers; that his particular needs as far as mobile home moving is concerned, are for someone who can move a trailer almost immediately; that what he means when he says he has experienced delays is that he encounters a situation where he cannot get someone to move a repossessed mobile home almost immediatley; that he bought 15 mobile homes for himself during the year 1973, most of which were repossessions from Cumberland County; of the 27 trailers that he owns, approximately 20 of them came from Cumberland County; of the 15 trailers which he purchased during 1973, Mr. Rorer moved 90 percent of them; that of the 15 purchases made during the year 1973, Mr. Rorer was able to move all of them but one under his present authority and that one was moved by Morgan Drive Away; that in seeking mobile home moving services, he shops around to get the best price; that at the present time the Applicant has the cheapest price in the long run, because he will pick up the blocks, drums, and everything and bring them and set them up; that one time during 1973 he called Morgan to move a trailer from Goldsboro to Spring Lake and Morgan was unable to move the trailer within five days, so he was forced to go to Goldsboro to secure a hauler there to move the trailer to Spring Lake; that he is planning to expand his mobile home park by putting on 20 more lots; that during the year 1973 he had ten or twelve trailers that were inside his mobile home park which moved from his park to somewhere else; that with the present transportation facilities offered, he was able to get them all moved, but it took a while; that he had had difficulty in getting Morgan Drive Away's people to move blocks and drums; and that sometimes the repossessed trailers that he bought were moved under the blanket authority of equipment owned by a sales lot operator.

Mr. Charles Conely testified as a character witness for the Applicant. He stated that he had known the Applicant for a little over eleven years and that the Applicant's character and reputation in the Spring Lake community has been nothing short of outstanding in the eleven years that he had known him; and that he has had occasion to refer customers to Mr. Rorer for mobile home moving services.

Mr. William Collins testified that he is in the mobile home repair business at the present time, but was manager of a mobile home park until a few days prior to the date of the hearing; that among his duties as manager of the mobile home

park was to assist in securing the transportation of mobile homes; that in his present business of mobile home repair, he has a need for mobile home transportation; that he gets lots of calls to move mobile homes, but that he is not in the mobile home moving business; that whenever the move is less than five or six miles, he tells the callers to contact Mr. Rorer; that in his mobile home repair business, he would make bids with insurance companies to repair burned out mobile homes and if his was the winning bid, it would be necessary for him to secure transportation services to move the mobile home from where it was located to his repair lot in Spring Lake; that the trailers involved could be located in Jacksonville, Wilson or other places; that during June or July of 1973 while he was managing the mobile home park, he contacted Transit Homes to move a trailer from Spring Lake to Rocky Mount for a soldier who was being discharged; that Transit verbally agreed to move the home on the soldier's date of discharge, but was three days late in arriving to make the move and even then Transit did not take down the blocks on the trailer and he had to do it himself.

Mr. Charles Prince, who was present in the courtroom to corroborate the testimony of Mr. Charles Conley as to the Applicant's character, was tendered to the Protestants for cross-examination, but no questions were asked. Applicant's unverified balance sheet of assets was then accepted into the record and the Applicant rested.

Mr. Forrest Strange testified that he is employed by Transit Homes, Inc., out of Greenville, South Carolina, as district manager and has been so employed since the middle of September, 1973; that his jurisdiction covers North Carolina among other states and that he spent three weeks and four days in North Carolina during the month of March, 1974; that Transit Homes' Exhibit No. 1 showed the following things - (a) A copy of Transit's authority in the State of North Carolina under Certificate No. C-812, (b) A copy of the Order granting Transit the authority to operate the intrastate interstate North Carolina, (c) A list of the advertising media that Transit uses, both nationally, regionally, and locally for advertising its services available within the State and throughout the nation, (d) A copy of Transit's equipment list of North Carolina based trucks and the terminals out of which they operate (as corrected), (e) A list of the North Carolina telephone directories in which Transit advertises in the yellow pages under the name of Transit Homes, Inc., and (f) The location of the Fayetteville terminal that the company will accept collect calls, but prefer such collect calls to be made to the home office in Greenville, South Carolina and not to the local terminal; that the difficulties earlier described by Applicant's witness Rose, in the double-wide trailer move from Fayetteville to Moyock, were not caused by the culpable negligence of Transit Homes, Inc.; that the Transit terminal in Fayetteville had received no call from Mr. Rose requesting a trailer to be delivered to Elizabeth City; that the company has a policy not to honor damage claims until

all outstanding freight due bills for the movement in question have been paid; that all of the equipment being operated under the authority of Transit Homes, Inc., stationed in North Carolina is available to make moves into and out of the Fayetteville-Spring Lake area, and other equipment can be made available, if necessary; that from his personal observation and knowledge of the equipment during the month of March, it is not being used to capacities; that the company has carried out and is presently willing and able to carry out its obligations to its franchise in the Fayetteville area; that he knows of no need for transportation in the Fayetteville area that is not being met; that he gets complaints from his drivers because they are not getting sufficient business to stay fully employed; that Transit does not actually own any of the trucks listed in its Exhibit No. 1, but such trucks are instead owned by their operators who are independent contractors operating under Transit's authority; that the first $100 of any damage claim brought against a move made by Transit, is borne by the operator of the vehicle involved and not by Transit; and, that the trucks listed in Transit's Exhibit No. 1 are licensed in the State of North Carolina under the name of Transit Homes, Inc.

Mr. Jack Kent testified that he is District Manager for Morgan Drive Away, Inc., and that Morgan holds authority for intrastate transportation of mobile homes in North Carolina under Certificate No. C-762; that in the course of his duties for Morgan, he travels about three weeks out of every four inside the State of North Carolina; that once every three weeks he is in the Fayetteville area because Morgan has a terminal there; that Morgan has fifteen terminals and 63 drivers scattered generally throughout the State of North Carolina; each driver is assigned to a particular terminal because he lives in that immediate area, but such drivers are free to work anywhere in the State; six drivers are assigned to the Fayetteville terminal; Morgan Drive Away has experienced a tremendous revenue loss in the previous six months and has, therefore, been required to drop its number of North Carolina drivers from 87 to 63 due to a lack of business; Morgan could use more business in the Fayetteville area; Morgan advertises in the yellow pages of the Fayetteville telephone book and accepts collect calls; Southern Fountain Mobile Homes is a substantial customer of Morgan in the State of North Carolina; that Morgan is not aware of any complaints having been received from any representative of Southern Fountain in connection with the services offered by Morgan in North Carolina; that Morgan is presently in a position to handle the needs outlined by the Applicant's witnesses; that granting the requested authority would have a harmful effect on Morgan's business and its drivers assigned to the Fayetteville area; that the mobile home industry business is off generally - including factories, building, sales, as well as moving; that, theoretically, each of Morgan's present 63 drivers is available to make moves from Cumberland County to some other point in the State and from other points in the State to

Cumberland County; that, in his opinion, there is no need for any additional carriers in the Fayetteville-Spring Lake area or in the State of North Carolina; that he knows of no instance where Morgan has had a delay in a requested movement over forty-eight hours other than those caused by inclement weather; that Morgan drivers do not necessarily prefer the long hauls over the minimum runs; and, that if necessary Morgan would send a driver from Asheville to pick up a trailer in Fayetteville and carry it to Manteo.

Based on the foregoing testimony and exhibits adduced at the hearing, the verified application and the Commission's official records relating to this docket, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. The Applicant, Russell D. Borer, is presently engaged in the business of transporting Group 21, Mobile Homes, within the City of Fayetteville and the Town of Spring Lake, Cumberland County, North Carolina, and their commercial zones, pursuant to authority contained in Exemption Certificate Number E-17473 previously granted by this Commission.

2. During the year 1973, Applicant's equipment was in use almost everyday of the week. Applicant made approximately 250 moves during 1973, and of those, 85 percent were made under the exempt authority previously granted.

3. The Applicant now proposes to engage in such business as an irregular route common carrier on a statewide basis - that is, from points and places in Cumberland County to all points and places throughout North Carolina and from points and places in North Carolina to points and places within Cumberland County.

4. The Applicant is fit, willing and able to properly perform the proposed service.

5. The Applicant is solvent and financially able to furnish adequate service as proposed by him on a continuing basis.

6. Each of the Protestants, Morgan Drive Away, Inc., and Transit Homes, Inc., has been duly certified by this Commission as an irregular route intrastate common carrier of Group 21, Mobile Homes, on a statewide basis. Granting the authority requested by Applicant would place him in direct competition with Protestants throughout the State of North Carolina.

7. There is a public need and a demand in addition to existing, authorized service, for the services offered by Applicant, both into, out of and outside of Cumberland County, but only on a "short-haul" basis. The services of

existing carriers are inadequate for the needs of Southern Fountain Mobile Homes Sales and its customers for moving service to and from the four (4) Southern Fountain sales lots in eastern North Carolina.

8. There are approximately forty-eight (48) mobile home sales dealers in Cumberland County. North Carolina ranks third or fourth in the nation in annual sales of mobile homes. Cumberland County is tied with Wake County (both behind Mecklenburg County) for second place in terms of annual sales of mobile homes by County within the State of North Carolina.

9. The Applicant presently includes in his total moving package charge the following services - unblocking, setup and connection of water and sewer lines. These services are difficult to obtain from drivers employed by Protestants and even if obtained, require payment of an additional charge pursuant to tariffs filed with this Commission.

10. Neither Protestant owns the equipment used to make hauls under its franchise rights, but each instead hires drivers who are independent contractors owning their own equipment to make such hauls.

11. Transit Homes has eight (8) trucks and drivers assigned to its Fayetteville terminal. Morgan Drive Away has six. Drivers for both companies have stated that they could take care of more business in the Fayetteville area. Sales of mobile homes have been declining. In 1973, Morgan was required to drop its total number of North Carolina drivers from 87 to 63 due to lack of business.

Based on the foregoing Findings of Fact, the Hearing Examiner now reaches the following

## CONCLUSIONS

Chapter 62 of the General Statutes of North Carolina requires that the Applicant for irregular route common carrier authority prove the existence of a public need and demand for the services proposed by the Applicant in addition to existing, authorized service. The statutes permit the Commission to disregard the form of the Application if the Applicant has merely misconceived the type of authority to which he is entitled. They do not permit the Commission to enlarge the scope of the authority applied for without notice to the Protestant. The statutes do allow the Commission to grant an Applicant "lesser included authority," when such authority is included within the scope of the authority applied for and noticed, and when Protestants have full opportunity to cross-examine and contravene evidence offered by the Applicant which tends to show a public need and demand for any new authority. The present Applicant has offered competent, material and substantial evidence tending to show the need for an additional irregular route common carrier of Group 2,

Mobile Homes, on a short-haul basis into, out of and outside of Cumberland County. The essential needs not presently being met are for short-range hauls of around forty to fifty miles from the Fayetteville-Fort Bragg-Spring Lake area and the needs of Southern Fountain and its customers for constant, point-to-point service to and from the four North Carolina sales lots of Southern Fountain. The Applicant has applied for statewide, irregular route, common carrier authority to and from Cumberland County. The Applicant has failed to carry his burden of proof to show that there is a public need and demand for the statewide services proposed by him in addition to existing service. Based on Finding of Fact Number 7 and the general principals of law hereinabove discussed, the requested authority must, therefore, be denied. However, as hereinabove discussed, the Applicant has demonstrated a public need and demand for short-haul authority, which is desirable and highly important to the public convenience and, accordingly, is required by public convenience and necessity and should, therefore, be established by Order of this Commission.

Protestants have offered evidence tending to show that their drivers were not fully employed and that their business was declining. In general, they contended that such business declines were caused by illegal and unwarranted competition and declines in the sales of mobile homes. The evidence offered at the hearing would equally support a conclusion that their business declines were caused by delays in completing contracted moves and failures by their drivers to offer as good a quality of service as the Applicant, particularly in the areas of unblocking, setting up and connection services. Certainly, there is no inherent advantage to Mr. Rorer because he lives in the local area and presumably participates in community and civic affairs. Protestants have fourteen (14) drivers living in the area who should be equally capable of building a reputation for good character and quality service. In any event, neither the public policy of this State as evidenced in Chapter 62 of the Statutes and the cases decided thereunder nor the public policy of the United States as evidenced by federal anti-trust laws and cases, preclude the entry of a competing carrier in a regulated industry where a demonstrated public need and demand therefor exists.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Russell D. Rorer, be, and hereby is, granted authority as an irregular route common carrier to transport Group 21, Mobile Homes, in accordance with Exhibit B attached hereto.

2. That operations shall begin under this authority when Applicant has filed with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of

which should be accomplished within thirty (30) days from the effective date of this Order.

3. That the authorization herein set forth shall constitute a certificate until formal certificate shall have been issued and transmitted to the Applicant authorizing the transportation herein described.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1693

Russell D. Rorer
Lot 27
Carolina Sands Mobile Home Park
Spring Lake, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Mobile Homes, as follows:

(a) Between all points and places within Cumberland County;

(b) From points and places in Cumberland County to points and places within the Counties of Robeson, Bladen, Sampson, Johnston, Harnett, Lee, Moore, Hoke and Scotland;

(c) From points and places within the Counties of Robeson, Bladen, Sampson, Johnston, Harnett, Lee, Moore, Hoke and Scotland to points and places in Cumberland County;

(d) From points and places within the Counties of Cumberland, New Hanover, Onslow, Nash and Edgecombe to points and places within a fifty (50) mile radius of the Towns of Wilmington, Jacksonville and Rocky Mount;

(e) From points and places within the Counties of New Hanover, Onslow, Nash and Edgecombe to

points and places in Cumberland County.

DOCKET NO. T-1693

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Russell D. Rorer, Lot 27, Carolina Sands Mobile Home Park, Spring Lake, North Carolina, to Transport Group 21, Mobile Homes or Housetrailers, from Points and Places in Cumberland County to all Points and Places in North Carolina and from Points and Places in North Carolina to Points and Places in Cumberland County | ) | ORDER MODIFYING RECOMMENDED ORDER OF JUNE 10, 1974 |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, July 25, 1974, at 9:00 a.m. (Oral Argument on Exceptions to Recommended Order)

BEFORE: Chairman Marvin R. Wooten (presiding) and Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Clawson L. Williams, Jr.
Attorney at Law
P. O. Box 96
Sanford, North Carolina

For the Protestants:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
Box 535
Eden, North Carolina
Appearing for: Morgan Drive Away, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
Appearing for: Transit Homes, Inc.

BY THE COMMISSION: By application filed with the Commission on January 28, 1974, the Applicant, Russell D. Rorer, seeks a Certificate of Public Convenience and Necessity from this Commission to operate as a common

carrier over irregular routes transporting Group 21, Mobile Homes, from points and places in Cumberland County to all points and places in North Carolina and from points and places in North Carolina to points and places in Cumberland County.

Notice of the application, together with a description of the authority sought and data concerning the time and place of this hearing was published in the Commission's Calendar of Hearings issued February 15, 1974. Such Calendar required any person or organization wishing tc protest the application or to intervene in these proceedings to file such protests or intervention with the Commission in accordance with Commission Rule R1-11 at least ten (10) days prior to the hearing. Timely protests to the authority sought were filed by counsel for and on behalf of Morgan Drive Away, Inc., and Transit Homes, Inc. Both protests, in essence, alleged that the granting of the authority requested in this application is not justified by public convenience and necessity and would have an adverse affect on the business of the protestants, who are both presently authorized by this Commission to perform within the requested territory, services identical to those requested in the application. No other protests or interventions have been received by the Commission.

At the call of the hearing, at the time and place hereinabove specified, Applicant was present and was represented by counsel, as were the protestants. The hearing was held and testimony received substantially as recited by the Hearing Examiner in his Recommended Order dated June 10, 1974. Such Recommended Order granted the authority sought by Applicant in part and denied part of the requested authority.

Following its issuance, exceptions and requests for Oral Argument on the Recommended Order were filed on June 18, 1974, by Morgan Drive Away, Inc., and on June 25, 1974, by Transit Homes, Inc. Oral Argument on the exceptions was heard by the Commission on July 25, 1974.

Based on the verified application, the transcript of the evidentiary hearing, the statements and arguments of counsel at the hearing on exceptions and the entire record in these proceedings, the Commission now finds, determines and concludes as follows: (1) The Findings of Fact made by the Hearing Examiner in his Recommended Order are hereby adopted as the Findings of Fact by this Commission; (2) The Conclusions as determined by the Examiner are hereby adopted by the Commission as its Conclusions and (3) The scope of authority granted to the Applicant by the Hearing Examiner in subparagraph (d) of Exhibit B attached to the Recommended Order is in excess of the authority requested and exceeds that for which notice was given. The exceptions thereto ought to be, and are hereby, granted.

IT IS, THEREFORE, ORDERED:

1. That the Recommended Order of the Hearing Examiner in this Docket is hereby modified by deleting therefrom the authority granted in subparagraph (d) of Exhibit B attached to the Recommended Order. In all other respects, the Recommended Order is hereby affirmed and adopted as the Order of this Commission.

2. That the Applicant, Russell D. Rorer, be, and hereby is, granted authority as an irregular route common carrier to transport Group 21, Mobile Homes, in accordance with Exhibit B attached hereto.

3. That operations shall begin under this authority when Applicant has filed with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of which should be accomplished within thirty (30) days from the effective date of this Order.

4. That the authorization herein set forth shall constitute a certificate until formal certificate shall have been issued and transmitted to the Applicant authorizing the transportation herein described.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of September, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1693

Russell D. Rorer
Lot 27
Carolina Sands Mobile Home Park
Spring Lake, North Carolina

Irregular Route Common Carrier

EXHIBIT B

Transportation of Group 21, Mobile Homes, as follows:

(a) Between all points and places within Cumberland County;

(b) From points and places in Cumberland County to points and places within the Counties of Robeson, Bladen, Sampson, Johnston, Harnett, Lee, Moore, Hoke, Scotland, Onslow, New Hanover, Nash and Edgecombe.

(c) From points and places within the Counties of Robeson, Bladen, Sampson, Johnston, Harnett, Lee, Moore, Hoke, Scotland, Onslow, New Hanover, Nash and Edgecombe to points and places in Cumberland County.

DOCKET NO. T-1667

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Thomas Woodrow Shirley, d/b/a Smithfield Motor Company, 611 Truck Lane, Smithfield, North Carolina - Application for Authority to Transport Mobile Homes | ) ) ) ) | RECOMMENDED ORDER GRANTING COMMON CARRIER AUTHORITY |

HEARD IN: The Commission Library, Ruffin Building, Raleigh, North Carolina, on October 16, 1973, at 10:00 A.M.

BEFORE: Don D. Coordes, Examiner

APPEARANCES:

For the Applicant:

Charles P. Wilkins
Broughton, Broughton, McConnell & Boxley
Attorneys at Law
P. O. Box 2387
Raleigh, North Carolina 27602

For the Protestant:

W. G. Ricks (Appearing for Himself)
Ricks Trailer Park
Route 3
Selma, North Carolina 27576

For the Commission Staff:

John R. Molm
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina

COORDES, EXAMINER: By Application filed with this Commission on July 11, 1973, Thomas Woodrow Shirley, d/b/a Smithfield Motor Company, 611 Truck Lane, Smithfield, North Carolina (hereinafter called "Applicant"), seeks authority to operate in intrastate commerce in North Carolina as a motor common carrier of property transporting as follows:

Group 21: (a) Mobile Homes, (b) Prefabricated Buildings on wheeled underridings (low boys)

1. From Johnston County to all points and places within the State of North Carolina;
2. From all points and places within the State of North Carolina to Johnston County;
3. Between all points and places within Johnston County.

Notice of the Application was published in the Commission's Calendar of Hearings issued July 17, 1973, said Notice giving a description of the authority sought and the time and place for hearing.

A protest to the Application was timely filed by W. G. Ricks, d/b/a Ricks Trailer Park, Route 3, Selma, North Carolina.

The Applicant offered the testimony of Mr. M. W. Knott, Mr. Frank Holding, Mr. Cecil Heavner, Mr. Earl Radford, Mr. Wilbert Williams, Mr. C. L. Gurganus, Mr. Waylon Bradwell, Mr. Dan Heavner and Mr. Thomas W. Shirley.

Mr. M. W. Knott, Johnston County electrical inspector, stated that he inspected mobile homes throughout Johnston County, except for the municipalities of Benson, Smithfield and Selma. He testified that the number of mobile homes in Johnston County has grown continuously, that he is inspecting an average of 65 mobile homes per month. He introduced an exhibit that indicated a substantial annual increase in the number of mobile homes inspected.

Mr. Holding, Vice President of the First Citizens Bank and Trust Company, Smithfield, testified that Mr. Shirley was a fit and proper person to perform the proposed service, and that he was solvent and financially able to furnish adequate service. Mr. Holding stated that the bank required prompt service when they repossessed mobile homes.

Mr. Cecil Heavner testified that he rented several mobile office units to construction companies, and planned to expand and provide mobile homes in case of disasters and other short-term arrangements. Presently, he stated it was difficult to find a full service mover. He described Mr. Shirley as a good and fair dealing businessman.

Mr. Radford testified that he owned a small trailer park, that he found it necessary to move some mobile homes with his wrecker, and that with the increasing demand for mobile home service and transportation, both Mr. Ricks and Mr. Shirley could serve the county.

Mr. Williams, a mobile court operator, estimated that sufficient demand existed for both Mr. Ricks and Mr. Shirley to engage in the transportation of mobile homes.

Mr. Gurganus, a member of the Town Board of Smithfield, stated that approximatley 200-250 mobile homes were located in Smithfield. He testified as to his belief that Mr. Shirley could provide adequate service.

Mr. Bradwell testified that he experienced difficulty in obtaining the services of a mobile home mover. He also stated that Mr. Shirley was financially able.

Mr. Dan Heavner testified that he had started construction of a 104 lot trailer park and that he would require the services of Mr. Shirley. He stated that Mr. Ricks was unable to provide the service he required.

Mr. T. W. Shirley testified that he had a 1969 Ford Puller, a 1964 Mack tractor, and a 1964 flatbed. He proposed to purchase a 1974 Puller and introduced a bid he had received. He related that this experience in mobile home moving resulted from his dealership in mobile homes. He stated that his facilities were adequate, that his office was open 7 days a week, and that he employed experienced drivers. He estimated that he had one request a day for mobile home moving, and that people were incurring delays of one to ten days before being moved. He testified as to his plans to provide a set-up service and wheels and tires when required. He estimated that he would make two deliveries per day. Upon cross-examination, Mr. Shirley admitted that recently his tow truck had been wrecked, that it had no windshield, no top, and that he had installed two roll bars for reinforcement.

Mr. Ricks, the protestant, testified for himself. He stated that he had never refused service to anyone, that he does block up trailers, but does not move cement steps or install window air conditioners, that he rents tires and wheels to the people being moved when required, and that even with the increase in business his tow truck was idle for one-third of the time. Mr. Ricks testified that he could move up to four mobile homes per day. Only recently though, he testified, did he become a full time mobile home mover. He believed many mobile homes were being moved illegally.

Upon consideration of the Application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) That because of the increasing demand for mobile home moves, public convenience and necessity require the proposed service, in addition to existing authorized transportation service.

(2) That with his experience, facilities and equipment, the Applicant is fit, willing and able to properly perform the service proposed.

(3) That the Applicant is qualified financially and otherwise to acquire the authority sought and provide adequate and continuous service thereunder.

(4) That the Applicant's tow truck, the vehicle recently wrecked with no windshield and no top, fails to meet the safety standards set forth in the Commission's rules and regulations.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Thomas Woodrow Shirley, d/b/a Smithfield Motor Company, 611 Truck Lane, Smithfield, North Carolina, be, and is hereby, granted a common carrier certificate in accordance with Exhibit B attached hereto.

(2) That the Applicant's tow truck, failing to meet the safety standards set forth in the Commission's Rules and Regulations, shall not be engaged in the operation of Applicant's mobile home moving business until such truck is repaired and meets the safety standards set forth in the Commission's Rules and Regulations.

(3) That Thomas Woodrow Shirley, d/b/a Smithfield Motor Company, file with the Commission evidence of the required insurance, lists of equipment, tariff of rates and charges, designation of Process Agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority acquired herein within thirty (30) days from the date this Order becomes final.

(4) That this Order, upon becoming final, shall constitute a certificate until a formal certificate shall have been issued to the Applicant.

ISSUED BY ORDER OF THE COMMISSION.

This 17th day of January, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1667

Thomas Woodrow Shirley,
d/b/a Smithfield Motor Company
611 Truck Lane
Smithfield, North Carolina

EXHIBIT B

Irregular Route Common Carrier
Transportation of Group 21, Mobile Homes and Prefabricated Buildings on wheeled underridings (low boys), from Johnston County to all points and places within the State of North Carolina; from all points and places within the State of North Carolina to Johnston County; and between all points and places within Johnston County.

DOCKET NO. T-1425, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Glosson Motor Lines, Inc., P. O. Box 1328,<br>Lexington, North Carolina 27292 - Petition<br>for Approval of Merger of State Motor<br>Lines, Inc., P. O. Drawer 4187, Longview<br>Station, Hickory, North Carolina 28601,<br>into Glosson Motor Lines, Inc. | ) | ORDER<br>APPROVING<br>MERGER |

BY THE COMMISSION: By joint petition filed with the Commission on April 12, 1974, Mr. Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, Raleigh, North Carolina, for and on behalf of State Motor Lines, Inc., (State) P. O. Drawer 4187, Longview Station, Hickory, North Carolina, and Glosson Motor Lines, Inc., (Glosson), P. O. Box 1328, Lexington, North Carolina, seeks approval of the merger of State Motor Lines, Inc., together with the operating authority thereof, into Glosson Motor Lines, Inc., with Glosson Motor Lines, Inc., being the surviving corporation and operator thereof.

Notice of the petition, together with a description of the involved authority, was published in the Commission's Calendar of Hearings issued May 2, 1974. The notice contained the provision that if no protests are filed by 5:00 P.M., Thursday, May 23, 1974, the Commission will decide the case on the record; and if protests are filed within the time specified, the Commission will set the matter for hearing.

No protests were filed and the petition is unopposed.

It appears from the petition, the representations contained therein, the documentary evidence attached thereto and the investigation conducted by the Commission Staff that Glosson is the owner of all the issued and outstanding capital stock of State; that the proposed merger will result in corporate simplification and will enable Glosson to operate more efficiently and economically; that the proposed merger will not affect or diminish the service to the public presently being rendered by State; that State holds Common Carrier Certificate No. C-102 and is currently conducting operations thereunder and that Glosson is qualified financially and otherwise to meet such reasonable demands as the business may require.

Upon consideration of the record in this matter as a whole, the Commission is of the opinion, finds and concludes, that the merger of State Motor Lines, Inc., together with the operating authority thereof, into Glosson Motor Lines, Inc., is in the public interest, will not adversely affect the service to the public by other public utilities, that Glosson is fit, willing and able to perform such service to the public under said franchise, and that

service under said franchise has been continuously offered to the public up to the time of filing the petition herein, and that the petition should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the merger of the operating authority contained in Common Carrier Certificate No. C-102, as more specifically described in Exhibit B attached hereto and made a part hereof, of State Motor Lines, Inc., into Glosson Motor Lines, Inc., with Glosson Motor Lines, Inc., being the surviving corporation and operator thereof, be, and the same is hereby, approved.

(2) That Glosson Motor Lines, Inc., file with the Commission evidence of insurance, list of equipment, tariff of rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority acquired herein within thirty (30) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1425, SUB 1

Glosson Motor Lines, Inc.
Lexington, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of general commodities except those requiring special equipment, over irregular routes between points and places in the area of the State east of the counties of Transylvania, Haywood, Madison, Yancey, Mitchell, Avery, Watauga, Ashe, Alleghany and west of the counties of Onslow, Jones, Carteret, Pamlico, Beaufort, Washington, Chowan and Gates.

DOCKET NO. T-92, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Carolina Delivery Service Company, Inc., Charlotte, North Carolina - Suspension and Investigation of Proposed Increase in Rates and Charges, Including a Proposed Increase of Fifty (50) Cents in Minimum Charges, Scheduled to Become Effective June 3 and March 6, 1974, Respectively | ) | ORDER GRANTING RATE INCREASE |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, September 17, 1974, at 9:30 a.m.

BEFORE: Commissioners Hugh A. Wells, presiding, and Ben E. Roney and Tenney I. Deane, Jr.

APPEARANCES:

For the Respondent:

H. Morrison Johnston
Miller, Creasy, Johnston & Allison
Attorneys at Law
923 Law Building
Charlotte, North Carolina

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing with this Commission of an application by Carolina Delivery Service Company, Inc., Charlotte, North Carolina, of a tariff schedule proposing an increase of fifty cents ($.50) in minimum charges applicable on North Carolina intrastate shipments of various commodities scheduled to become effective March 6, 1974, and designated as Carolina Delivery Service Company, Inc., Motor Freight Tariff No. 3-B, NCUC No. 9, Supplement No. 10, Item 180-D thereto, and tariff filing by Carolina Delivery Service Company, Inc., on May 6, 1974, proposing an increase of approximately 11% in rates and charges applicable on North Carolina intrastate shipments of various commodities scheduled to become effective June 3, 1974, and designated as Carolina Delivery Service Company, Inc., Motor Freight Tariff No. 3-C, NCUC No. 11.

Order of Suspension and Investigation and Notice of Hearing was issued by the Commission on March 5, 1974, with a Supplemental Order of Suspension and Investigation and Notice of Hearing being issued on May 15, 1974. Petitions for Temporary Relief regarding the aforementioned tariff filings have been filed with the Commission and approved by appropriate Commission Order. The hearing was rescheduled on this matter to September 17, 1974, at 10:00 a.m., in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina.

Motion to Cancel Hearing was filed with the Commission on September 6, 1974, by Respondent. Said Motion was denied by Commission Order dated September 13, 1974.

Respondent offered the testimony of Mr. Harmon Vickers, Vice President, Carolina Delivery Service Company, Inc., who testified regarding the equipment owned, services provided, and financial status of Carolina Delivery Service Company, Inc. Mr. Vickers was cross-examined by the North Carolina Utilities Commission's Staff Attorney.

The Commission Staff offered the testimony of James L. Rose, Rate Specialist with the North Carolina Utilities Commission, who offered testimony and exhibits detailing the effect that the proposed tariff increases would have on Carolina Delivery Service Company, Inc.'s North Carolina intrastate operations.

Mr. George E. Dennis, Staff Accountant of the North Carolina Utilities Commission, offered testimony and exhibits regarding Carolina Delivery Service Company, Inc.'s expenses, revenues and operating ratios. Mr. Dennis further offered testimony regarding transactions between certain companies affiliated with Carolina Delivery Service Company, Inc.

Based on the testimony given, exhibits presented, and the evidence adduced, the Commission makes the following

## FINDINGS OF FACT

1. That Carolina Delivery Service Company, Inc., is a common carrier holding Common Carrier Certificate No. C-116 and is subject to regulation by this Commission and is properly before the Commission with respect to the proposed increases in its rates and charges.

2. That Respondent proposes to increase by fifty cents ($.50) its minimum charges applicable on North Carolina intrastate shipments of various commodities designated as Carolina Delivery Service Company, Inc., Motor Freight Tariff No. 3-B, NCUC No. 9, Supplement No. 10, Item No. 180-D.

3. That Respondent proposes an increase of approximately 11% in rates and charges applicable on North Carolina

intrastate shipments of various commodities designated as Carolina Delivery Service, Inc., Motor Freight Tariff No. 3-C, NCUC No. 11.

4. That proper formula and methods were not utilized in order to make separation of expenses and revenues to be allocated to North Carolina intrastate shipments.

5. That Respondent herein should undertake a study program to develop and determine a more accurate and equitable method or methods of separation to improve the probative force and effect of its evidence concerning the derivation of intrastate operating ratios as required by statutes.

6. That Carolina Delivery Service Company, Inc., has so commingled its assets with other corporate affiliates that it is unable to properly determine exact expenses and revenues to be allocated to its North Carolina intrastate operations.

7. That Respondent has been given suggestions by the Interstate Commerce Commission regarding the separation of its corporate affairs.

8. That the Respondent in this proceeding is subject to the emergency fuel surcharge.

9. That it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility as well as to the customers.

10. That the Commission finds that the evidence presented by Carolina Delivery Service Company, Inc., in this proceeding is, under this fact situation, of sufficient probative force to support and justify approval of the proposed increases in rates and charges.

11. Based on the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

1. G. S. 62-146(h) requires that this Commission give due consideration to, among other factors, the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need and the public interest of the adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical and efficient management to provide such services.

2. We conclude that Respondent has shown need for the additional revenue that the proposed increases will produce,

that the proposed increases are not excessive, and that the suspended tariff schedules should be allowed to become effective.

3. We do not conclude that the formula and method used in making the separations in this case reflect to a certainty accurate results and we advise and enjoin Respondent herein to continue its efforts for improvement in this area; however, we do conclude that the evidence relates volume and mile to operating expense and these to the revenues to an extent sufficient when considered in light to the circumstances in this case do demonstrate that intrastate operations do not produce sufficient revenue to provide a fair operating ratio for such operations.

4. We further conclude that Carolina Delivery Service Company, Inc., should undertake an active study program to develop and determine a more accurate and equitable method or methods of separation to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute. We further conclude that a failure to develop improved more accurate and equitable separation methods will of necessity result in negative findings in the future and we advise and enjoin the Respondent to develop and present an improved method of separations in future cases upon which this Commission may make more enlightened findings and determinations.

5. We also conclude that Respondent herein should take affirmative steps to institute the suggestions offered by the Interstate Commerce Commission regarding its intercorporate dealings with affiliate companies. The proposed corporate separations should be undertaken in order to better separate the revenues and expenses of Carolina Delivery Service Company, Inc.

6. The Commission calls attention to an Order in Docket No. M-100, Sub 52, entitled, "Order Reducing Emergency Fuel Surcharge for Motor Carriers," which was issued on November 13, 1974. This Order reduces the emergency fuel surcharge from 6% to an amount not to exceed 4%, effective December 1, 1974. The Order also provides that the emergency fuel surcharge itself shall terminate on June 30, 1975. The Order in Docket No. M-100, Sub 52, is applicable to the participating carrier in this docket.

7. We conclude that it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility so that the utility will have sufficient earnings to enable it to give reasonable service.

8. The Commission further concludes that the Respondent, Carolina Delivery Service Company, Inc., has carried the

burden of proof showing that the proposals herein are just and reasonable.

IT IS, THEREFORE, ORDERED

1. That the Orders of Suspension in this docket dated March 5, 1974, and May 15, 1974, be, and same hereby are, vacated and set aside for the purpose of allowing tariff schedules as amended to become effective.

2. That publication authorized hereby may be made on one (1) day's notice to the Commission and to the public, but in all other respects shall comply with the rules and regulations of the Commission governing the construction, filing and posting of tariff schedules.

3. That upon publication hereinabove authorized being made, the investigation and proceeding in this matter be, and the same hereby are, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of November, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-13|7, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>United Parcel Service, Inc. (An Ohio Corporation), New York, New York - Suspension and Investigation of Proposed Increase in Various Rates and Charges, Scheduled to Become Effective March 30, 1974. | ) | ORDER DENYING PETITION IN PART BUT ALLOWING 6% FUEL SURCHARGE |

BY THE COMMISSION: By order in this Docket dated March 27, 1974, the Commission suspended until December 24, 1974, a tariff schedule filed by United Parcel Service, Inc., (An Ohio Corporation), Room 800, 643 West 43rd Street, New York, New York 10036, proposing an increase in line haul rates and charges ranging from approximately 5.3 percent to 10 percent and an increase in rates and charges of ten (10) cents for the correction of wrong addresses and charges for C.O.D. collections, applicable on North Carolina intrastate shipments of general commodities, said schedule being designated as United Parcel Service, Inc. (An Ohio Corporation), Local Parcel Tariff No. N.C.U.C. No. 1, Supplement No. 16, Items Nos. 40-A, 65-A and 200-D, thereto, declared the matter to constitute a general rate case under G. S. 62-137, instituted an investigation concerning the

lawfulness thereof, and assigned the matter for hearing on October 22, 1974.

The Commission is now in receipt of a Petition filed on April 3, 1974, by Mr. F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, Raleigh, North Carolina, for and on behalf of United Parcel Service, Inc. (An Ohio Corporation), Petitioner, requesting that the Commission vacate its Order of Suspension and Investigation in this Docket dated March 27, 1974, and that if the proposed increase in rates and charges, as hereinbefore described, are allowed to become effective as requested, Petitioner will not apply the six (6) percent emergency fuel surcharge for motor carriers, or, in the alternate, that Petitioner be allowed to amend its tariff schedule, as hereinabove described, by publishing the six (6) percent emergency fuel surcharge for motor carriers as authorized by the Commission's Order in Docket No. M-100, Sub 52, dated February 13, 1974, on one (1) day's notice, pending hearing and final determination in this matter.

Upon consideration thereof, the Commission is of the opinion, finds and concludes that the Petition, filed for and on behalf of United Parcel Service, Inc. (An Ohio Corporation), requesting that the Commission vacate its Order of Suspension and Investigation in this Docket dated March 27, 1974, should be denied and that Petitioner be allowed to publish the six (6) percent emergency fuel surcharge for motor carriers, as hereinabove described, to become effective on one (1) day's notice pending hearing and final determination in this matter.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Petition filed for and on behalf of United Parcel Service, Inc. (An Ohio Corporation) requesting that the Commission vacate its Order of Suspension and Investigation in this Docket dated March 27, 1974, thereby allowing the proposed increase in various rates and charges, as hereinabove described, to become effective as filed be, and the same is hereby, denied.

(2) That Petitioner is hereby allowed to publish on one (1) day's notice the six (6) percent emergency fuel surcharge for motor carriers as authorized by the Commission's Order in Docket No. M-100, Sub 52, dated February 13, 1974, pending hearing and final determination in this matter.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of May, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1633, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Lewis C. Coats and John David Peede, d/b/a Coats & Peede Trailer Moving Company, Route 2, Angier, North Carolina - Application for Sale and Transfer of Common Carrier Certificate No. C-986 to Lewis C. Coats, d/b/a Lewis C. Coats Trailer Moving Co., Route 1, Angier, North Carolina 27501 | ) | RECOMMENDED ORDER |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Wednesday, January 9, 1974, at 10:20 a.m.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Mr. L. Philip Covington
Attorney at Law
139 West Main Street
Garner, North Carolina 27529
Appearing for: Lewis C. Coats

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

RONEY, HEARING COMMISSIONER: This matter arose upon the filing of an application with this Commission on September 10, 1973, by Lewis C. Coats, d/b/a Lewis C. Coats Trailer Moving Co., a sole proprietorship, requesting authority to acquire the Certificate of Public Convenience and Necessity operated by Lewis C. Coats and John David Peede, d/b/a Coats & Peede Trailer Moving Company, a partnership. The Commission, deeming this transaction to be in the public interest, set the matter for hearing on Wednesday, January 9, 1974, at 10:00 a.m.

Notice of said hearing was published in the Commission's Calendar of Hearings issued October 23, 1973.

The hearing was held at the published time and place. Applicant appeared and was represented by counsel. Mr. John David Peede and Mr. J. L. Williams appeared to protest the application as public witnesses.

Mr. Coats testified that he is willing to fully assume all past debts of Coats & Peede Trailer Moving Company and further to assume the debts that Mr. J. L. Williams had joined as cosigner with Coats & Peede Trailer Moving Company. At this point Mr. Peede and Mr. Williams agreed by stipulation to withdraw their protests if Mr. Coats were to in fact assume these debts and present valid evidence of such loan assumptions. The North Carolina Utilities Commission by and through its attorneys has received assurances that the assumption of the aforementioned loans has been consummated.

Based on the testimony given, the evidence adduced, and the exhibits herein, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That Coats & Peede Trailer Moving Company holds authority as an irregular route common carrier transporting Group 21, Mobile Homes, as indicated in Certificate No. C-986.

2. That the certificate held by the Transferor has been actively operated and accordingly transfer thereof is justified by the public convenience and necessity, in view of the presumption of law that the public convenience and necessity once having been shown to exist continues.

3. That the proposed transfer of operating authority is in the public interest.

4. That the proposed transfer will not adversely affect the service to the public under said certificate inasmuch as the evidence indicates that the proposed Transferee is capable of rendering service equal to that of the proposed Transferor.

5. That the proposed Transferee is fit, willing and able to perform such service to the public under the proposed sale and transfer of the certificate.

6. That Coats & Peede Trailer Moving Company has continually offered service under its certificate to the public up to the filing of the application.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

It appears from representation of Applicant and from our investigation that the authority is active; that there are no debts or claims against Transferor; that Transferee, Lewis C. Coats, is operating as a sole proprietorship under the trade name Lewis C. Coats Trailer Moving Company; that Transferee has complied with the provisions of G. S. 62-111; that Transferee is qualified financially and otherwise to

acquire the operating rights and provide adequate and continuous service thereunder.

Upon consideration thereof, the Hearing Commissioner is of the opinion, finds, and concludes that said transfer is in the public interest, will not adversely affect the public under said certificate, and will not unlawfully affect the service to the public by other public utilities, and that the Transferee is fit, willing and able to perform such service to the public under said Certificate.

IT IS, THEREFORE, ORDERED

1. That the transfer of Common Carrier Certificate No. C-986, more particularly described in Exhibit B attached hereto and made a part hereof from Lewis C. Coats and John David Peede, d/b/a Coats & Peede Trailer Moving Company, to Lewis C. Coats, d/b/a Lewis C. Coats Trailer Moving Co., be and the same is hereby approved.

2. That Lewis C. Coats, d/b/a Lewis C. Coats Trailer Moving Co., file with the Commission evidence of insurance, tariffs of rates, charges, rules and regulations, lists of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of February, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1633, Sub 1

Lewis C. Coats Trailer Moving Co.
Lewis C. Coats, d/b/a
Route 1
Angier, North Carolina 27501

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of Group 21, Mobile Homes, in the following territory: Between all points in Wake County; from Wake County to all points in the State of North Carolina; and from all points in the State of North Carolina to Wake County.

DOCKET NO. T-117, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Sun Oil Company, a Pennsylvania Corporation, with its Registered Agent being Mr. William E. Sisson, P. O. Drawer 3066, Azalea Station, Wilmington, North Carolina 2840| - Petition to Transfer all of the Stock of Terminal City Transport, Inc. (Holder of Common Carrier Certificate No. C-367), P. O. Drawer 3066, Wilmington, North Carolina 2840|, to Commercial Properties, Inc., 600 New Hampshire Avenue, N. W., Washington, D. C. 20037 | ) | RECOMMENDED ORDER GRANTING TRANSFER |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Monday, August 19, 1974, at 10:00 a.m.

BEFORE: E. Gregory Stott, Hearing Examiner

APPEARANCES:

For the Applicant:

Joseph E. Wall
Jordan, Morris and Hoke
Attorneys at Law
P. O. Box 709
Raleigh, North Carolina 27602

No Protestants.

STOTT, HEARING EXAMINER: This matter arose upon the filing with this Commission on May 8, 1974, of an application by Sun Oil Company, a Pennsylvania Corporation, with its registered agent being Mr. William E. Sisson, P. O. Drawer 3066, Azalea Station, Wilmington, North Carolina, to transfer all the stock in Terminal City Transport, Inc. (holder of Common Carrier Certificate No. C-367), P. O. Drawer 3066, Wilmington, North Carolina, to Commercial Properties, Inc., 600 New Hampshire Avenue, Washington, D. C. 20037. Notice of the application together with a description of the involved authority was published in the Commission's Calendar of Hearings issued June 27, 1974. The notice further provided that this matter would be heard on Monday, August 19, 1974, at 10:00 a.m. in the Commission's Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina. No protests were filed in this matter.

At the time of hearing, Applicant was present and represented by counsel. Applicant offered the testimony of Mr. Allen A. Perryman, Jr., President of Terminal City Transport and President of Traveler's Oil Company, Inc., who

described the financial situation of Terminal City Transport and gave reason for desiring to transfer the stock in the aforementioned corporation. Mr. C. L. Huff, Vice President and Member of the Board of Directors of Commercial Properties, Inc., explained reasons for desiring to purchase all of the stock in said corporation, described his financial capabilities and expressed his desire to continue to maintain present level of service offered by Terminal City Transport.

Based upon the record and testimony given, exhibits presented and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That Sun Oil Company, a Pennsylvania corporation, with its registered Agent being Mr. William E. Sisson, owns all the stock in Terminal City Transport, Inc.

2. That Terminal City Transport, Inc., holds authority as an intrastate, irregular route, common carrier in North Carolina as indicated in Certificate No. C-367.

3. That Sun Oil Company proposes to transfer all of the stock in Terminal City Transport, Inc., to Commercial Properties, Inc.

4. That the Certificate held by Transferor has been actively operated up to the time of this hearing and is presently being operated. Accordingly, transfer thereof is justified by public convenience and necessity in view of the presumption of law that public convenience and necessity once having been shown to exist continues.

5. That the proposed transfer of operating authority is in the public interest and will not unlawfully affect the services offered to the public by other public utilities.

6. That the proposed transfer will not adversely affect the service to the public under said certificate inasmuch as the evidence indicates that the proposed Transferee is capable of rendering service equal to that of the proposed Transferor and will render not only equal service but more aggressive service and that the proposed Transferee is fit, willing and able to perform such services to the public under the proposed stock transfer.

Whereupon, the Commission reaches the following

CONCLUSIONS

This case involves a joint application for Commission approval of the transfer of all of the stock in Terminal City Transport, Inc., holder of Common Carrier Certificate No. C-367, from Sun Oil Company to Commercial Properties, Inc.

Statutory criteria for the sale or transfer of operating authority of a motor carrier are set forth in the provision of G. S. 62-|||(a) and G. S. 62-|||(e) as follows:

"(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

* * *

"(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G. S. 62-||2(b)(5)."

This Examiner hereby concludes that joint applicants have satisfied the requirements of G. S. 62-||| and the proposed sale and transfer should accordingly be approved.

IT IS, THEREFORE, ORDERED

|. That the sale and transfer of all the stock in Terminal City Transport, Inc., holder of Common Carrier Certificate No. C-367 as set out in Exhibit B attached hereto be, and hereby is, approved.

2. That Terminal City Transport, Inc., shall file with this Commission evidence of required insurance, lists of equipment, tariffs of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of this Commission.

3. That the officers of Terminal City Transport, Inc. shall familiarize themselves with the rules and regulations of this Commission as they pertain to irregular route common carriers and shall abide by and obey them.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of September, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-117, SUB 9

Terminal City Transport, Inc.
P. O. Drawer 3066
Wilmington, North Carolina 28401

EXHIBIT B

Irregular Route Common Carrier

(1) Transportation of petroleum and petroleum products, in bulk in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Friendship, Thrift, Salisbury, Apex, Fayetteville and Selma to points and places within the entire State of North Carolina, and from all points and places within the State of North Carolina to said originating terminals.

(2) Transportation of liquefied petroleum gas, in bulk in tank trucks from all originating terminals of such liquefied petroleum gas to points within the territory described in above paragraph (1).

(3) Transportation of fish oil and fish oil products, in bulk in tank trucks, between all points and places within the State of North Carolina.

(4) Transportation of creosote and asphalt, in bulk in tank trucks, from Morehead City and Wilmington to all points and places within the State of North Carolina.

(5) Transportation of methanol between all points and places throughout the State of North Carolina.

DOCKET NO. T-|7|7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of National Freight, Inc., 57 W. Park Avenue, Vineland, New Jersey 08360 - Application for Authority to Sell and Transfer Common Carrier Certificate No. C-833, from Northeastern Trucking Company, P. O. Box 26276, Charlotte, North Carolina 282|3, to National Freight, Inc. | RECOMMENDED ORDER GRANTING TRANSFER |

HEARD IN: The Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, September |3, |974, at |0 a.m.

BEFORE: Hearing Examiner John R. Molm

APPEARANCES:

For the Applicants:

Vaughan S. Winborne
||08 Capital Club Building
Raleigh, North Carolina 27602
Appearing for: Northeastern Trucking Company

James Jones, Jr.
Tom Steed, Jr.
Allen, Steed & Pullen
P. O. Box 2058
Raleigh, North Carolina 27602
Appearing for: National Freight, Inc.

For the Protestants:

None

MOLM, HEARING EXAMINER: By joint application filed with the Commission on July 8, |974, Northeastern Trucking Company, Charlotte, North Carolina, and National Freight, Inc., Vineland, New Jersey, seek approval for authority to sell and transfer Certificate No. C-833 together with the operating rights contained therein from Northeastern Trucking Company to National Freights, Inc. The application was for approval by the Commission of the transfer by the Seller to the Buyer of all motor carrier intrastate operating authority for transportation over irregular routes of general and other specified commodities with the exception of that part of the said operating rights which have been transferred to Columbus Motor Lines, Inc. in Docket No. T-304, Sub 7. The authority transferred to Columbus Motor Lines, Inc. is described as follows:

"(7) Transportation of Group 2, heavy commodities, and Group 22, travel drill, bulldozers, shovels and heavy machinery, to points and places within a 150-mile radius of the corporate limits of the City of Henderson."

By motion filed July 8, 1974, the joint applicants requested the Commission to enter an order approving and authorizing the temporary operation of that part of the authority granted in Certificate No. C-833 which is the subject of Petitioners' Petition and Application pending the Commission's action on said Petition and Application. On July 24, 1974, the Commission issued an Order granting the Motion for Temporary Authority. In its Order, the Commission took note that the Interstate Commerce Commission had granted to National Freight, Inc., temporary authority to operate the interstate authority of Northeastern Trucking Company by its Order in No. MC-F-12190, dated May 28, 1974. Notice of the Application together with the description of the authority involved was published in the Commission's calendar of hearings issued July 24, 1974.

At the call of the hearing, the Applicants were present and represented by counsel. No one appeared in opposition to the granting of the authority sought herein and there were no written protests filed following the Notice published in the Commission's calendar. Mr. John F. Guignard, President and Owner of Northeastern Trucking Company, testified generally as to the contractual provisions, his equipment and present operations. Mr. Robert Cummings, Vice President of Finance for National Freight, Inc., testified as to the experience and financial ability of National Freight, Inc.

Having considered the application, the evidence presented in the record in this proceeding taken as a whole, the hearing examiner makes the following

## FINDINGS OF FACT

1. That Northeastern Trucking Company holds authority as an intrastate common carrier in North Carolina under the authority granted in Certificate No. C-833.

2. That Northeastern Trucking Company proposes to transfer its authority granted in Certificate No. C-833 to National Freight, Inc.

3. That the authority granted by Certificate No. C-833 has been actively operated up to the time the Commission's Order issued July 24, 1974, granting authority to National Freight, Inc. to conduct operations under common carrier Certificate No. C-833 on a temporary basis.

4. That Northeastern Trucking Company proposes to sell approximately 100 tractors and 100 trailers as a part of its contract to National Freight, Inc.

5. That National Freight, Inc. presently operates in 41 states and the District of Columbia under authority granted by the Interstate Commerce Commission. National Freight, Inc., also operates in the States of New York, Pennsylvania, Georgia and Texas under authority granted by those states' respective public service commissions.

6. That National Freight, Inc. stands in good credit with its suppliers and is in a position to purchase further equipment should it be necessary to operate the authority granted under Certificate No. C-833.

7. That National Freight, Inc. presently operates its authority with over 3,000 pieces of equipment.

CONCLUSIONS

1. This application for the transfer of common carrier Certificate No. C-833 is in the public interest in that it will not adversely affect the service to the public under said franchise nor will it unlawfully affect the service to the public granted by other public utilities.

2. National Freight, Inc. is fit, willing and able to perform such service to the public under said franchise.

3. Service under said franchise has been continuously offered to the public by Northeastern Trucking Company up to the time that the Commission issued an Order dated July 24, 1974, granting authority to National Freight, Inc. to conduct operations under said franchise on a temporary basis pending final determination in this matter. Since the date of the Order, service under the franchise has been conducted by National Freight, Inc.

4. That the proposed sale and transfer of the common carrier authority held by Northeastern Trucking Company involves both interstate authority and intrastate authority within the State of North Carolina. The Interstate Commerce Commission has yet to approve the sale and transfer on a permanent basis of the interstate common carrier authority presently held by Northeastern.

IT IS, THEREFORE, ORDERED:

1. That the sale and transfer of the intrastate common carrier authority currently held by Northeastern Trucking Company to National Freight, Inc. as set out in Exhibit "B" attached hereto be, and hereby is, approved thirty (30) days following the final disposition by the Interstate Commerce Commission of the sale and transfer of the Interstate Common Carrier Authority currently held by Northeastern Trucking Company to National Freight, Inc. I.C.C. Docket No. MC-F-12190.

2. That National Freight, Inc., shall file with the Commission evidence of the required insurance, lists of

equipment, schedule of minimum rates and charges, designation of process agent, and otherwise comply with the rules and regulations of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 23rd day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine B. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1717

National Freight, Inc.
57 West Park Avenue
Vineland, New Jersey 08360

EXHIBIT B

Irregular Route
Common Carrier

Commodity and Territorial Description

"(1) Transportation of Group 5, Solid Refrigerated Products, Viz: Fresh fish, fruits, vegetables, dairy products, and other commodities, except meat and meat products, which require refrigeration while in transit and the use of vehicles with temperature controls, from points and places throughout the State of North Carolina to Charlotte, Asheville and Raleigh, North Carolina.

"(2) Transportation of Group 6, Agricultural Commodities, viz: Unmanufactured farm, dairy and orchard products, including wheat, corn, oats, peanuts, potatoes, melons, fruits, vegetables, cotton seed, cotton seed meal and hulls, seeds, feeds, poultry, eggs, and other farm produce, from points and places throughout the State of North Carolina to Charlotte, Asheville, and Raleigh, North Carolina.

"(3) Transportation of general commodities, except those requiring special equipment, over irregular routes from Charlotte to points and places in the counties of Gaston, Cleveland, Rutherford, Henderson, Buncombe, McDowell, Union, Anson, Richmond, Scotland, Robeson, Columbus, Brunswick, New Hanover, Bladen, Cumberland, Hoke, Lee, Moore, Montgomery, Stanly, Randolph, Chatham, Wake, Durham, Orange and Alamance.

"(4) Transportation of general commodities, except those requiring special equipment, over irregular routes between points and places within a radius of twenty-five (25) miles of Concord; from said area to points and places throughout the State; and from points and places throughout the State to points and places within a radius of twenty-five (25) miles of Concord.

"Note: The authority in Paragraph (4) above, to the extent that it duplicates any other authority held by Northeastern Trucking Company shall not be construed as more than one operating right.

"(5) Transportation of general commodities, except those requiring special equipment and except unmanufactured leaf tobacco and related commodities described in NCUC Docket No. 2417, over irregular routes, between all points and places on, east and south of U.S. Highway 29 from the Virginia-North Carolina State Line to Reidsville, thence U.S. Highway 158 to Mocksville, thence U.S. Highway 64 to Statesville, thence U.S. Highway 21 to intersection with N.C. 115, thence N.C. 115 to intersection with U.S. 21 and on U.S. 21 to Charlotte, thence U.S. Highway 29 to the North Carolina-South Carolina State Line.

"(6) Transportation over irregular routes, of commodities of iron and/or steel, including but not limited to prefabricated bars to dimensions, steel pipe, steel windows, concrete reinforcing steel wire mesh, steel culvert pipe (Corrugated), cast iron soil pipe, steel trusses, girders, channels, beams, basis and structural forms, equipment and building materials used by bridge, culvert and building contractors, steel kiln cars, rails, accessories and equipment, which may be transported on ordinary vehicular equipment for the over-the-road portion of the transportation and does not require special equipment, specialized handling or rigging, to and from all points in that part of North Carolina, on, west and north of U.S. Highway 29 from the Virginia-North Carolina State Line to Reidsville, thence U.S. Highway 158 to Mocksville, thence U.S. Highway 64 to Statesville, thence U.S. Highway 21 to intersection with N.C. 115, thence N.C. 115 to intersection with U.S. 21 and on U.S. 21 to Charlotte, and thence U.S. Highway 29 to the North Carolina-South Carolina State Line. LIMITATION: Truck Load lots only.

DOCKET NO. T-1673

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
United Tank Lines, Inc., 4112 Galway Drive, Greensboro, North Carolina 27406 - Application for Authority to Sell and Transfer Common Carrier Certificate No. C-253 from F. T. Loftin, P. O. Box 206, Troutman, North Carolina, to United Tank Lines, Inc. ) RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, January 31, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioner Tenney I. Deane

APPEARANCES:

For the Applicants:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: United Tank Lines, Inc.
F. T. Loftin

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 27602

and

Eugene C. Brooks, III
Attorney at Law
P. O. Box 1130
Durham, North Carolina 27702
Appearing for: Eastern Oil Transport, Inc.
O'Boyle Tank Lines, Inc.
M & M Tank Lines, Inc.
Black Motor Express, Inc.
Petroleum Transportation, Inc.
Kenan Transport Company
Terminal City Transport
A. C. Widenhouse
East Coast Transport Company

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: By joint application filed with the Commission on August 31, 1973, by F. T. Loftin, Troutman, North Carolina, and United Tank Lines, Inc., Greensboro, North Carolina, Applicants sought approval for authority to sell and transfer Common Carrier Certificate No. C-253 together with the operating rights contained therein from F. T. Loftin to United Tank Lines, Inc.

Notice of the application together with the description of the involved authority was published in the Commission's Calendar of Hearings issued October 1, 1973. Said Notice contained the provision that if no protests were filed by 5:00 p.m., Monday, October 27, 1973, the Commission would decide the case on the record, and if protests were filed within the specified time, the Commission would set the matter for hearing.

Joint protests were filed with the Commission in apt time by Eastern Oil Transport, Inc., Wilmington, North Carolina, O'Boyle Tank Lines, Inc., Washington, D. C., M & M Tank Lines, Inc., Greensboro, North Carolina, Black Motor Express, Incorporated, Wilmington, North Carolina, Petroleum Transportation, Inc., Gastonia, North Carolina, Kenan Transport Company, Durham, North Carolina, Terminal City Transport, Incorporated, Wilmington, North Carolina, A. C. Widenhouse, Inc., Wilmington and Concord, North Carolina, and East Coast Transport Company, Incorporated, Goldsboro, North Carolina. By Order dated November 9, 1973, the joint protests were allowed and the matter was set for hearing in the Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, January 31, 1974, at 10:00 o'clock a.m.

Prior to said hearing the Attorney for the Applicant, F. T. Loftin, filed an affidavit dated January 29, 1974, from Mr. F. T. Loftin in which he said and deposed that he was the owner of Common Carrier Certificate No. C-253 issued to him by the North Carolina Utilities Commission, that as owner he has operated this Certificate since he acquired it pursuant to the Grandfather Provision of the 1947 Truck Act and has operated it continuously up to and including the date when he was stricken with a heart attack, after which he sought and acquired approval of the suspension of operations by the North Carolina Utilities Commission. In order to dispose of this Certificate and his equipment he thereafter entered into a contract with United Tank Lines, Inc., and Mr. Roy C. Harrison for the sale of said Certificate for a total purchase price of $15,000. He further deposes that he has provided herewith bills of lading for February, March and April with photocopies of checks paying the same to show operations prior to the date of Affiant's heart attack. He avers that he is unable to attend any hearing in Raleigh and that his doctor has advised him that he sould reduce his activities and that he should not attend any hearing or travel any distance. He states that he has no one connected with his business who can testify on his behalf, so he, therefore, requests that the North Carolina Utilities Commission accept his affidavit and sworn testimony that he has continuously operated the Certificate granted to him by Order No. T-147, dated May 20, 1949.

An affidavit by Thomas R. Griffin, M. D., filed the same day as Mr. Loftin's affidavit substantiated Mr. Loftin's claim that he had had a serious heart attack and that presently his heart condition would prohibit him from continuing his business. Dr. Griffin has advised Mr. Loftin that he should sever his relations with his business and that he is in no condition to travel to Raleigh for hearing nor can he be subjected to the strain of a trial without endangering his health.

Attorneys for the Protestants stipulated that they would accept the affidavit of the doctor and that they would also accept the affidavit of F. T. Loftin if they were allowed to cross-examine the Affiant either by interrogatories or possibly by deposition. It was thereafter agreed by all parties that Protestants would present Affiant's Attorney with written interrogatories of which he would have answered on or by February 8, 1974, and that if no request for further questioning by the Protestants was requested that the record would be closed and the Commission would decide this matter on the evidence presented at the hearing and on affidavits and exhibits presented.

The answers to said interrogatories have been filed and there has been no request for further information. At this time, Mr. Roy C. Harrison testified that he is the principal owner of United Tank Lines and that he wishes to purchase the authority of Mr. F. T. Loftin so that he might continue

to operate said authority. He stated that he is aware of the Rules and Regulations of the North Carolina Utilities Commission in regard to the operation of common carrier authority and that he fully intends to comply with such rules and regulations. He further stated that he is financially able to continue to operate the aforementioned authority and to operate said authority at its present rate or at an increased level of operation. He would be willing to serve anyone who requested his services.

On cross-examination he stated that he has made substantial preparations for the takeover of the common carrier authority of Mr. F. T. Loftin. At this point, Attorney for the Applicant stipulated that the authority to be transferred from Mr. F. T. Loftin to United Tank Lines did not include LP gas or asphalt.

Protestants offered testimony of Wesley T. McAfee, who is Secretary-Treasurer and General Manager of East Coast Transport, Inc. Mr. McAfee testified that his company owns territory that roughly corresponds to the territory that F. T. Loftin proposes to transfer to United Tank Lines in this docket. He further testified that he has the equipment available to handle any extra business in this area and that he is ready, willing and able and is actively soliciting any business in the aforementioned area. He further stated that for the past six to eight months he has been losing business and has idle equipment available to handle any extra business that might become available.

Protestants further offered testimony of Lloyd F. Taylor, Assistant General Manager of Eastern Oil Transport, Wilmington, North Carolina, Robert L. White, Operations Manager of Petroleum Transportation, Inc., Gastonia, North Carolina, Weldon H. Kimble, Vice President of Marketing, Kenan Transport Company, Durham, North Carolina. Testimony of these witnesses corroborated the testimony of Mr. McAfee in that each of the witnesses stated that they were experiencing a declining amount of business and they had idle equipment with which they could service the needs of the general public in the area of F. T. Loftin's authority. Based upon the record, testimony given and the evidence adduced, the Hearing Commissioner makes the following

## FINDINGS OF FACT

1. That F. T. Loftin holds authority as an intrastate carrier in North Carolina as indicated in Certificate No. C-253.

2. That United Tank Lines, Inc., the proposed transferee is a corporation incorporated under the laws of North Carolina.

3. That F. T. Loftin proposes to transfer the authority granted to him in Certificate No. C-253.

4. That the joint Applicants have by stipulation agreed that the proposed transfer of operating rights from F. T. Loftin to United Tank Lines, Inc., encompasses the cancellation of all rights of F. T. Loftin to engage in intrastate transportation of any petroleum products in bulk in tank trucks over irregular routes from existing originated terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to points and places throughtout the State and of gasoline, kerosene, fuel oils, and naphthas in bulk in tank trucks over irregular routes between all points and places within the territory it is now authorized to make deliveries from and presently authorized originating terminals.

5. That the franchise held by the transferor has been actively operated up until two months prior to hearing and that the suspension of operations was granted by the North Carolina Utilities Commission for good reason. Accordingly, transfer thereof is justified by public convenience and necessity in view of the presumption of law that public convenience and necessity once having been shown to exist continues.

6. That the mere availability of other franchised common carriers that are ready, willing and able to transport additional business within the franchised area of transferor does not constitute a showing that public convenience and necessity no longer exists.

7. That the proposed transfer of operating authority is in the public interest.

8. That the proposed transfer will not adversely affect the service to the public under said franchise inasmuch as the evidence indicates that the proposed transferee is capable of rendering service equal to that of the proposed transferor and will render not only equal service but more aggressive service, and that the proposed transferee is fit, willing and able to perform such services to the public under the proposed franchise transfer.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

This case involves protested joint application for Commission approval of the transfer of irregular route operating authority of F. T. Loftin as set forth in Certificate No. 253 to United Tank Lines, Inc., as indicated by the following commodity and territory description:

"Transportation of petroleum products, in bulk in tank trucks, over irregular routes from existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to points and places throughout the

State and of gasoline, kerosene, fuel oils and naphthas in bulk in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals."

Statutory criteria for the sale or other transfer of operating authority of a motor carrier are set forth in the provisions of G. S. 62-111(a) and 62-111(e) as follows:

"(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged, or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

* * *

"(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G. S. 62-112(b)(5)."

Protestants in this case urged this Commission to deny the transfer of operating rights of F. T. Loftin simply because other truckers within F. T. Loftin's certificated area are ready, willing, and able to provide additional services. They say that due to the declining business in these areas, the transfer should be denied because it would place a burden upon their operations.

In the case of Utilities Commission v. Coach Company, 269 NC 717, 153 SE 2d 461, 1967, the Protestants sought, as the Protestants here seek, construction of the statute which would provide them with protection from increased competition contending that G. S. 62-111(a) required the Commission to consider similar elements upon the transfer of franchise authority and upon the granting of an application

for new authority including public need for the service already provided by existing carriers and the effect of the service provided by the transferee of the operations of existing carriers. In that case the Court held that the showing of public need which G. S. 62-262(e)(1) required of an application for new authority was not applicable in a transfer proceeding and was not written into it by G. S. 62-111(a). In the case of Utilities Commission v. Petroleum Carrier, 7 NC App 408, 173 SE 2d 25, 1970, the Court of Appeals interpreted G. S. 62-111 as similarly prohibiting the application as such doctrine or test as follows:

> ". . .The amendment sets out certain specific criteria to be considered in the Commission's determination of whether approval in a given case is justified. It does not, on the other hand, indicate a policy change toward protecting existing certificate holders from lawful competition. Like the subsection (a) 'public convenience and necessity' test, the requirement that the Commission find the transfer 'in the public interest' does not write into the transfer approval procedure the G. S. 62-262(e)(1) new certificate test of public need."

In that case, the Court of Appeals recited the conclusion of the Supreme Court in the case of Utilities Commission v. Coach Company, supra, that the policy of the State as declared in the Public Utilities Act of 1963 clearly favors transfers of actively operated motor freight carrier certificates without unreasonable restraints. Inasmuch as public convenience and necessity were shown to exist when authority was granted or acquired under the 1947 Grandfather Clause and the rebuttable presumption of law is that it continues. The Court of Appeals further made it clear that such a policy and such statutes did not protect other carriers from increased competition to be anticipated from aggressive transferee.

In another Coach Company case, Utilities Commission v. Coach Company, 261 NC 384, 34 SE 2d 689, 1964, the Court through Moore, J., said

> "There is no public policy condemning competition as such in the field of public utilities; the public policy only condemns unfair or destructive competition."

The possibility that a transfer of authority to a more competitive carrier will adversely affect existing carriers does not make the transfer contrary to the public interest as a matter of law.

Joint Applicants have satisfied the requirements of G. S. 62-111 and the proposed sale and transfer should accordingly be approved.

IT IS, THEREFORE, ORDERED

1. That the sale and transfer of the common carrier authority currently held by F. T. Loftin to United Tank Lines, Inc., as set out in Exhibit B attached hereto, be, and hereby is, approved.

2. That any operating authority which is presently owned by F. T. Loftin which might remain after said transfer be, and hereby is, cancelled.

3. That United Tank Lines, Inc., shall file with the Commission evidence of required insurance, lists of equipment, a schedule of minimum rates and charges, designations of process agent and otherwise comply with the rules and regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of March, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1673

United Tank Lines, Inc.
4112 Galway Drive
Greensboro, North Carolina 27406

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of petroleum and petroleum products in bulk, in tank trucks, over irregular routes from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville and Salisbury to points and places throughout the State, and of gasoline, kerosene, fuel oils and naphthas in bulk, in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals.

DOCKET NO. T-1039, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Joint Application for the Sale and Transfer of a Portion of Common Carrier Certificate No. C-539 from Public Transport Corporation, P. O. Box 327, Troutman, North Carolina 28166, to Wendell Transport Corporation, Wendell, North Carolina 27591 | ) | RECOMMENDED ORDER DISMISSING APPLICATION AND DENYING PROPOSED TRANSFER OF RIGHTS |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, August 9, 1974, at 9:30 a.m.

BEFORE: Robert F. Page, Hearing Examiner

APPEARANCES:

For the Applicants:

R. Mayne Albright
Attorney at Law
P. O. Box 1206
Raleigh, North Carolina 27602
Appearing for: Public Transport Corporation

Clarence M. Kirk
Kirk & Ewell
Attorneys at Law
P. O. Box 307
Wendell, North Carolina 27591
Appearing for: Wendell Transport Corporation

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 28602
Appearing for: Kenan Transport Company
Tidewater Transit, Inc.
East Coast Transport Co., Inc.
Eagle Transport Corporation
O'Boyle Tank Lines, Inc.

Eugene C. Brooks, III
Attorney at Law
P. O. Box 1130 - 300 Wachovia Bank Building
Durham, North Carolina
Appearing for: Eastern Oil Company

PAGE, HEARING EXAMINER: By joint application filed with the Commission on April 22, 1974, Public Transport Corporation seeks authority to sell and transfer to Wendell Transport Corporation that portion of the operating rights presently held by Public Transport Corporation under Certificate No. 539 which reads as follows:

"(2) Transportation of liquefied petroleum gas in bulk, in tank trucks, from all originating terminals of such liquefied petroleum gas to points within the territory described in above paragraph (1).*

Irregular route, common carrier authority from all existing originating terminals at or near Wilmington, Beaufort, Morehead City, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville and Salisbury to all points and places within the State of North Carolina (as now provided in paragraph (1) of Certificate C-539)."

Notice of such application was given in the Commission's Calendar of Hearings issued on June 6, 1974, which notice set the matter for hearing on July 5, 1974, gave a description of the authority sought tc be transferred and the manner and method of filing interventions and protests in the cause. Protests and Motions for Leave to Intervene were received by the Commission on June 25, 1974, and were allowed by Order issued July 1, 1974. On June 27, 1974, a new notice of hearing was issued which rescheduled the hearing for the time, date and place first above noted.

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* Paragraph (1), referred to above, of Common Carrier Certificate No. C-539 reads as follows:

"(1) Transportation of petroleum and petroleum products, in bulk, in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Beaufort, Morehead City, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville and Salisbury to all points and places within the State of North Carolina, and of gasoline, kerosene, fuel oils and naphthas, in bulk, in tank trucks, over irregular routes, between all points and places within the territory such carrier is now authorized to make deliveries from presently authorized originating terminals."

Paragraphs (1) and (2) comprise the entire set of operating rights held by Public Transport under Common Carrier Certificate No. C-539.

Prior to the presentation of evidence, the Protestants moved to dismiss the application to transfer on the grounds that to allow Public Transport Corporation to transfer its liquefied petroleum gas (hereinafter referred to as LPG) authority separate and apart from its petroleum and petroleum products authority (which Public Transport Corporation proposes to retain) would be in violation of law in that it would create a "new" LPG carrier without a showing of "public convenience and necessity" as required by G. S. 62-262(e)(i) and, in addition, would be directly contrary to a prior ruling of this Commission in Docket No. T-243, Sub 6, issued on May 6, 1970. Following oral argument on the motion, the Hearing Examiner reserved ruling on the motion pending the conclusion of the evidence and the building of a full trial record.

The Applicants presented the testimony of C. Proc Dean, Principal Shareholder and Manager of Wendell Transport Corporation, and Mr. Ray D. Rayner, Secretary and Treasurer of Public Transport Corporation. The Protestants presented the testimony of Weldon H. Kimball, Vice President of Marketing for Kenan Transport Company, and Mr. Wesley T. McAfee, Secretary-Treasurer and General Manager of East Coast Transport Company, Inc. At the conclusion of the evidence, the Hearing Examiner took judicial notice of the certificates of Operating Authority, financial reports and equipment lists of both Applicants and Protestants, of the Commission Inspector's Report, and of the Commission's records in this Docket and in Docket No. T-243, Sub 6 - Sale and Transfer of Black's Motor Express to Richard Infinger.

Based on the foregoing evidence, testimony and noticed matters, the Hearing Examiner now makes the following:

## FINDINGS OF FACT

1. Public Transport Corporation, Troutman, North Carolina, is a corporation organized and existing under the laws of the State of North Carolina with rights from this Commission to operate as a common carrier in intrastate commerce as indicated in Certificate No. C-539. Such rights include the authority to transport LPG on a statewide basis.

2. Wendell Transport Corporation, Wendell, North Carolina, is a corporation organized and existing under the laws of the State of North Carolina with rights from this Commission to operate as a common carrier in intrastate commerce as indicated in Certificate No. C-748. Such rights include the authority to transport LPG within thirty-four (34) counties.

3. Each of the protesting carriers, which are parties to this action, are properly licensed in North Carolina to engage in business as common carriers of property in intrastate commerce under Certificates which are matters of public record at this Commission. Each of such carriers is

authorized, under its Certificate, to transport petroleum and petroleum products including LPG.

4. Public Transport Company originally acquired its authority to transport petroleum and petroleum products statewide under the "grandfather clause" of the 1947 Truck Act.

5. Prior to the enactment of the Public Utilities Act of 1963 (G. S. 62-1, et seq.), regulation of motor carriers by the North Carolina Utilities Commission was governed by the provisions of the North Carolina Truck Act of 1974. Pursuant to its authority under the Truck Act to promulgate and enforce reasonable and necessary rules and regulations, the Commission adopted as Rule 10 of the Rules and Regulations for Motor Carriers a description of commodities which is similar to the present Commission Rule R2-37. Group 3 of Rule 10 applied to petroleum carriers and, prior to February, 1961, read as follows:

> "Group 3. Liquid Petroleum Products in Bulk. This group includes gasoline, kerosene, fuel oil and other petroleum derivatives in bulk or tank trucks."

6. During the month of February, 1961, the Commission, by Notice and by Order in Docket No. T-2, Sub 1, classified LPG as a "petroleum product" under Group 3 of Rule 10 of its Rules and Regulations for the Administration and Enforcement of the North Carolina Truck Act. The Notice authorized all carriers holding Group 3 authority to transport LPG within the territory in which they were authorized to transport petroleum products. The Order further authorized all such carriers to have their certificates of authority amended "to include the right to transport liquid petroleum gas, in bulk, in tank trucks, from all originating terminals" then established or to be established, whether or not such terminals were within the scope of such carriers' then existing authorized territory. (Docket No. T-2, Sub 1).

7. No separate Finding of public convenience and necessity, as contrasted with public interest, was required in Docket No. T-2, Sub 1, in order for a Group 3 carrier to amend its certificate. The only requirement was that the carrier request such amendment from the Commission on or before April 1, 1961, a deadline that was subsequently extended. Such amendments were thereupon granted by the Commission as a "matter of course" (Ordering Paragraph, Docket No. T-2, Sub 1) and were "tacked on" to the previously authorized Group 3 authority.

8. In Docket No. T-100, the Commission, by Order issued on September 28, 1961, completely revised its rules and regulations for enforcement of the Truck Act. These rules were substantially in the same form and language as the present Rule R2-37 and Group 3, as therein adopted, included LPG as a petroleum product under Group 3. LPG has remained in Group 3 through every subsequent amendment by the

Commission of its Rules and Regulations regarding motor carriers. The most recent revision, adopted on January 14, 1974, contains a general definition of "petroleum products" followed by a listing of seventy-five (75) specific commodities, including LPG, which are designated as "petroleum products."

9. The portion of its petroleum and petroleum products authority which Public Transport Corporation proposes to transfer to Wendell Transport Corporation is the LPG authority standing alone, and not included within its total Group 3, Petroleum and Petroleum Products, authority. [Paragraph (2) referred to above and not both paragraphs (1) and (2)].

10. During the preceeding year, the Applicant, Public Transport Corporation, has carried 82 loads of LPG, generating revenues of approximately $7,000.00. Public Transport Corporation, during the existence of its LPG authority, has never refused to transport LPG when requested to do so and, on previous occasions, actively solicited LPG business. All of the 1973-74 shipments of LPG by Public Transport Corporation were actually made using trucks and equipment belonging to the Applicant, Wendell Transport Corporation. Such trucks were dispatched by Wendell Transport Corporation, using Wendell drivers, but were sent per instruction of Public Transport Corporation and under its operating authority. From 1961-1973, until it entered the trip lease arrangement with Wendell Transport Corporation, Public Transport Corporation did not make any hauls of LPG despite its solicitation of such business.

11. The Group 3, Petroleum and Petroleum Products, authority of Public Transport Corporation [Paragraphs (1) and (2) referred to above] has been continuously and actively operated and, hence, such authority is not dormant or prohibited from transfer on this ground.

12. Public Transport Corporation and Wendell Transport Corporation have entered into a written contract for the sale and transfer of all of Public Transport Corporation's present LPG statewide authority [Paragraph (2) hereinabove referenced] to Wendell Transport Corporation for the sum of $27,000.00. Such authority would thereupon be merged with Wendell Transport Corporation's present thirty-four (34) county LPG authority.

13. The proposed Transferee, Wendell Transport Corporation, is fit, willing and able to render the proposed service to the public under the terms of the proposed transfer.

14. The proposed transfer is not contrary to the "public" interest, as distinguished from the interests of the Protestants. Such proposed service and transfer will not adversely affect service to the public by other public utilities. There has been no showing that public

convenience and necessity, as distinguished from public interest, needs or requires the proposed transfer to be made.

Based upon the foregoing Findings of Fact, the Hearing Examiner now reaches the following:

## CONCLUSIONS

Contrary to the contentions of the Applicant, this question in this case is not answered by a mere mechanical application of the statutes - G. S. 62-111(a) and (e). Such statutes merely codify the well-established policy of the State which "clearly favors transfers of actively operated motor freight carrier certificates without unreasonable restraint." State, ex rel Utilities Commission v. Associated Petroleum Carriers, 7 N. C. App. 408, 413; 173 S. E. 2d 25(1970).

Indeed, if the Applicants in this case had proposed to transfer all of Public Transport Corporation's Group 3 authority [Paragraphs (1) and (2)], the only issues would be dormancy and public interest. This case would be much easier to determine also, if hypothetically, Public Transport had Group 3 (Petroleum and Petroleum Products), Group 4 (Liquid Refrigerated Products), and Group 12 (Explosives and Other Dangerous Articles) authority and wished to sell one total group to Wendell Transport Corporation. The issues in such a case would be greatly simplified. The "public convenience and necessity" test of G. S. 62-111(a) has been interpreted to mean merely that the authority has been actively operated and that the Applicants for sale and transfer do not have the burden to show the type of demand and need which would have to be shown in the case of an application for "new" authority. Petroleum Carriers, supra, pp. 413-414; State ex rel. Utilities Commission v. Coach Company, 269 N. C. 717, 153 S. E. 2d 461(1967).

The outcome of this case, however, depends on the answer to a different question, involving the reasonableness and validity of Commission Rules and Regulations and matters of utility regulation and public policy generally. That question is: May a carrier, duly licensed to engage in intrastate commerce as a common carrier of commodities as specified by group description contained in Commission Rule R2-37, spin off one or more of the specified commodities within the group description and sell its rights to transport such commodities while retaining its rights to transport the balance of the commodities listed or defined for such group? If the legislative policy of reasonable regulation of public utilities under appropriate rules and regulations promulgated to secure such results is to have any meaning, the Commission must answer this issue negatively.

In point of precedent, the Commission has already done so in its Order in Docket No. T-243, Sub 6, issued on May 6, 1970, approving the sale and transfer of the common stock (as contrasted with assets, franchise or operating rights) of Black's Motor Express, Inc., to Richard Infinger. Black's Motor Express held a common carrier certificate which included statewide petroleum and petroleum products authority and, in a separate paragraph, statewide LPG authority. The language of such authority was virtually identical to paragraphs (1) and (2) of Public Transport Corporation's authority which was earlier quoted. In the Black's Motor Express, Inc., case, the Protestants argued that the authorities were severable and that (as was admitted in the evidence) the LPG authority standing alone, was dormant and could not be transferred. The Applicants in that case contended that, since the LPG authority had been granted to all Group 3 petroleum carriers "as a matter of course" by the Commission, such authority was an integral and inseparable part of the petroleum and petroleum products authority. Hence, the carrying of any petroleum products would prevent the LPG authority from becoming dormant. In Finding of Fact No. 6 in its Order in the Black's Motor Express case, the Commission stated that: "The Commission granted D. L. Black the authority to transport liquefied petroleum gas to become an integral part of the carrier's authority to engage in the transportation of petroleum and petroleum products." Also that, ". . .it was not the intent of the Commission and it was never contemplated that the liquefied petroleum gas could be separated from the petroleum authority through sale, cancellation or otherwise, in that the Commission's Order (in Docket No. T-2, Sub 1, allowing all Group 3 carriers to amend their certificates to include LPG) had the necessary effect of merely enlarging upon its previously established definition of petroleum and petroleum products;. . ."

It is apparent from the foregoing that the Commission had presented to it in the Black's Motor Express case the identical issue that confronts it in this case - whether or not LPG authority is separable from petroleum and petroleum products authority. The Commission rules that the LPG authorities which were granted pursuant to its Order in Docket No. T-2, Sub 1, became an integral, incidental, inseparable portion of each carrier's Group 3 petroleum and petroleum products authority.

Further evidence of the Commission's policy of non-severability of specific commodities within the general commodity groups can be found in the Commission's Order in Docket No. T-2, Sub 3. This Order is printed in the Fifty-Third Report of the North Carolina Utilities Commission, July 1, 1962-December 31, 1963, at page 60. In that docket, just as in Docket No. T-2, Sub 1, the Commission issued an Order which would allow Group 3 petroleum carriers to automatically amend their certificates to include authority to transport gasoline, kerosene, fuel oils and naphthas, in bulk, in tank trucks, over irregular routes within their

respective operating territories. [This is source of the second portion of paragraph (|) of Public Transport Corporation's authority.] In that Order the Commission stated that if and when any Group 3 carrier requested authority to amend its certificate as provided in the Order, " . .such amendment shall not be construed as the granting of additional or separate authority for the purpose of separate sale or transfer, but be considered only in conjunction with and as a part of that operating authority now held by such common carrier of petroleum and petroleum products." This construction of the extension of petroleum authority to include gasoline, kerosene, fuel oil and naphthas is equally applicable to LPG. No valid or logical reason exists to treat LPG as a severable, transferable commodity within Group 3, when the other four are conclusively stated to be nonseverable.

G. S. 62-|| | provides that, "The Commission shall approve applications for transfer of motor carrier franchises. . " It does not mandatorily require the Commission to approve the sale or transfer of portions of franchises, much less the sale of specific commodity authority within portions of franchises. For this reason, the contentions of the Applicants regarding the meaning of G. S. 62-|| | are not relevant to the issue as stated above. This is no misunderstanding between the parties as to the meaning of the statute. They are in agreement with each other and with the courts as to what it means. However, a mere mechanical application of the statute still leaves the fundamental issues in this case unresolved.

G. S. 62-3| gives to the Commission the authority to ". . .administer and enforce the provisions of this chapter, and to make and enforce reasonable, and necessary rules and regulations to that end." The present Rule R2-37 is such a rule. This rule, or one similar to it, has been in effect at the Commission since the early days of the |947 Truck Act. The rule sets out twenty-one (2|) categories of commodities for the transportation of which common carrier certificates or contract carrier permits may be issued. The categories run from the broad and general, such as Group | - General Commodities, and Group 2| - Other Commodities, to the narrow and specific, such as Group 3 which, in its present form, lists seventy-five (75) specific petroleum and petroleum products which may be transported. To the extent possible, the groups were left broad, general and open for later additions, as new products are constantly coming into the marketplace. This contributes materially to ease of interpretation, administration and enforcement.

To allow the type of sale and transfer proposed by Applicants herein, would destroy the meaning and usefulness of Rule R2-37. Thereafter, persons seeking common carrier certificates for a particular group would be required to show a public need and demand for transportation of each specific item and commodity within the group and that such need exceeded the ability of all existing carriers to

service it. Carriers would then begin to specialize in carrying one or two specific items; e.g., butadiene and ethyl benzene or kerosene and naphtha. Overall quality of service to the public would decline. Finally, Rule R2-37 itself would have to be swapped and every conceivable item placed in a separate category. Such categories would number in the thousands, with new ones being added every time a new product was introduced. This result was certainly not intended by the Commission in Docket No. T-2, Sub 1, when it allowed the amendments for LPG to Group 3 carriers. Such a result is completely contrary to sound, efficient and reasonable regulation of motor carrier utilities.

In reaching the conclusion that its interpretation of Rule R2-37 and Orders in previous dockets control the outcome of this case, the Commission is not depriving Public Transport Corporation of any "property rights." Public Transport Corporation has what it always had - statewide authority to transport Group 3, Petroleum and Petroleum Products, including LPG. This is its present common carrier franchise, and Public Transport Corporation may, upon complying with the requirements of G. S. 62-111, seek to sell such franchise at any time.

IT IS, THEREFORE, ORDERED:

That the joint application by Public Transport Corporation and Wendell Transport Corporation to sell and convey the LPG authority of Public Transport Corporation to Wendell Transport Corporation be, and the same is hereby, denied and the application dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1674, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Jack Daniel Wood, d/b/a Wood Mobile Home Movers, Pass Street, Hayesville, North Carolina 28904 - Application for Sale and Transfer of Common Carrier Certificate No. C-965 from Joe C. Hayes, d/b/a Reeves Mobile Home Service, P. O. Box 103, Lake Junaluska, North Carolina, to Jack Daniel Wood, d/b/a Wood Mobile Home Movers | ) | ORDER GRANTING TRANSFER |

HEARD IN: The Commission Hearing Room, Ruffin Building,

One West Morgan Street, Raleigh, North Carolina, on Thursday, May 2, 1974, at 3:00 p.m.

BEFORE: Chairman Marvin R. Wcoten, presiding, and Commissioners Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Edwin B. Hatch
Purrington, Hatch & Purrington
Attorneys at Law
605 Raleigh Building
Raleigh, North Carolina

For the Protestant:

R. Phillip Haire
Holt & Haire, P.A.
Attorneys at Law
Box 248
Sylva, North Carolina 28779
Appearing For: James Woodrow Frady, d/b/a Frady's Mobile Home Towing Service

For the Commission Staff:

E. Gregory Stott
Associate Commissicn Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE CCMMISSION: By joint application filed with the Commission on January 28, 1974, by Jack Daniel Wood, individual, d/b/a Wood Mobile Home Movers, Pass Street, Hayesville, North Carolina, and Joe C. Haynes, individual, d/b/a Reeves Mobile Home Service, P. O. Box 103, Lake Junaluska, North Carolina, Applicants sought approval for authority to sell and transfer Common Carrier Certificate No. C-965, together with the operating rights contained therein from Joe C. Haynes, d/b/a Reeves Mobile Home Service, to Jack Daniel Wood, d/b/a Wood Mobile Home Movers.

Notice of the application together with a description of the involved authority was published in the Commission's Calendar of Hearings issued February 19, 1974. The Notice contained the provision that if no protests were filed by 5:00 p.m., Tuesday, March 12, 1974, the Commission would decide the case on the record, and if protests were filed within the specified time the Commission would set the matter for hearing.

Timely protest was filed with the Commission by James Woodrow Frady, d/b/a Frady's Mobile Home Towing Service, Sylva, North Carolina. By Order dated May 1, 1974, the protest of James Woodrow Frady was allowed. Notice and commodity and territory description was given, and date of hearing was set for Tuesday, April 23, 1974, at 10:00 a.m., by publication in a subsequent Calendar of Hearings issued March 20, 1974.

At the time of hearing all parties were present and represented by counsel. Applicant offered testimony of Mr. Joe C. Haynes who stated reasons why he would like to sell his authority. Mr. Jack Daniel Wood explained reasons for desiring to purchase said authority and described his financial capabilities, and Mr. W. P. Bradley testified as to the character of Mr. Jack Daniel Wood.

Protestant offered the testimony of James Woodrow Frady as to his capability to serve the territory described in the application. Mr. Gibson was tendered as corroborating the testimony of Mr. Frady.

Based upon the record, the testimony given and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That Joe C. Haynes, d/b/a Reeves Mobile Home Service, holds authority as an intrastate mobile home mover in North Carolina as indicated in Certificate No. C-965.

2. That Joe C. Haynes proposes to transfer the authority granted to him in Certificate No. C-965.

3. That the Certificate held by the Transferor has been actively operated up to the time of this hearing and is presently being operated. Accordingly, transfer thereof is justified by public convenience and necessity in view of the presumption of law that public convenience and necessity once having been shown to exist continues.

4. That the mere availability of other franchised mobile home movers that are ready, willing, and able to transport additional business within the certificated area of the Transferor does not constitute a showing that public convenience and necessity no longer exists.

5. That the proposed transfer of operating authority is in the public interest.

That the proposed transfer will not adversely affect the service to the public under said certificate inasmuch as the evidence indicates that the proposed Transferee is capable of rendering service equal to that of the proposed Transferor and will render not only equal service but more aggressive service and that the proposed Transferee is fit,

willing, and able to perform such services to the public under the proposed certificate transfer.

Whereupon, the Commission reaches the following

CONCLUSIONS

This case involves a protested joint application for Commission approval of the transfer of irregular route operating authority to transfer mobile homes of Joe C. Haynes, d/b/a Reeves Mobile Home Service as set forth in Certificate No. C-965 to Jack Daniel Wood, d/b/a Wood Mobile Home Movers, as indicated by the following commodity and territory description:

> Transportation of mobile homes over irregular routes between any points within the Counties of Madison, Haywood, Swain, Macon, Graham, Clay, Cherokee, and Jackson as well as permission to move mobile homes over irregular routes from any point within these counties to any point within the State of North Carolina.

Statutory criteria for the sale or other transfer of operating authority of a motor carrier are set forth in provisions of G. S. 62-111(a) and G. S. 62-111(e) as follows:

> "(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed, through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided that the above provisions shall not apply to regular trading in listed securities on recognized markets.
>
> * * *
>
> "(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding

30 days has been approved by the Commission as provided in G. S. 62-112(b)(5)."

Protestant in this case urges the Commission to deny the transfer of operating rights of Joe C. Haynes simply because other mobile home movers within Joe C. Haynes certificated area are ready, willing and able to provide additional services. Protestant says that due to the declining business in these areas the transfer should be denied because it would place a burden upon other operations.

In the case of Utilities Commission vs. Coach Company, 269 N.C. 717, 153 SE 2d 461 (1967), the protestants sought, as the Protestants here seek, construction of the statutes which would provide them with protection from increased competition contending that G. S. 62-111(a) required the Commission to consider similar elements upon the transfer of franchise authority and upon the granting of an application for new authority, including public need for the service already provided by existing carriers and the effect of the service provided by the Transferee on the operations of existing carriers. In that case, the Court held that showing of public need which G. S. 62-262(e)(1) required of an application for new authority was not applicable in a transfer proceeding and was not written into it by G. S. 62-111(a). In the case of Utilities Commission vs. Petroleum Carrier, 7 N.C. App. 408, 173 SE 2d 25 (1970), the Court of Appeals interpreted G. S. 62-111 as similarly prohibiting the application of such doctrine or test as follows:

> The amendment sets out certain specific criteria to be considered in the Commission's determination of whether approval in a given case is justified. It does not, on the other hand, indicate a policy change for protecting existing certificate holders from lawful competition. Like the subsection (a) public convenience and necessity test, the requirement that the Commission find the transfer in the public interest does not write into the transfer approval procedure the G. S. 62-262(e)(1) new certificate test of the public need.

In that case, the Court of Appeals recited the conclusion of the Supreme Court in the case of Utilities Commission vs. Coach Company, supra, that the policy of the State as declared in the Public Utilities Act of 1963 clearly favors transfers of actively operated motor freight carrier certificates without unreasonable restraints inasmuch as public convenience and necessity were shown to exist when authority was granted or acquired under the 1947 Grandfather Clause and rebuttable presumption of law is that it continues. The Court of Appeals further made it clear that such policy and such statutes would not protect other carriers from increased competition to be anticipated from an aggressive Transferee.

In another Coach Company case, Utilities Commission vs. Coach Company 261 NC 384, 34 SE 2d 689 (1964), the Court, through Moore, J., said

"There is no public policy condemning competition as such in the field of public utilities. The public policy only condemns unfair or destructive competition. The possibility that a transfer of authority to a more competitive carrier would adversely affect existing carriers does not make the transfer contrary to the public interest as a matter of law."

Joint applicants have satisfied the requirements of G. S. 62-111 and the proposed sale and transfer should accordingly be approved.

IT IS, THEREFORE, ORDERED

1. That the sale and transfer of common carrier authority currently held by Joe C. Haynes to Jack Daniel Wood as set out in Exhibit B attached hereto be, and hereby is, approved.

2. That Jack Daniel Wood, d/b/a Wood Mobile Home Movers, shall file with the Commission evidence of required insurance, lists of equipment, schedule of minimum rates and charges, designations of process agent, and otherwise comply with the Rules and Regulations of this Commission.

3. That Jack Daniel Wood shall familiarize himself with the rules and regulations of this Commission as they pertain to mobile home movers and shall abide by and obey them.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1674, SUB 1

Jack Daniel Wood, d/b/a
Wood Mobile Home Movers
Pass Street
Hayesville, North Carolina 28904

EXHIBIT B

Irregular Route Common Carrier

Transportation of mobile homes over irregular routes between any points within the Counties of Madison, Haywood, Swain, Macon, Graham, Clay, Cherokee, and Jackson as well as permission to move mobile homes over irregular routes from any point

within these counties to any point within the State of North Carolina.

DOCKET NO. R-71, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Seaboard Coast Line Railroad Company - Application for Authority to Implement the Mobile Agency Concept in the Lumberton, North Carolina, Area, on a Permanent Basis to Serve the Existing Agency Stations of St. Paul, Pembroke, Fairmont, Rowland, Gibson and Laurel Hill and the Nonagency Stations of Duart, Buie, Pates, Raynham, Elrod, Scholl, Elmore and Lowe. | ) | RECOMMENDED ORDER GRANTING APPLICATION |

HEARD IN: City Council Chambers, Municipal Office Building, 501 East 5th Street, Lumberton, North Carolina on January 25, 1974, at 11:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner.

APPEARANCES:

For the Applicant:

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For the Commission Staff:

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Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
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Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: On October 31, 1973, Seaboard Coast Line Railroad Company filed with the Commission an Application seeking permanent authority to implement a Mobile Agency for Freight Service in the Lumberton, North Carolina area, serving the following agency and non-agency stations:

| Agency Stations | Non-Agency Stations |
|---|---|
| Saint Paul | Duart |
| Pembroke | Buie |
| Fairmont | Pates |
| Rowland | Raynham |
| Gibson | Elrod |
| Laurel Hill | Scholl |
| | Elmore |
| | Lowe |

The station buildings at Saint Paul, Gibson and Laurel Hill, being in fair condition are proposed to be leased to any interested party or dismantled and removed. The station building at Pembroke is proposed to be abandoned and removed. The station buildings at Fairmont and Rowland are presently under partial lease and such buildings will be left intact under the leases.

By Order dated November 8, 1973, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service fifteen (15) days prior to the date of the hearing. One letter was received in opposition, not to the Applicant's basic mobile agency concept, but to putting the concept into effect permanently without a trial period. By Commission Order dated December 10, 1973, the appearance of counsel for Applicant, Mr. Charles M. Rosenberger, was allowed.

The cause came on for hearing at the above-captioned time and place, with the Applicant being present and represented by Counsel. No persons appeared to contest the Application at the hearing. Applicant introduced Affidavits of Publication from three area newspapers of the Notice to the Public required by the Commission Order setting the matter for hearing.

The Applicant presented the prepared testimony of Mr. J. H. Ingoldsby, Superintendent of Station Operations - Freight Claim Prevention for Applicant, and several shipper witnesses being served by a Mobile Agent at other points on Applicant's Line. These witnesses included the following: Mr. Robert F. Butler, District Manager, Boren Clay Products, Roseboro, North Carolina; Mr. Billy Horne, real estate and general business, Stedman, North Carolina; Mr. John E. Elam, Bladen Milling Company, Bladenboro, North Carolina; Mr. Thurman Smith, Manager of Cross Creek Savings and Loan Association and President of the Chamber of Commerce, Roseboro, North Carolina; and Mr. William C. Moore, D. D. McCall Co., Saint Paul, North Carolina. The last mentioned witness, Mr. Moore, does not now, but would be, receiving mobile agency service if the Application is approved. All witnesses enthusiastically endorsed the mobile agency concept as contained in the Application. The entire

testimony of all witnesses is a matter of record in this proceeding.

Based on the transcript of hearing, the verified Application, and the Commission files concerning the previous implementation of the mobile agency concept by Applicant in Tarboro, Wilson, Fayetteville, Goldsboro, Conway, Chadbourn, Henderson, Jacksonville and Aberdeen, which collectively comprise the record in this cause, the Hearing Commissioner now makes the following:

FINDINGS OF FACT

1. That the Applicant, Seaboard Coast Line Railroad Company, is a corporation authorized to do business in North Carolina as a franchised common carrier by rail, engaged in both interstate and intrastate commerce; that with regard to its intrastate operations, Applicant is subject to the jurisdiction of and regulation by the North Carolina Utilities Commission, and that Applicant has properly filed its Application with this Commission concerning this matter, over which this Commission has jurisdiction.

2. That Applicant is hereby requesting permanent authority to implement a mobile agency service in the Lumberton, North Carolina, area, to operate from a base station at Lumberton and to serve the following agency and non-agency stations:

| Agency Stations | Non-Agency Stations |
|---|---|
| Saint Paul | Duart |
| Pembroke | Buie |
| Fairmont | Pates |
| Rowland | Raynham |
| Gibson | Elrod |
| Laurel Hill | Scholl |
| | Elmore |
| | Lowe |

3. That the Applicant seeks to lease, sell, donate, abandon or remove from its property the agency stations at Saint Paul, Fairmont, Rowland, Pembroke and Gibson. The agency station at Laurel Hill was destroyed beyond repair by fire on or about December 19, 1973.

4. That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) A central office will be established at Lumberton and said office will be equipped with a telephone service over which all of its customers in the involved area may phone the agency without payment of a long distance toll charge.

(b) The mobile agent will use a two-way radio equipped mobile van containing necessary agency supplies. The mobile agent will thus be in continuous contact with the central office or base station, the switching trains and, where necessary, the individual customers.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each station or customer premises to determine cars on hand for demurrage and other purposes. In addition, he will be equipped to collect freight charges if the customer so desires, receive orders for empty cars and provide answers for any inquiries as to available railroad service.

(d) The mobile agent will visit the place of business of each of the railroad patrons rather than having the customer come to the agency, as is the case at present.

(e) The mobile agent will work six days per week; whereas the present stations are open only five days per week. In addition, the base station at Lumberton will remain open 10 hours per day (8:00 A.M. - 6:00 P.M.) six days a week as contrasted with the present eight hours per day, five days a week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

(g) Full agency services will become available to non-agency stations which have been closed due to insufficient business. These stations will become "open" stations under the present tariff regulations, and the present "open" stations will remain such.

(h) The base station will be equipped with a Telex machine programmed for the Seaboard Coast Line computer in Jacksonville, Florida. Such machine provides instant tracing of outbound freight cars and incoming freight and empty cars for loading. Customers can, thereby, know at all times the status of their shipments, raw materials and empty cars needed for loading.

(i) The mobile agent will cover the entire territory covered by the Application each and every day, six days per week. The route consists of a total distance of approximately 150 miles, which will entail driving time of slightly over four hours, leaving almost four

hours of free working time. A billing analysis of each affected station from December 1, 1972 - November 30, 1973 shows that the mobile agent would have to perform a daily average of approximately eight (8) billing functions or units. One trained agent can easily perform such functions in less than four working hours.

5. That the implementation of the mobile agency service will result in substantially the same or improved service with respect to the following services: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' place of business; (c) eight stations previously classified as non-agency stations will be upgraded to agency status and will receive agency service; (d) stations now receiving five days per week agency service will receive six days per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer co-ordination between local freight train service and the agent for the benefit of the shipping and receiving public.

6. The changes in the present method of operation as proposed and in existing plant, equipment, apparatus, facilities and other physical property ought reasonably to be made.

## CONCLUSIONS

The Hearing Commissioner concludes that the Seaboard Coast Line Railroad Company is engaged in the operation of a privately-owned business; that by virtue of the nature of the service it undertakes to render, certain exceptional duties are imposed upon it by the common law and by statute; that this Commission is authorized by statute to regulate its rates, service to the public, and the safety of its equipment and operating practices; and that in other respects, the company has the same freedom as does any other corporation in the management of its properties and in the employment and assignment of the duties of its employees (See Utilities Commission v. Atlantic Coast Line Railroad, 268 N.C. 242(1966).) However, every railroad is mandatorily required to furnish adequate, efficient and reasonable service in accord with G. S. 62-131(b).

G. S. 62-118 deals with the "abondonment and reduction of service" by railroads and sets forth the criterion upon which this Commission shall have the power to authorize such abandonment or reduction in service. The Hearing Commissioner concludes that "abandonment and reduction" in service under this statute, contemplates more than the substitution of a mobile agency for a particular agent, and that it also encompasses the broader concept of abandonment or reduction in railroad service by trains operating and serving a particular area. The Hearing Commissioner concludes that implementation of a Mobile Agency in the Lumberton, North Carolina area is not an "abandonment or

reduction in service" as is contemplated by G. S. 62-118, and therefore, said statute is not determinative in this case. It is also concluded that any inconvenience brought about by the approval of the Mobile Agency plan in this case will be occasional and minimal in comparison with the savings to the railroad and the improvement and extension of service contemplated by the plan, and that it is not in the public interest and is not required by Chapter 62 of the General Statutes that a public utility should waste its manpower or other resources with no substantial resulting benefit to the public. (State ex rel. Utilities Commission v. Atlantic Coast Line Railroad, supra.)

The Hearing Commissioner further concludes that approval of the implementation of the "Mobile Agency Concept" as applied for should be granted, subject to the supervision of this Commission; that the present physical station buildings may be leased, abandoned, dismantled or removed as noted above; that as long as Applicant retains ownership of the present stations buildings it should either maintain them in a reasonable state of repair or proceed with dismantlement and removal thereof; that Applicant should advise the Commission of its actions in connection with the various involved station buildings, and that the number of mobile agencies, telephone lines, and other facilities should keep pace with the needs and demands for service.

The Hearing Commissioner concludes that G. S. 62-30, 62-32(6) and 62-42(a) empower this Commission to approve the "Mobile Agency Concept" on a permanent basis, and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances from time to time.

G. S. 62-245 deals with the railroads' duty to receive and forward freight tendered and provides a penalty for the unlawful refusal to receive and forward such freight. It is the conclusion of the Hearing Commissioner that such duty to receive and forward tendered freight remains unaltered by the approval and implementation of the "Mobile Agency Concept".

The Hearing Examiner finally concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the six fixed agents as well as providing comparable service for the eight non-agency stations. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant be, and hereby is, authorized to establish on a permanent basis, within thirty (30) days from the effective date of this Order, the Mobile Agency Concept in the area and manner hereinabove described, and to close, dismantle, move, lease, occupy, or otherwise alter the

physical buildings at Saint Paul, Fairmont, Rowland, Pembroke and Gibson as good business management dictates.

2. That so long as Applicant retains ownership of the station buildings involved in the Mobile Agency Concept, it should maintain them in a reasonable state of repair. The exteriors, including the grounds and any outbuildings, and the interiors should be painted, cleaned or washed so that they will always appear in an attractive, well-cared-for condition. Applicant shall require the tenant at any leased station building to repair and maintain said building and grounds in such condition.

3. That Applicant notify the Commission the date and manner of disposition of each of the station buildings herein involved.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 595

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Complaint of Dr. G. D. Zahn on Additional Deposit Requirements for Telephone Service of Placemat Press, Fayetteville, North Carolina, by Carolina Telephone and Telegraph Company,<br>Complainant<br>vs.<br>Carolina Telephone and Telegraph Company,<br>Defendant | ) | ORDER DENYING RELIEF SOUGHT IN COMPLAINT |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, N. C., May 17, 1974, at 10:00 A.M.

BEFORE: Commissioner Hugh A. Wells, Presiding; Commissioners Ben E. Roney and George T. Clark, Jr.

APPEARANCES:

For the Complainant:

Not represented by Counsel

For the Respondent:

William W. Aycock, Jr.
Attorney at Law
Taylor, Brinson & Aycock
P. O. Box 308
Tarboro, N. C.

For the Commission Staff:

John R. Molm
Associate Commission Attorney
Ruffin Building
Raleigh, N. C.

BY THE COMMISSION: This matter came on for hearing before Commissioner Hugh A. Wells, Presiding; Commissioners Ben E. Roney and George T. Clark, Jr., on May 17, 1974, on the complaint of Dr. G. D. Zahn, doing business as Placemat Press, Inc., Fayetteville, North Carolina, against Carolina Telephone and Telegraph Company.

In his Complaint dated February 25, 1974, Dr. Zahn sought relief from the additional $150.00 deposit imposed on him by Carolina Telephone and Telegraph Company (hereinafter called "CAROLINA TELEPHONE"). The Answer filed by Carolina Telephone contended that Dr. Zahn consistently failed to pay

his telephone bill until after the due date. The Answer further stated its belief that the Complainant had on deposit with Carolina Telephone an amount of $50.00, while the Complainant's average monthly bills for five consecutive months had exceeded $100.00 per month.

At the hearing Dr. G. D. Zahn was not represented by counsel. Carolina Telephone was represented by Mr. William W. Aycock, Jr., Tarboro, North Carolina. Dr. Zahn presented testimony and exhibits in support of his complaint. Carolina Telephone presented the testimony and exhibits of Mr. T. P. Williamson, Assistant Vice President of Carolina Telephone. Both parties submitted late exhibits which have been admitted into evidence by the Commission.

Based upon the Complaint, the Answer, the testimony and exhibits, the Commission makes the following

FINDINGS OF FACT

1. That Carolina Telephone established service for Placemat Press on July 9, 1973, requiring $50.00 deposit to satisfactorily establish credit.

2. That the average monthly bills dated October 9, 1973, through February 9, 1974, exceeded $100.00.

3. That Complainant failed to pay his bills until after the due date for five consecutive months, for the bills dated October 9, 1973, through February 9, 1974.

4. That Carolina Telephone informed Complainant on January 10, 1974, that an additional deposit of $150.00 would be required to maintain satisfactory credit.

5. That the combined average bill for two months of telephone service exceeded $200.00, an amount exceeding four times the initial deposit of $50.00 made by the Complainant.

6. That Carolina Telephone disconnected the Complainant's telephone service for failure to pay the additional deposit on February 21, 1974.

Based upon these Findings, the Commission makes the following

CONCLUSIONS OF LAW

1. Rule R12-3(c) grants to a public utility the authority to require the customer to re-establish credit in case the basis on which credit was originally established has materially changed.

2. Credit is deemed to be re-established by any one of five methods enumerated in Rule R12-2, one of the methods being a cash deposit to secure payment of bills for service as prescribed in Rule R12-4.

3. Rule R12-4 authorizes a cash deposit in an amount not to exceed two-twelfths of that estimated for service in the ensuing twelve months; in this case an amount approximately equal to $200.00.

4. The additional deposit of $150.00 combined with the initial deposit of $50.00 is a reasonable deposit requirement, considering all of the circumstances.

IT IS, THEREFORE, ORDERED that the relief sought by Complainant, Dr. G. D. Zahn, doing business as Placemat Press, Inc., i.e., relief from the $150.00 additional deposit imposed by Carolina Telephone and Telegraph Company be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This 2nd of August, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Petition of E. A. Friddle, et al.,<br>Complainants<br><br>vs.<br><br>Central Telephone Company (formerly Lee Telephone Company) and Southern Bell Telephone and Telegraph Company,<br>Defendants | ORDER DISMISSING JUNE 19, 1973, ORDER AND CLOSING DOCKET |

BY THE COMMISSION: On May 9, 1972, Bailey, Dixon, Wooten & McDonald, Attorneys at Law, Raleigh, North Carolina, filed Petition of E. A. Friddle and others requesting that a small area at and near the Intersection of North Carolina 65 and U. S. Highway #220, approximately 1.1 mile north of the Guilford County Line in Rockingham County be removed from the franchise area of Lee Telephone Company (now Central Telephone Company) and added to the franchise area of Southern Bell Telephone Company.

On May 16, 1972, the Commission issued Order Serving Complaint on Lee Telephone Company (now Central Telephone Company) and Southern Bell Telephone and Telegraph Company directing that said companies satisfy the Complaint or file Answer thereto within thirty (30) days. Answer to the Complaint was filed with the Commission by Lee Telephone Company (now Central Telephone Company) on June 13, 1972,

and by Southern Bell Telephone Company on June 15, 1972. These Answers were served on the Complainants by Commission Order dated June 26, 1972, with the stipulation that Complainants could file reply to the answers or request public hearing within twenty (20) days of the date of the Order. Complainants' attorney filed request for hearing on July 5, 1972.

Hearing was held on October 24 and 25, 1972, after which the Commission issued a Recommended Order dated March 19, 1973, changing the boundary line and ordering Southern Bell Telephone and Telegraph Company to provide telephone service to the Complainants. All parties excepted to the Recommended Order and Oral Argument was set and heard on May 18, 1973, after which the Commission issued an Order dated June 19, 1973, affirming and adopting the Recommended Order which issued on March 19, 1973.

Central Telephone Company and Southern Bell Telephone and Telegraph Company gave Notice of Exceptions to the Commission Order and appealed the matter to the North Carolina Court of Appeals. The Court of Appeals issued its Opinion and Judgment dated April 15, 1974, reversing the Commission Order of June 19, 1973, requiring Southern Bell to provide telephone service to the Complainants.

On April 30, 1974, the Commission filed with the Supreme Court of North Carolina Notice of Petition for Writ of Certiorari to the North Carolina Court of Appeals to Review its Decision. On June 11, 1974, the Clerk of the Court of Appeals certified to the Chief Clerk of the North Carolina Utilities Commission that the Petition for Certiorari to review the decision of the Court of Appeals was denied by Order of the Supreme Court of North Carolina on the 4th day of June, 1974.

Upon the Commission's review of the record in this case and the actions taken, it is concluded that every action necessary or available has been taken and completed.

IT IS, THEREFORE, ORDERED that the Commission Order in this docket issued June 19, 1973, be, and the same is hereby, dismissed and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of August, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 733

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Southern Bell Telephone and Telegraph Company for Adjustments in its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina. | ) | ORDER GRANTING PARTIAL INCREASES IN RATES AND CHARGES |

HEARD: Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, November 27 - 30, and December 4, 5, 17, 18, 1973.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane, Jr.

BY THE COMMISSION: This matter is before the North Carolina Utilities Commission upon application filed on June 20, 1973, by Southern Bell Telephone and Telegraph Company, P. O. Box 240, Charlotte, North Carolina, (hereinafter referred to as Southern Bell) for authority to increase existing rates and charges for intrastate service to produce an annual increase in revenue of approximately $33,812,129. The Commission, by order dated July 20, 1973, declared this application to be a general rate case; suspended the proposed increase in rates; set the application for hearing to begin on November 27, 1973; and ordered Southern Bell to give sufficient notice to the public.

Public hearings commenced on November 27, 1973, at which time the following appearances were entered:

APPEARANCES:

For the Applicant:

R. C. Howison, Jr.
Joyner and Howison
Wachovia Bank Building
Raleigh, North Carolina
Appearing for: Southern Bell Telephone and Telegraph Company

John F. Beasley
General Attorney
Southern Bell Telephone and Telegraph Company
1245 Hurt Building
Atlanta, Georgia
Appearing for: Southern Bell Telephone and Telegraph Company

For the Protestants:

Wade H. Hargrove
Tharrington, Smith & Hargrove
300 BB&T Building
Raleigh, North Carolina 2760|
Appearing for: N. C. Association of Broadcasters

J. Randall Groves
Thigpen & Hines, P. A.
900 NCNB Building
Charlotte, North Carolina 28202
Appearing for: Contact, Inc.

For the Intervenors:

Dellon E. Coker
Attorney at Law
Regulatory Law Office
Office of the Judge Advocate General
Department of the Army
Washington, D. C. 203|0
Appearing for: Department of Defense and all Other Executive Agencies of the United States

Thomas L. Barringer
Attorney at Law
First Federal Building
Raleigh, North Carolina
Appearing for: N. C. Consumers Council, Intervenors

For the Attorney General of North Carolina:

I. Beverly Lake, Jr.
Assistant Attorney General
Ruffin Building
Raleigh, North Carolina
Appearing for: Using and Consuming Public

Robert P. Gruber
Associate Attorney General
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Raleigh, North Carolina
Appearing for: Using and Consuming Public

Jerry J. Rutledge
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Appearing for: Using and Consuming Public

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina
Appearing for: The Commission Staff

E. Gregory Stott
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina
Appearing for: The Commission Staff

At their request the above parties of record were given thirty (30) days from the date of mailing of the last transcript to file briefs.

On August 1, 1973, the Commission entered its Order consolidating the complaint of Litton Systems, Inc., in Docket No. P-55, Sub 732, with Southern Bell's rate case in Docket No. P-55, Sub 733. Following the consolidation of these dockets, various motions pertaining to the proceedings were filed by Litton Systems, Inc. On August 23, 1973, Southern Bell filed Motion for Severance of Docket No. P-55, Sub 732, from Docket No. P-55, Sub 733. Commission Order of August 27, 1973, denied Southern Bell's motion to Sever. By Order of September 25, 1973, the Commission, on its own motion, separated and removed the complaint of Litton Systems, Inc., from the general rate case.

Petitions to intervene were filed by: the Department of Defense and all Other Executive Agencies of the United States on August 16, 1973, and allowed by Order dated August 20, 1973; the North Carolina Consumers Council on November 2, 1973, allowed by Commission Order dated November 5, 1973; and the North Carolina Association of Broadcasters, Inc., Contact, Inc., on November 7, 1973, allowed by Commission Order dated November 13, 1973.

On October 9, 1973, Notice of Intervention was filed by the Attorney General of North Carolina, and the Commission's Order Allowing Motion to Extend the Calendar Schedule was issued by the Commission on October 15, 1973. On October 30, 1973, the Attorney General filed a Motion for Extension of Time for Filing Expert Testimony.

Southern Bell's reply to the Attorney General's Motion for Extension of Time for Filing Expert Testimony was filed on November 2, 1973. The Commission by Order dated November 5, 1973, granted the Attorney General's Motion for Extension of Time and set forth the procedure for receiving testimony.

The additional annual rate increases proposed by Southern Bell of $33,812,129 would include, in addition to certain non-recurring charges, increases in basic exchange rates as

shown by the following table reflecting present rates and proposed increases.

| | Residence | | | Business | | |
|---|---|---|---|---|---|---|
| | Ind. | 2-Pty. | 4-Pty. | Ind. | 2-Pty. | 4-Pty. |
| Exchanges: | Atkinson, Blowing Rock, Bolton, Burgaw, Gibson, Locust, Long Beach, Newland, Southport, Spruce Pine, Taylorsville | | | | | |
| Present | $5.40 | $4.45 | $3.95 | $11.85 | $10.70 | $ 9.90 |
| Proposed | 6.90 | 4.95 | 4.45 | 14.45 | 13.30 | 12.50 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Boone, Claremont, Hamlet, Laurinburg, Rockingham, Selma | | | | | |
| Present | 5.60 | 4.60 | 4.05 | 12.60 | 11.45 | 10.50 |
| Proposed | 7.10 | 5.10 | 4.55 | 15.20 | 14.05 | 13.10 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Canton, Caroleen, Cleveland, Clyde, Denver, Ellenboro, Fairmont, Forest City, Grantham, Grover, Hendersonville, Lake Lure, Lattimore, Lawndale, Lenoir, Lincolnton, Lumberton, Maggie Valley, Maiden, Morganton, Pembroke, Reidsville, Rowland, Ruffin, Rutherfordton, Statesville, Stony Point, Troutman, Waynesville | | | | | |
| Present | 5.80 | 4.80 | 4.20 | 13.35 | 12.20 | 11.10 |
| Proposed | 7.30 | 5.30 | 4.70 | 15.95 | 14.80 | 13.70 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Acme, Carolina Beach, Castle Hayne, Cherryville, Gatewood, Goldsboro, Kimesville, Milton, Mount Olive, Newton, Salisbury, Scotts Hill, Shelby, Wrightsville Beach | | | | | |
| Present | 6.05 | 5.00 | 4.35 | 14.10 | 12.95 | 11.70 |
| Proposed | 7.55 | 5.50 | 4.85 | 16.70 | 15.55 | 14.30 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Anderson, Bessemer City, Black Mountain, Burlington, Enka-Candler, Fairview, Gastonia, Kings Mountain, Leicester, Lowell, Saxapahaw, Stanley, Swannanoa, Wilmington | | | | | |
| Present | 6.30 | 5.20 | 4.50 | 14.85 | 13.70 | 12.30 |
| Proposed | 7.80 | 5.70 | 5.00 | 17.45 | 16.30 | 14.90 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Exchanges: | Apex, Arden, Asheville, Cary, Greensboro, Julian, Knightdale, Monticello, Summerfield, Wendell, Zebulon | | | | | |
| Present | 6.50 | 5.40 | 4.65 | 15.85 | 14.45 | 13.05 |
| Proposed | 8.00 | 5.90 | 5.15 | 18.45 | 17.05 | 15.65 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Raleigh, Winston-Salem | | | | | |
| Present | $6.75 | $5.60 | $4.85 | $17.35 | $15.95 | $14.15 |
| Proposed | 8.25 | 6.10 | 5.35 | 19.95 | 18.55 | 16.75 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |
| Exchanges: | Belmont, Charlotte, Davidson, Huntersville, Mt. Holly | | | | | |
| Present | 7.00 | 5.80 | 5.05 | 18.85 | 17.45 | 15.25 |
| Proposed | 8.50 | 6.30 | 5.55 | 21.45 | 20.05 | 17.85 |
| Increase | 1.50 | .50 | .50 | 2.60 | 2.60 | 2.60 |

## BACKGROUND INFORMATION

The Commission issued an order on July 20, 1973, setting the petition for increased rates for public hearing beginning on November 27, 1973. Subsequent hearings were held November 28, 29, 30, December 4, 5, 17, and 18, 1973.

Southern Bell's petition for an increase in rates follows a $13,295,087 increase granted in the order dated August 2, 1971 in Docket No. P-55, Sub 650 and an $11,971,672 increase in Docket No. P-55, Sub 681 granted in its order dated October 17, 1972. The Company states in its petition that since the granting of the last increase it has continued to invest large amounts of capital in North Carolina to expand and improve its telephone plant and service. In addition, the Company's petition points to a $4.9 million increase in intrastate expense effective July 1, 1973, resulting from the labor agreement between the company and the union. The Company contends that these factors as well as others have had and will continue to have the effect of preventing the Company from earning the 7.51% rate of return found proper by the Commission in its order dated June 30, 1972.

## WITNESSES

Southern Bell offered the testimony and exhibits of the following witnesses: Mr. Robert R. Nathan, President of Robert R. Nathan Associates, Inc., Consultant, as to general economic trends responsible for the need of an increase in rates and some prospective economic trends; Mr. Robert N. Dean, Assistant Vice President and Assistant Treasurer, Southern Bell Telephone and Telegraph Company, as to the current cost of capital, fair rate of return, and the determination of additional revenues required by Southern Bell; Mr. Arthur R. Tebbutt, Professor of Statistics, Northwestern University, Consultant, as to price index

numbers for material, labor, and engineering constructed upon his advice under the direction of J. T. Gathright; Mr. John D. Russell, Vice President, American Appraisal Associates, Inc., Consultant, as to indexes, prepared under his direction, which reflect the changes in costs for the building account, and for the contractor portion of the underground conduit, buried cable, and pole line accounts; Mr. W. E. Thornton, Price Manager, Western Electric Company, as to a description of Western Electric's central office equipment price indexes applicable to Southern Bell and their method of preparation; Mr. Jack T. Gathright, Engineering Manager, Inventory and Costs, Southern Bell Telephone and Telegraph Company, as to replacement cost of the Company's intrastate properties used and useful in furnishing telephone service and how this replacement cost was used in the calculation of a fair value amount for the Company's intrastate properties; Mr. Roderick G. Turner, Jr., General Accountant, Southern Bell Telephone and Telegraph Company, as to the Company's present intrastate operating results as of June 30, 1973, as reflected by the Company's books and records, and adjusted for known changes in revenue and expense levels; Mr. George J. Kamps, Engineering Manager, Price Surveys, American Telephone and Telegraph Company, as to price comparison studies and conclusions drawn from the studies; Mr. Henry S. Pino, Manager of Statistics-Regulatory Matters Division, Western Electric Company, as to Western Electric sales and earnings; Mr. John K. Christensen, Director, License Contract and Regulatory Matters, American Telephone and Telegraph Company, as to license contract services and costs; Mr. David B. Denton, Rate Planning Supervisor, Southern Bell Telephone and Telegraph Company, as to the principles employed in developing a schedule of rates and charges for telephone services.

The protestants offered testimony and exhibits as follows: Mr. Gene N. King, President, Contact, Inc., as to the effects of certain aspects of the requested increase on his business; Mr. F. L. Patterson, President, Southern Telephone Answering Association, as to the effects of certain aspects of the application on the telephone answering business.

The following public witnesses presented testimony: Mr. Jim Beam, Charlotte, N. C., as to the effects of the requested increase on his business; Mr. George W. Johnson, Decatur, Georgia, as to the effects of the increase on his North Carolina business interests; Mrs. Lillian Woo, President, North Carolina Consumers Council, as to the unreasonable magnitude of the requested increase; Mr. George Spinnett, North Carolina Senior Citizens Federation, as to the effects of the increase on low or fixed income citizens; Mrs. Laurel Raymond as to the effects of the increase particularly on low income groups; Mr. Clarence Talmadge White, as to his desire for the availability of metered or limited use telephone service; Mr. Thomas D. Harrell, Jr., President and General Manager, Radio Stations WSTP and WRDX, as to the effects of aspects of the requested increase on

the operations of the radio stations; Mr. F. L. Patterson, on his own behalf, as to the effects of the requested increase on the telephone answering business.

The Commission Staff offered the testimony and exhibits of the following witnesses: Mr. Hugh L. Gerringer, Telephone Toll Settlements and Separations Engineer, as to the appropriateness of the division between interstate and intrastate operations of the Company within North Carolina, the status of the intrastate toll settlements for the test period and the determination of the Company's normalized intrastate toll revenues for the test period; Mr. Vern W. Chase, Chief Engineer, Telephone Rate Section, as to his evaluation of the rate proposals in the proceeding and other rate matters; Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section, as to the results of the staff review of engineering and installation of central office equipment and trunking facilities, and on new service installation difficulties; Mr. Charles D. Land, Staff Telephone Engineer, as to the staff's review of telephone service provided by Southern Bell in North Carolina; Mr. Thomas M. Kiltie, Staff Economist, as to the toll versus non-toll distribution of any increase in revenues which might be granted to Southern Bell's intrastate operations; Mr. William E. Carter, Jr., Senior Staff Accountant, as to the North Carolina intrastate operating results of Southern Bell for the twelve months ended June 30, 1973.

The Attorney General introduced the testimony and exhibits of the following witnesses: Mr. David A. Kosh, President, David A. Kosh and Associates, Consultant, as to fair rate of return for the North Carolina intrastate operations of Southern Bell; Mr. Dennis R. Bolster, Vice President, David A. Kosh and Associates, Consultant, as to revenue requirements of the North Carolina intrastate operations of Southern Bell.

## TEST YEAR AND THE NEED FOR NORMALIZATION

It is fundamental to the ratemaking process to select the financial experience for a period of time (usually one year) to test the company's level of earnings and thus the reasonableness of the present rate structure. In the company's original filing, it presented the actual results for the 9 months ended April 30, 1973, and estimated results for the 3 months ended June 30, 1973. The Commission, by Order dated July 20, 1973, established the test period as the 12 months ending June 30, 1973, and ordered the company to revise its exhibits to show the actual results for that period. In testing the reasonableness of the present rates, there are four basic determinations that must be made: (1) What is the fair value rate base upon which the utility should be permitted to earn; (2) What level of revenues should be used, (3) What level of expenses should be used, and (4) What rate of return should the utility earn on the fair value rate base?

In arriving at answers to these basic questions, the starting point in this case was to use historical financial data. The use of historical financial data does not necessarily represent a fair measure of the probable future level of earnings under the existing rates. That is the reason it is necessary to analyze this data for the purpose of identifying adjustments which are required to produce a more representative level of revenues and expenses that are expected to occur in the foreseeable future. An example of an expense item not recorded on the books which was not considered to be representative of a normal level is the wage increase which went into effect on July 1, 1973, one day after the test year. The actual level of wages experienced during this period of time was adjusted upward as though this wage increase had been in effect throughout the full 12 months. In the ratemaking process, this type of adjustment to the historical financial experience is commonly referred to as a "known change". Besides the questions of what are a reasonable level of revenues and expenses, there is also the question of what expenses should the utility be allowed to pass on to the consumer in its rate structure. For example, should the utility pass on contributions made to charitable institutions. Another very important question to be answered is, what investment should be considered in determining the fair value rate base upon which the utility is entitled to earn? In other words, what items of investment should go in to make up the calculation of the original cost net investment and net reproduction cost new, two of the components used to determine the fair value rate base.

Based upon the entire record of this proceeding, the Commission makes the following:

## FINDINGS OF FACT

1. That Southern Bell is a duly franchised public utility providing telephone service to its subscribers in 92 local exchanges in North Carolina, extending from Haywood County and Waynesville on the west through major cities and counties in the Piedmont area of North Carolina to New Hanover County and Wilmington in the east; and is a duly created existing corporation authorized to do business in North Carolina and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. That the total increases in rates and charges as filed by Southern Bell would produce $34,412,771 in additional gross annual revenues, and the total reductions filed would amount to $600,642 in annual reductions leaving the combined additional increase in annual revenues applied for of $33,812,129, or resulting in total annual intrastate operating revenues of $236,660,582.

3. That Southern Bell Telephone and Telegraph Company is providing generally good telephone service in its service area in North Carolina.

4. That the reasonable original cost of Southern Bell's North Carolina intrastate utility property is $606,237,216, the depreciation reserve is $126,706,712, and the depreciated original cost to be $479,530,504.

5. That the reasonable replacement cost of Southern Bell's intrastate plant in service is $623,640,532, plus a working capital, material and supplies allowance in the amount of $2,205,994 to produce a total reasonable replacement cost of $625,846,526.

6. That the allowance for working capital under approved rates after accounting and pro forma adjustments at June 30, 1973 of $2,205,994 is proper.

7. That the fair value of Southern Bell's property used and useful in providing service to the public within North Carolina at the end of the test period considering the depreciated original cost, and the working capital allowance of $48l,736,498 and the reasonable replacement cost of $625,846,526 is $549,691,301.

8. That the approximate gross revenues for Southern Bell for the test period are $203,001,960 under present rates and that under company proposed rates would have been $236,814,089, before annualization to year-end revenues.

9. That the level of operating expenses after accounting and pro forma adjustments, including taxes and interest on customer deposits is $166,581,787, which includes an amount of $29,284,759 for actual investment currently consumed through reasonable actual depreciation, before annualization to year-end level.

10. That the proper annualization factor necessary to restate income after accounting and pro forma adjustments to end-of-period level as required by G.S. 62-133 is 3.61%.

11. That the proper rate of return which Southern Bell should have the opportunity to earn on the fair value of its North Carolina intrastate investment is 7.55%.

## Rate Design

### Basic Rate Schedule

12. That the present ratios between business and residential individual line rates range from 2.19 to 1 in Group 1, to 2.69 to 1 in Group 8. The proposed increases in basic local service would slightly lower these ratios. These ratios can be computed directly from the rate schedules in the Company's application.

13. That twenty-four (24) exchanges have outgrown the present rate group limits. If the present limits are continued, it will be necessary to move these exchanges to the next higher group.

Services Whose Rates are Related to Basic Service

14. That the rates for certain services bear a specific relationship to rates for basic services. Included in this category are private branch exchange trunks, and individual lines arranged for rotary service. The present ratio between the rates for PBX trunks and business individual lines is 1.6 to 1. The rate relationship proposed by Bell is 1.75 to 1. Individual lines arranged for rotary service are presently offered at the regular individual line rate. Southern Bell proposed a twenty percent increase in the rates for these lines. Usage studies have been made in order to determine the appropriate relationships for these services.

15. That the rates for other services are also tied directly or indirectly to rates for basic exchange service. Examples of such services include Centrex service, message rate service, mobile telephone service, and joint user service.

Coin Telephone Service

16. That the costs of coin telephone service have risen sharply over the past 22 years.

17. That the costs of converting pay stations from the present $.10 to $.15 for each five minutes, and later from $.15 to $.20 for each five minutes would be approximately double the onetime $.10 to $.20 conversion costs.

18. That the results of a national market research study conducted by Audits and Surveys, Inc. indicated that 75% of pay telephone users would have been willing to pay $.20 for their most recent local call from a pay telephone. However, the Commission finds that the study does not properly take into account the relative inelasticity of demand for such service over the intermediate to long-term and therefore finds that the reduction in expected usage should be no more than 15%.

19. That the current commission paid by the Company to the party on whose premises the public pay station is located is 15% of all coin box receipts.

20. That semi-public telephone service provides added value to the subscriber and causes added cost to the Company. A flat monthly rate instead of the present guarantee would simplify administration of the service. The nature and amount of usage of the semi-public telephone offered at the proposed flat rate in many cases would not justify continuing to offer the service.

Service Charges

21. That present service connection charges are considerably below labor costs involved in doing the work. Presently costs of service activity not recovered through one-time service charges must be recovered by some other means.

Zone Charges

22. That elimination of zone charges for customers outside of the base rate area will produce a decrease in annual revenues of $1,480,838.40 based on units in service at the end of the test period.

Supplemental Services and Equipment

23. That supplemental services are those services furnished upon subscriber request which are in addition to basic local telephone service. It is possible to make estimates of costs for these services.

Local Private Line Service

24. That sub-voice grade and voice-grade local channels are served by the same type of facilities. Present rates do not reflect actual facility arrangements.

The Commission will now analyze and discuss the evidence advanced by all parties concerning each finding of fact and herewith makes its conclusions based on this evidence and sets forth the reasons and bases therefor.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Charles D. Land, Telephone Engineer of the Telephone Service Section of the Commission Staff testified to present the results of the Commission staff's review of telephone service provided by Southern Bell in North Carolina. The staff's review consisted of field tests and inspections of central office facilities, inspections and tests of public paystations, operator answer time tests, and an analysis of the data provided by Southern Bell in monthly reports and in response to the Commission's order setting this matter for hearing. Mr. Land's conclusions were that intra-office, inter-office and DDD test call results were well within acceptable limits on a statewide basis. The results of inter-office and DDD noise and transmission tests were also well within acceptable limits. Mr. Land further stated that the subscriber trouble reports per 100 stations and the percent subseguent trouble reports were within an acceptable range.

While Mr. Land emphasized in general that Southern Bell's service overall was good, there were pointed out a number of areas where problems exist and the company should take appropriate corrective action. The operator answer time

test results indicated that the Commission objectives were not being consistently met. Mr. Land mentioned operator answer time in the Shelby and Gastonia area as areas where trunk maintenance and slow operator response resulted in excessive delays and occasional inability to reach an operator. Mr. Land also stated that the number repeat and out-of-service trouble reports received before 5 P.M. and carried over was too high, and that the percentage of regular service orders worked within five (5) days should be improved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission will now analyze the testimony and exhibits presented by Company Witness Turner, Staff Witness Carter, and Attorney General Witness Bolster concerning the original cost net investment. The following chart summarizes the amount which each of these witnesses contends is proper for this item:

| Item | Company Witness Turner | Staff Witness Carter | Attorney General Witness Bolster |
|---|---|---|---|
| 1. Investment in Telephone Plant in Service | $606,237,216 | $606,237,216 | $606,237,000 |
| 2. Property held for future use | 638,064 | - | - |
| 3. Less: Accumulated provision for depreciation | (126,122,893) | (126,706,712) | (126,123,000) |
| 4. Net investment in telephone plant in service | $480,752,387 | $479,530,504 | $480,114,000 |

As the above chart shows all witnesses agree that the original cost of investment in telephone plant in service is $606,237,216. (Witness Bolster rounded all amounts to the nearest $1,000.) Based on the testimony presented by these witnesses, we conclude that the reasonable original cost of Southern Bell's utility plant in service to be $606,237,216. However, the witnesses are at odds on the treatment to be accorded property held for future use. Company witness Turner maintained that property held for future use should be included in calculating the original cost net investment plus allowance for working capital. It was his position that investment in property held for future use is important in providing telephone service to customers as telephone plant currently in service. Witness Turner contended that funds used to purchase these properties were provided by the investor and that exclusion of this item from the original cost net investment would result in the company being denied an opportunity of earning a return on capital provided by the investor for this purpose. Staff Witness Carter offered

no testimony concerning this item but did exclude it in developing his original cost net investment. Attorney General Witness Bolster originally included this item in calculating original cost net investment but amended his testimony on the stand to exclude this item.

The Commission is of the opinion that inclusion of property held for future use in determining plant in service does not comply with G. S. 62-133 (b) (1) which states, "the Commission shall ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State, considering the reasonable original cost of property less that portion of the cost which has been consumed by previous use recovered by depreciation expense, the replacement cost of the property, and any other factors relevant to the present fair value of the property." The Commission interprets this statute to mean that only plant which is in service is "used and useful" and that this term would not include property held for future use. We will exclude the amount of $638,064 from the original cost net investment.

All witnesses agree that depreciation reserve should be included as a deduction in calculating the original cost net investment. The witnesses do not agree, however, on the proper amount to be deducted. Both the Company and Attorney General Witnesses agree that the accumulated provision for depreciation of telephone plant in service at the end of the test period was $126,122,893. Witness Carter testified that the accumulated provision for depreciation was $126,706,712, which is $583,819 more than the amounts per Witnesses Turner and Bolster. This difference resulted from the additional adjustment to depreciation expense made by Witness Carter to annualize depreciation expense based on the plant investment in service and the appropriate depreciation rates at the end of the test period. It is the Commission's duty by statute to set rates based on end-of-period results. In arriving at the appropriate level of operating expenses, we have added an amount of $583,819 to depreciation expense. It is entirely consistent to increase the accumulated provision for depreciation by this amount for ratemaking purposes. We adopt this adjustment as proper and will use the accumulated provision for depreciation proposed by Witness Carter of $126,706,712 in calculating the original cost net investment. Based on the foregoing evidence and conclusions, the Commission finds that the original cost net investment proposed by Staff Witness Carter of $479,530,504 is proper and we will use this amount in arriving at the fair value rate base.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Although the term "replacement cost" envisions replacing utility plant in accordance with modern design techniques and with the most up-to-date changes in the state of the art of telephony, trended original cost as presented by company witnesses envisions and is founded upon the premise of the

duplication of plant as is with certain inefficiencies and outmoded designs included. Even though obsolescence can be, to an extent, accounted for in proper depreciation treatments, the economies of scale inherent in telecommunications (e.g., employing one 600 pair conductor cable down a road versus six, 100 pair cables installed over a number of years) are not fully recognized in the trending process. However, we conclude that the trended original cost as proposed by the company for the purported value of the replacement cost represents some evidence and the only evidence on true replacement cost of the plant in service. Accordingly, the weight given to the trended original cost study offered in this proceeding as evidence of replacement cost is based upon a detailed evaluation of the methodology employed.

Company Witness Jack T. Gathright testified on the net replacement cost new of Southern Bell's intrastate plant in service. This witness testified that his definition of replacement cost as used in his study is that cost obtained by trending the depreciated original cost of property to current price levels and that replacement cost does not imply that this is a cost which would be incurred in physically replacing all of the Southern Bell Telephone property in North Carolina with a substitute plant. Replacement cost determined by the trending methods restates the investment and the existing plant in terms of current price levels taking into consideration that a portion of the original investment has been recovered by depreciation expense. He testified that his trending method gives proper recognition to any loss of service value which has occurred since the telephone plant in North Carolina was originally constructed, properly states the replacement cost of terms of present economic conditions and gives full effect through the appropriate index numbers to any savings that have been brought about by improvements in manufacturing techniques, construction methods, tools, and engineering technology. Company Witness Gathright found the replacement cost of the company's intrastate properties as of June 30, 1973, to be $626,651,280. This includes telephone plant in service replacement cost of $623,640,532; property held for future use of $638,064; and materials, supplies, and cash working capital of $2,372,684. The witness testified that he tested his replacement cost study by trending using the consumer price index and the gross national product implicit price deflators and found that the results were very close to his replacement cost study.

Company Witness Thornton's testimony dealt with a series of price indexes that he developed for several general classifications of central office equipment. It was his opinion that the price indexes he had developed accurately portrayed the movement of Western Electric's prices for various types of central office equipment sold to Southern Bell. Although these indexes were developed on nationwide averages, Witness Thornton believed they would be applicable to any Bell operating company because all of the equipment

is made by the same manufacturer to the same specifications. He testified that differences could be caused by the quantities of each type of equipment required in each central office to meet local conditions, but that the indexes were calculated in such a way as to eliminate higher costs caused by newer more sophisticated equipment or higher costs of larger quantities of equipment.

On cross-examination Witness Thornton testified that the equipment price indexes are applicable nationwide and installation indexes are calculated for Southern Bell in North Carolina. The indexes are so constructed that changes in design and changes in technology are excluded from index. However, indexes would reflect changes in methods or technology of manufacturing which resulted in lower prices for the equipment. In other words these price indexes can be used to determine what Western Electric would charge Southern Bell at today's prices for the equipment which is presently owned by Southern Bell.

Company Witness John D. Russell, Vice President, American Appraisal Associates, Inc., testified in behalf of Southern Bell concerning cost trend indexes which he prepared for the Southern Bell North Carolina building account and for the contractor portion of the underground conduit, buried cable and pole line accounts. He testified that American Appraisal Company developed cost indexes applicable specifically to thirteen major components of buildings by developing cost trends for basic elements comprising a particular building component and then weighting the various elements to combined them into an index for a particular component. This witness testified that he physically inspected a sample of company buildings in order to determine the weight or relative importance of the elements in the North Carolina buildings. He stated that wage rates and material prices used in the study were determined from an analysis of actual data obtained for North Carolina cities and that the determination of the relative importance of the various elements and components was based on an analysis of the quantities of elements and a sample of company buildings in North Carolina.

Company Witness Russell also testified to other indexes prepared for the contract portion of underground conduit, buried cable, and pole line accounts and that these indexes reflected construction indexes in each of these accounts only for work performed by contractors. The methods used to prepare indexes for contract labor on underground conduit construction were similar to those for the building index. He testified that American Appraisal provided Southern Bell with a series of underground conduit contract construction cost index numbers from 1928 to January 1, 1973, and for contract construction portion of buried cable and pole line indexes from 1940 to January 1, 1971, and that subsequent to January 1, 1971, Southern Bell has updated these indexes.

Based on our study of the testimony, exhibits, and entire record, we conclude the reasonable replacement cost of Southern Bell's intrastate plant in service is $623,640,532. Consistent with our findings on original cost net investment, we have excluded from the net replacement cost new property held for future use of $638,064.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company Witness Turner, Staff Witness Carter and Attorney General Witness Bolster all included in their exhibits an allowance for working capital. However, all three witnesses disagree as to the proper amount to include for this item. Before analyzing the reasons why these witnesses disagree as to the proper amount to include for this item, we will discuss the reason why an allowance for working capital is included in arriving at the fair value rate base.

Working capital is a term which has different meanings to different people, but in the generic sense it means current assets minus current liabilities. From a regulatory point of view, working capital represents an investment in materials and supplies plus the cash required to pay operating expenses prior to the time revenues for services rendered are received. The reason for including an allowance for working capital in the rate base is to compensate the investor with a return on the capital furnished by him for these purposes.

In major rate proceedings studies are normally performed to determine working capital requirements properly includible in the rate base. There are several different types of studies which are made to arrive at a working capital requirement figure. One example is a "lag study" which is made to determine the expense paid in advance or arrears of receipt of revenues. Another type of study is a "balance sheet analysis" which is intended to show the working capital furnished by investors. The purpose of the "balance sheet analysis" approach is to compare capital supplied by investors to the rate base.

The following schedule sets forth the amount included by each witness as the proper allowance for working capital:

| Line No. | Item | Company Witness Turner | Staff Witness Carter | Attorney General Witness Bolster |
|---|---|---|---|---|
| 1. | Material and Supplies | $4,563,388 | $3,472,330 | $4,563,000 |
| 2. | Cash (Including Tax Accruals) | (857,570) | 223,628 | (3,085,000) |
| 3. | Less: Customer Deposits | 1,333,134 | 1,340,606 | - |
| 4. | Allowance for Working Capital | $2,372,684 | $2,355,352 | $1,478,000 |

Company Witness Turner testified that the allowance for working capital was $2,372,684 consisting of material and supplies per books of $4,563,388 less a negative cash allowance of $857,570, and average customer deposits of $1,333,134. On cross-examination he stated that the $4,563,388 figure on the books at June 30, 1973, for material and supplies was a reasonable amount. He stated that it is required to carry the construction program that the company is carrying, maintain the pace of the construction, and also to provide the maintenance supplies necessary to maintain a rapidly growing plant. Mr. Turner stated that the company has extensive management control to insure that material and supplies were not being overstocked and that the company carries only what is necessary and adequate to meet the requirements of the installation and construction people, although he could not describe the controls. He stated that the balance of material and supplies had increased another million dollars since the test period and he does not expect a drop in that level. Company Witness Turner stated the negative cash allowance was based on a "lag study". Company Witness Turner testified during cross-examination that the lag study was based on North Carolina combined operations, not North Carolina intrastate operations.

Staff Witness Carter proposed an allowance for working capital of $2,355,352 composed of the sum of a cash allowance of 1/12 of operating expenses and average prepayments less average tax accruals and customer deposits. He testified that these items have been used by the Commission in proceedings where lag studies have not been made to determine the cash working capital allowance.

Staff Witness Carter stated that he reduced the per books balance of material and supplies by $1,091,058. Mr. Carter stated that he determined the average material and supplies per average total station for the years ended June 30, 1969 to 1973. Each of those amounts were converted to 1973 dollars using the Consumer Price Index and a five-year average was obtained. The five-year average obtained was $2.922 dollars per average and this amount was multiplied by the 1,502,516 stations in service at June 30, 1973, resulting in an amount of $4,390,352 representing North Carolina combined material and supplies on a normalized basis. Mr. Carter stated that in addition to being in excess of the normalized amount, end-of-period material and supplies were more than $1,000,000 in excess of average material and supplies for the test period.

On cross-examination Mr. Carter stated that even though he used data for a five-year period in developing the adjustment in the amount of $1,091,058, the average investment in materials and supplies per station used to make the adjustment was not 2 1/2 years old. He stated that all prices had been adjusted to 1973 dollars, thus a current average investment was used.

In developing his allowance for working capital, with the exception of material and supplies which have previously been discussed, Staff Witness Carter used a cash allowance of 1/12 of operating expenses, average prepayments, less average tax accruals and average customer deposits.

Attorney General Witness Bolster testified that the determination of a need for an allowance for working capital should be based on a specific study of the actual cash requirements of the company in view of the relative delay, or "lag", between the provision of service and receipt of revenues, on the one hand, and the provision of service and payment of expenses, on the other. He adopted the allowance for working capital developed by Company Witness Turner with one exception. He excluded the alleged payment of depreciation expense prior to the receipt of revenues in the amount of $2,228,000 proposed by the company to reflect what it claims is a 28.4 day delay in the receipt of cash paid out in the form of depreciation expense.

Mr. Bolster further stated that traditionally, depreciation has been excluded from cash working capital studies and allowances. The reason generally given for such exclusion has been that depreciation is not a cash expense, but rather represents an accrual providing for the periodic recovery through revenues of the company's plant investment. Mr. Bolster testified that the proper allowance for working capital of Southern Bell's North Carolina intrastate operations is $1,478,000.

The Commission does not believe the working capital allowance proposed by either Company Witness Turner or Attorney General Witness Bolster is proper. In determining the amount to include for materials and supplies, Witness Turner simply took the amount per books and made no effort to determine the normalcy of this amount. He stated the company had controls and safeguards to prevent overstocking, but was unfamiliar with these controls and could not explain them. It is clear from this record that the lag study used by Company Witness Turner is based on North Carolina combined operations, instead of North Carolina intrastate operations. The Commission does not believe such a lag study truly reflects the cash working capital requirements of Southern Bell's North Carolina intrastate operations.

Witness Bolster founded his working capital allowance on the same lag study as did Witness Turner. The only difference is Witness Bolster removed from the study depreciation expense included by Witness Turner. Staff Witness Carter reduced the book figures by $1,091,058. Mr. Carter's adjustment reflects the five-year average material and supplies per average total station based on 1973 dollars multiplied by the number of total stations in service at June 30, 1973. His adjustment was made to reduce the materials and supplies to a normal level based on past levels stated in terms of 1973 dollars. Staff Witness Carter's cash allowance was based on the sum of the 1/12 of

operating expenses and prepayments less average tax accruals.

The Commission is of the opinion that the method used by both Company Witness Turner and Attorney General Witness Bolster is improper for two reasons. First, the amount included as cash is calculated using the results of a lag study based on North Carolina combined operations. Second, neither witness made any attempt to evaluate the normalcy of the materials and supplies balance per books.

The Commission will, therefore, adopt the method used by Mr. Carter to develop the allowance for working capital. This method has consistently been used by the Commission in other rate proceedings in the absence of a meaningful lag study. The Commission concludes Witness Carter's method of determining an allowance for working capital is proper in the absence of a reliable lag study. Using this method the Commission will have to adjust the working capital allowance of $2,355,352 proposed by Staff Witness Carter to take into consideration the July 1973 wage increase occurring outside the test period not reflected in Mr. Carter's exhibits as originally filed, and the tax accruals associated with the annual increase in revenues approved herein. The Commission concludes that the proper allowance for working capital is $2,205,994.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Having determined the appropriate original cost of net investment in plant in service to be $479,530,504, and the net replacement cost new of plant in service to be $623,640,532, we will now discuss the testimony of company Witness Gathright and Attorney General Witness Bolster concerning the weighting assigned each of these components in arriving at the fair value of net telephone plant in service.

Company Witness Gathright gave equal weight to each component in arriving at the fair value of $551,877,428 for net telephone plant in service. His basis for doing this was that the Commission assigned equal weight to each component in Docket No. P-55, Sub 681.

The Attorney General Witness Bolster, Vice President of David A. Kosh and Associates, Inc., testified on behalf of the Attorney General, concerning the fair value of Southern Bell's North Carolina intrastate plant in service. Mr. Bolster testified that the proper basis for determining a fair value rate base is to weight the net original cost plant in service and trended net original cost plant in service in accordance with the company's capital structure. The witness developed an original cost component of $262,142,000 by weighting the net original cost by 54.6% debt, a trended original cost component of $283,133,000 by weighting the net trended original cost by 45.4% equity, and

adding the two, he arrived at the fair value of telephone plant in service of $545,275,000.

The Commission believes that, in arriving at a fair value, it has an obligation to make a determination of appropriate weight to be assigned the original cost net investment and net replacement cost new on a case by case basis.

The price indexes used to calculate the reproduction cost new do not reflect what the cost to Southern Bell would be to replace all of its equipment with new equipment taking into consideration the current state of the art. Instead the indexes results in a calculation of the plant as it presently exists. Neither do these indexes reflect increases or decreases in operational costs which would result if equipment was completely replaced using today's modern design and techniques. Thus, the net replacement cost new as presented by the company is founded on the premise that if destroyed, the entire system would be rebuilt on a brick-for-brick, pole-for-pole basis and include existing inefficiencies and outmoded, obsolete design.

Attorney General Witness Bolster testified that both the net original cost and net replacement cost new should be weighted by the capital structure. If this method were adopted, it would mean that everytime the capital structure changed, so would the fair value. Therefore, we will not use that method in arriving at the weighting to be assigned each of these components.

In arriving at the weight assigned each component, the Commission believes that service is an appropriate consideration. Gene A. Clemmons, Chief Engineer, Telephone Service Section of the Commission staff testified as to the results of the review of engineering and installation of the central office equipment and trunking facilities. Staff Witness Clemmons testified that the company's engineering and planning of central office equipment reflects a reasonable engineering interval of less than 2.5 years; that a study of traffic usage on equipment and trunk groups showed certain central offices which exceeded the engineered capacity and that the company has scheduled additions by the end of 1973 to relieve the congestion in most equipment groups with some additions scheduled into 1974.

Based on the testimony and exhibits heretofore discussed and considering the fact that the replacement cost new presented by the company is founded in the premise that if destroyed the system would be replaced on a brick-for-brick, pole-for-pole basis and that such a technique does not fully recognize economies of scale inherent in telephone construction practices. The Commission concludes that, giving slightly less than 50% weighting to the evidence of replacement cost herein, the fair value of Southern Bell's plant in service is $549,691,301.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company Witness Turner, Attorney General Witness Bolster, and Staff Witnesses Carter and Gerringer presented testimony concerning the appropriate level of operating revenues. Staff Witness Gerringer testified specifically concerning the separations procedures employed by the company to separate its operating revenues and expenses between jurisdictions. Witnesses agree the appropriate level of intrastate operating revenues before adjustment to the end of period level is $203,001,960. Based on the testimony and exhibits of all witnesses, the Commission will adopt as the proper level of North Carolina intrastate operating revenues before adjustment the amount of $203,001,960.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company Witness Turner, Staff Witness Carter, and Attorney General Witness Bolster all presented testimony and exhibits showing the level of North Carolina operating expenses they believed should be used by the Commission for purposes of fixing Southern Bell's rates in this proceeding.

The following chart shows the amounts contended for by each witness:

| Item | Company Witness Turner | Staff Witness Carter | Attorney General Witness Bolster |
|---|---|---|---|
| Operating Expenses | $ 96,183,641 | $ 91,183,004 | $ 96,184,000 |
| Depreciation and Amortization | 28,700,940 | 29,284,759 | 28,701,000 |
| Taxes Other Than Income | 21,949,007 | 21,776,007 | 21,949,000 |
| Income Taxes - State | 1,374,636 | 1,630,240 | 1,375,000 |
| Income Taxes - Federal | 13,325,122 | 14,463,428 | 11,445,000 |
| Deferred Income Taxes | 6,530,760 | 6,530,760 | 6,531,000 |
| Interest on Customer Deposits | 60,364 | 60,364 | 60,000 |
| Allocation of AT&T Income Taxes | - | (865,900) | - |
| Total Operating Expenses Before Annualization | $168,124,470 | $164,062,662 | $166,245,000 |

The Commission will now analyze the reasons why the witnesses propose different amounts for total operating expenses before annualization.

One of the principle items causing the difference in the amount proposed for operating expenses as set for above is

the exclusion of Staff Witness Carter of a wage and benefits adjustment of $5,060,000 proposed by Company Witness Turner and adopted by Attorney General Witness Bolster. The increase net of federal and state income taxes is $2,473,328.

Staff Witness Carter stated that he did not include the wage and benefits adjustment totaling $5,060,000 occurring in July, 1973, one month outside the test period. He stated that at the time his testimony and exhibits were filed, he did not have sufficient information from the company to support the adjustment. After he filed his testimony and exhibits, Southern Bell furnished workpapers supporting the wage adjustment. Having had an opportunity to review the workpapers that support the adjustment, Witness Carter stated on cross-examination that this adjustment should be included and that if the workpapers had been furnished to him prior to the filing date, he would have included this amount in the original filing of his testimony and exhibits.

Based on the evidence given by these witnesses, the Commission believes the net adjustment of $2,473,328 proposed by Witness Turner proper and should be included in order to normalize the test year level of operating expenses.

The next item of controversy is depreciation expense. Staff Witness Carter proposed to increase depreciation expense by $296,989 (net of state and federal income taxes). He testified that this adjustment was necessary in order to arrive at actual depreciation on end-of-period level after application of the annualization factor. In arriving at the end-of-period total operating expenses, Staff Witness Carter adjusted depreciation based on the actual plant and did not use the annualization factor for this item. It was his reasoning that items which could be adjusted on an actual basis should not be estimated using a annualization factor as the basis. Witness Carter also followed this same approach to adjust interest expense and the state and federal income taxes related thereto. The Commission finds this approach logical and will adopt Witness Carter's adjustment for purposes of this case.

The next item of difference is caused by the fact that Staff Witness Carter excluded charitable contributions and other miscellaneous deductions from total operating expenses while Company Witness Turner and Attorney General Witness Bolster elected to include these items in total operating expenses.

Mr. Turner testified that he included $180,000 in contributions and $20,000 in membership fees and dues in operating revenue deductions. He stated that these costs should be included as an operating cost because in the present day society, they are looked upon as a social responsibility of a corporation to the area in which it operates.

The Commission concludes that these items should not be included in total operating expenses. To include this item would have the effect of requiring the ratepayer to involuntarily make contributions through the payment of rates to an organization of the company's choice. We will, therefore, eliminate these expenses from total operating expenses proposed by Witness Carter.

The final major area of difference is the amount which should be included for federal income tax expense.

In determining the federal income taxes applicable to Southern Bell's North Carolina intrastate operations, Staff Witness Carter made an adjustment reducing the federal income tax expense recorded on the books by $865,900 representing an allocation of AT&T's federal income taxes. Mr. Carter testified that AT&T issues debt to purchase the telephone operating subsidiary companies' common stock and AT&T receives a tax deduction on this debt and its income taxes are reduced. If the telephone operating companies could issue the debt themselves, they would receive the interest deductions and would record less federal income tax expense on their books. He stated that the adjustment of $865,900 is the reduction in federal income taxes applicable to AT&T debt assigned to Southern Bell's North Carolina intrastate operations for the twelve months ended June 30, 1973. The study is prepared by AT&T under the direction of the NARUC Committee on Accounts.

On cross-examination Mr. Carter stated that even though Southern Bell itself cannot claim the $865,900 deduction for AT&T federal income taxes, AT&T issued the debt on which this federal income tax deduction was based to purchase the common stock of Southern Bell. If Southern Bell had issued the debt, the company would have been able to claim the associated interest expense and federal income taxes of $865,900. The adjustment flows the reduction in federal income taxes from AT&T to Southern Bell's North Carolina intrastate operations as if Southern Bell had issued the debt.

Attorney General Witness Bolster stated that he analyzed the company's proposed adjustments and found that they were reasonable. However, he made one additional adjustment to reported net operating income, which was not proposed by the company. This adjustment concerned interest expense and federal income taxes.

Witness Bolster testified Southern Bell joins with its parent, AT&T Company, in filing a consolidated federal income tax return. However, while joining in the consolidation, Southern Bell computes, pays (to IRS), and reports in its books of account its income tax liability on a separate return basis. Since Southern Bell, by joining in the consolidation, becomes individually liable for the entire tax liability arising from the consolidation, it would seem only equitable to Southern Bell and to its

customers - that Southern Bell should share in the benefits of the consolidation. Yet the savings that result from consolidation accrue largely to the benefit of the AT&T Company. One principal such benefit not passed on the individual affiliate companies or to their customers is the tax savings resulting from the inclusion in the consolidation of AT&T's interest expense associated with its investment in the affiliate companies, like Southern Bell.

Mr. Bolster further testified that Southern Bell is wholly owned by AT&T. All of Southern Bell's equity capital is owned by AT&T. AT&T has obtained this equity capital of Southern Bell and the other affiliated companies, by obtaining funds from investors, part of which has been in the form of debt. Thus, in reality, part of Southern Bell's nominal or reported equity capital is ultimately, in fact, debt capital, debt capital that has an interest expense associated with it. This interest expense, associated with the debt capital that the parent company has issued in order to purchase the equity capital of its affiliates, is available to and used by the parent as a tax deduction for federal income tax purposes. In developing test year federal income taxes, Southern Bell has not allocated any portion of this tax deduction associated with its investment in North Carolina, to the North Carolina intrastate operations. Since North Carolina intrastate customers are being asked to pay a fair return on the North Carolina interstate investment of Southern Bell, these customers are entitled to the benefit of the interest deductions for tax purposes associated with that fair return, that is, the interest deductions associated with Southern Bell's debt capital allocated to North Carolina intrastate and the interest deductions associated with that portion of AT&T's debt capital used to finance its purchase of Southern Bell's North Carolina intrastate equity investment. Mr. Bolster indicated that, in this way, the interest deductions for tax purposes, the federal income taxes and the fair return are all consistent as they should be, all reflecting the ultimate source of investor supplied capital used to provide service in North Carolina.

Mr. Bolster testified that in developing test year operating expenses and net operating income, the company included an amount for federal income taxes which was based on including as a tax deduction only the allocated dollar amount of interest expense reported on Southern Bell's books of account. The amount, for the twelve months ending June 30, 1973, allocated to North Carolina intrastate operations was $11,450,000. He adjusted the company's test year operating expenses to reflect the effect on test year federal income taxes of including as a deduction for tax purposes North Carolina intrastate interest deduction which results from allocating interest to North Carolina on the basis of the year end 1973 debt cost of the consolidated Bell System. This was done by applying the Bell System year end 1973 estimated cost of debt, 6.55%, to estimated North Carolina intrastate debt capital at June 30, 1973, such debt

capital reflecting the Bell System's estimated year end 1973 debt ratio of 46.2%. This allocation procedure resulted in an interest expense for tax purposes of $15,366,000 or $3,916,000 more than allocated by the company. He further testified that the 48% federal income tax rate was applied to this differential, the result was a decrease of $1,880,000 in reported test year federal income taxes.

Company Witness Turner did not propose a reduction to book income taxes for the income tax effects of interest on debt carried on AT&T's books which supports Southern Bell's intrastate investment in telephone plant in service. Instead Company Witness Dean offered testimony in which he urged the Commission not to make this adjustment in this case. Company Witness Dean reasoned that use of the consolidated capital structure in establishing the fair rate of return for Southern Bell takes into account all of the debt leverage in the system but does not take into account the tax effect of interest paid by AT&T. Witness Dean further testified that if you made the tax imputation you should include the capital that AT&T has invested in Bell Labs and the pool of funds maintained by AT&T for the Bell System and 195 Broadway Corporation (which owns the buildings housing the general Department).

Based on the evidence in this record, the Commission concludes that the practice of reducing the federal income taxes on Southern Bell's books for the income tax effects of interest on debt which supports Southern Bell's intrastate investment is proper. It seems unusual to us that Company Witness Dean would object to using the Bell System consolidated capital structure to compute Southern Bell's North Carolina intrastate income taxes expense when he himself uses the Bell System consolidated capital structure to calculate Southern Bell's North Carolina intrastate cost of capital. It seems clearly inconsistent to us to recommend using Southern Bell's interest cost for calculating federal income tax expense and the Bell System interest cost for calculating cost of capital. We conclude that Mr. Turner's operating expenses should be reduced to reflect the tax effects of the capital structure and embedded debt costs found proper by the Commission in its findings on fair rate of return. Set forth below is the Commission's calculation of the required reduction in Witness Turner's proposed federal income tax expense:

*DETERMINATION OF STATE AND FEDERAL INCOME TAX ADJUSTMENTS RESULTING FROM APPROVED CAPITAL STRUCTURE AND EMBEDDED INTEREST COSTS

| | |
|---|---|
| End-of-period interest expense (Total company) (Excluding customer deposits) (See below) | $ 123,592,071 |
| Actual interest expense during test period (Excluding customer deposits) | 93,002,909 |
| Increase in interest expense | 30,589,162 |
| Allocation of end-of-period interest expense to North Carolina - 16.60% (Ratio of North Carolina plant and materials to total company plant and materials) | 20,516,284 |
| Actual North Carolina interest expense per books | 15,616,504 |
| North Carolina adjustment | 4,899,780 |
| Intrastate - % | 73.84% |
| North Carolina intrastate interest expense adjustment | $ 3,617,998 |
| *Income tax effects: | |
| State | $ 217,080 |
| Federal | 1,632,441 |
| Total | 1,849,521 |
| Divide by approved annualization factor - 3.61% | ÷ 103.61% |
| Adjustment to state and Federal income taxes | $ 1,785,080 |
| Total company capitalization (Witness Carter Exhibit I, Schedule III) | $4,034,973,432 |
| % of approved capital structure represented by debt | 45.85% |
| Dollar amount of debt | 1,850,180,699 |
| Embedded interest cost of approved capital structure | 6.68% |
| Annual end-of-period interest expense | $ 123,592,071 |

Based upon all the evidence offered by all the witnesses concerning the proper level of operating expenses, the Commission concludes that the proper level of expenses including interest on customer deposits before annualization

is $166,581,787. The development of this amount is shown in the following schedule:

| | | | |
|---|---|---|---|
| Total operating expenses after adjustments (including customer deposits) per Witness Turner | | | $168,124,470 |
| Add: Additional depreciation adjustment per Witness Carter | $ 296,989 | | |
| Adjustment resulting from Witness Turner rounding all adjustments to nearest $1,000 while Witness Carter used the actual adjustment | 954 | $ 297,943 | |
| Less: Adjustment for charitable contributions, country club dues, and community welfare expenditures | 55,546 | | |
| Adjustment for decrease in state and federal income taxes based on approved capital structure and embedded debt cost | 1,785,080 | 1,840,626 | 1,542,683 |
| Total operating expenses found reasonable under present rates before annualization | | | $166,581,787 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

As set forth in Finding of Fact Nos. 8 and 9, the proper level of operating revenues is $203,001,960 and operating expenses is $166,581,787. This results in net operating income before annualization of $36,420,173. The test year net operating income must be increased to the end-of-period level. G. S. 62-133(c) provides that the probable future revenues and expenses shall be based on the plant and equipment in service at the end of the test period. Both Company Witness Turner and Staff Witness Carter offered testimony and exhibits on the proper annualization factor.

The basic difference between these two witnesses is that Company Witness Turner used the relationship of average main stations during the test year end of test year main stations

while Staff Witness Carter used the relationship of average mains and extensions to end of test year mains and extensions. Witness Turner contended that this main station should be used because it is the primary income producing unit while Witness Carter maintained that exclusion of extensions would completely ignore additional income produced by these units.

The Commission is of the opinion that basing the annualization adjustment solely on the increase in main stations results in an understatement of the probable future revenues and expenses. The revenues and expenses generated by stations other than main stations would be totally ignored and would not be based on total plant and equipment in service at the end of the test period as required by G. S. 62-133(c).

The Commission concludes that the net operating revenues should be increased by an annualization adjustment determined by the increase in the number of total stations in service at the end of the test period over the average number of total stations in service during the test period, since total stations generate all revenues and expenses. This results in an adjustment of 3.61% as determined by Witness Carter. Applying this factor to the test year net operating income of $36,420,173 heretofore found proper results in end of period net operating income of $37,734,941 ($36,420,173 x 103.61%).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Commission now comes to the segment of the case which is one of the most difficult and perplexing problems faced by a regulatory commission in a rate proceeding, while at the same time it is the most basic and purposeful duty of the regulatory commission. In order to reach a decision in this segment of the case, it is necessary for the Commission to carefully scrutinize and review the evidence presented by the company witnesses and any witnesses of intervenors that desire to be heard in this matter. This Commission has learned from experience that there are no absolutes in arriving at a determination of what is a proper rate of return. Thus, in the Bluefield Case, the Supreme Court stated that "a regulated entity must be allowed to earn a rate of return comparable to the returns earned by other businesses with corresponding risks and uncertainties and that the allowance should provide sufficient earnings to assure the financial integrity of the enterprise and permit it to attract the necessary capital." (Bluefield Water Works and Improvement Company vs. West Virginia Public Service Commission, 262 US 679). Later, in the Hope Decision, the Court refined these guidelines, holding that from the investor point of view, "It is important that there be enough revenue, not only for operating expenses, but also for the capital cost of the business." (Federal Power Commission vs. Hope Natural Gas, 320 US 591).

The principle laid down in the Bluefield Case is well recognized by the Supreme Court of North Carolina. In State ex rel. Utilities Commission vs. Morgan, 278 N. C. 235, 238 (1971), the Court said:

"In this State the test of a fair rate of return is that laid down by the Supreme Court of the United States in Bluefield Water Works & Improvement Company vs. Public Service Commission of State of West Virginia, 262 U. S. 679, 43 S. Ct. 675, 67 L.Ed. 1176; that is, if the company continues to earn such a rate of return, will it be able to attract on reasonable terms the capital it needs for the expansion of its service to the public? See, G. S. 62-133 (b) (4)."

The Bluefield and Hope Cases have in essence established guidelines to be followed by a regulatory commission. However, in the final analysis, the fairness and reasonableness of the rate of return in any particular proceeding is a matter for informed and impartial judgement and must be made by giving adequate consideration to all testimony in the proceeding, which the Commission has done and will comment on in the following pages.

Robert N. Dean, Assistant Vice President and Assistant Treasurer of Southern Bell, testified giving his opinion as to cost of capital and correspondingly the fair rate of return the company is entitled to earn on its fair value rate base. Company Witness Dean's basic position was that, under the economic and financial environment which has characterized the period from 1960 to the present, the Bell System's history of earnings on its equity capital has been inadequate to sustain the capital values and real purchasing power of their common stockholders' commitments to furnishing telephone service. He testified that it is obvious that the company must have earnings that are equal to those available on average to other segments of the corporate society, if it is to treat its stockholders fairly, maintain its credit, and obtain new capital required on reasonable terms.

Witness Dean introduced evidence which he stated showed that this growth in earnings per share, and attendant growth in dividends and market price were dependent upon the earnings a corporation achieved on its book equity. He compared the returns earned on book equity by Bell with the average earnings of other corporate enterprises, both regulated and unregulated, through the 1960 to 1972 period, and concluded that Bell's return had been substantially below the norms of our society.

Relative to Southern Bell's embedded cost of long-term debt capital, Witness Dean stated that the Bell System embedded cost was 6.40% and the embedded cost of Bell System preferred stock was 7.90% at July 31, 1973.

Mr. Dean testified that he determined the "fair" return on equity to Southern Bell by using the "comparative earnings" test. Mr. Dean's method of applying the comparative earnings test was to obtain data on the reported returns on book equity earned during the period 1960 - 1972 by a number of corporations which are classified by various criteria as being "high grade" or which are given high safety ratings by financial rating agencies. Mr. Dean used eight groupings of companies some of which were subject to public regulation and some of which were composed of unregulated companies.

Mr. Dean's study then proceeded to determine average earnings on book equity for each of his groupings for each year in the 1960 - 1972 period. He then found for each group of firms in his study the average return on book equity over the 1960 - 1972 period and two sub-periods (1963 - 1972, 1968 - 1972). These long-term average returns to book equity ranged from 11.6% for Standard and Poor's 425 industrial firms to 19.8% earned by the 45 industrial firms given an A+ quality rating by Standard and Poor.

From these averages Mr. Dean arrived at his conclusion that the cost of equity capital to Southern Bell was "at least" 12.5%. He stated that the use of broad-based average earnings was a measure of the opportunity cost to potential equity investors in Southern Bell (through the Bell System).

Mr. Dean concluded that the use of average earnings on book equity by industrials was a proper measure of "comparable earnings" because the use of different capital structures by regulated public utilities and unregulated industrial corporations tended to equalize the overall risk to the equity investor. Although industrial firms typically have higher "business risk", they adopt a safer, more conservative capital structure with less "financial risk" than do regulated public utilities, specifically the Bell System. Mr. Dean stated that the two types of firms have substantially equal "overall risk" to the equity investor.

Mr. David A. Kosh of David A. Kosh and Associates, Inc., appeared and testified on behalf of the Attorney General of North Carolina as to the results of studies he had made concerning the fair rate of return Southern Bell was entitled to on its North Carolina intrastate operations.

Mr. Kosh testified that he approached the question of fair rate of return as being basically a question of the cost of capital. He stated that the cost of capital consists of three components: (1) the cost of debt capital, (2) the cost of preferred capital, (3) the cost of common equity, and then combining these components based on a reasonable capital structure ratio to arrive at a fair rate of return.

Witness Kosh concluded that in view of the 100% stock ownership by AT&T of Southern Bell, it is appropriate to determine the cost of debt as well as the capital structure by using the Bell System Consolidated, because financing of

Southern Bell is nothing but a part of the financing of the system. He stated that with that idea in mind he determined the embedded cost of debt of AT&T and estimated what additional debt would cost through the end of 1974 to arrive at a cost rate of 6.68% for debt and 7.89% for preferred stock.

Witness Kosh pointed out that probably the most controversial point in rate of return determination is the question of the cost of equity capital. He stated that in determining the cost of equity capital, he had used what has come to be known as the discounted cash flow approach, or the DCF approach. In explaining the DCF approach, Witness Kosh stated it is simply a recognition of the fact that what an investor obtains in making an investment in the company is the current dividend, plus the growth in that dividend over time. He added that the investor may not hold that stock indefinitely; he may sell it, but when he does, then the purchaser of the stock will also be buying it for what he can get on a basis of current dividends, increasing dividends and the growth in those dividends due to retained earnings, as well as the sale of stock at prices in excess of book value. Witness Kosh concluded that it can be said that the market price of a utility stock is equal to the discounted value of all the future incomes that the person expects to get from the ownership of that stock. He stated that the rate which discounts those future dividends to the future market price can reasonably be interpreted as the investor requirement or the cost rate of equity.

In commenting upon the difficulty of locating and analyzing comparable companies, Witness Kosh stated that since Southern Bell does not have stock in the hands of the public, he was of necessity led to the consideration of other companies that are similar within the Bell System. He stated that there are six Bell operating companies a portion of whose stock, though not all of it, is actively traded. He eliminated from his consideration the Southern New England Telephone & Telegraph because of the fact that it is traded over the counter, thus making adjustments for the value of rights more difficult and uncertain, so in essence he relied upon the market price in the trading of the five Bell operated companies whose stock is actively traded on recognized exchanges. He further stated that he had also analyzed the stock of AT&T itself as representing a cross section of the Bell System as a whole.

In further explaining the DCF approach, witness Kosh stated that if you want to assume a reasonably constant growth, which is as good an assumption as one can make for regulated utilities, the DCF formula comes down to a rather simple form which says the capitalization rate is equal to the current yield plus the growth. He stated that what you get is a current return on your market price, plus the growth in dividends over a period of time. He further pointed out that of necessity what you have to do is to estimate the current yield, which is not difficult, because

it is equal to the dividends divided by the market price, plus the growth in that dividend over time.

Witness Kosh testified that he had made a comprehensive study of the growth of dividends of the five Bell operating companies, as well as AT&T. He stated that he had studied the pattern of growth and book value and dividends per share for the period going all the way back to 1950. Witness Kosh testified that on the basis of all his studies he came to estimates of the growth rate for the various companies that he considered to be comparable to the company here in question. He further added that upon reaching this conclusion, the next question to be solved was, what yield do you use? He stated that the formula technically calls for the current spot yield, but in this case he was not really interested in the current spot cost of equity nor was he interested in what the cost was on the basis of the stock market prices of five minutes ago on the New York Stock Exchange.

Witness Kosh pointed out that once the cost of the three components of capital are formulated, the next question was what is an appropriate capital structure to which they should be applied. Mr. Kosh stated that he then determined the anticipated capital structure as of the end of 1974 to consist of 45.8% debt, 5.2% preferred stock, 45.4% common equity, and 3.6% cost free. Witness Kosh stated that he used this capital structure, not because it happened to be the actual capital structure, but because he thought it was a reasonable capital structure under the circumstances in this case.

Witness Kosh concluded that what he had done was take the capital structure which he anticipates to exist at the end of 1974, and combining the four capital costs, that is, debt, preferred stock, common equity, and cost free, arrived at an overall cost of capital of 7.78%. Based on his studies Mr. Kosh concluded that 7.8% was the maximum return that would be reasonable for Southern Bell to have an opportunity to earn on its fair value rate base. It was his opinion that this return would be more than sufficient to allow equity investors an opportunity to earn a fair rate of return on their investment and be protected against attrition in earnings and confiscation of their capital. Witness Kosh went on to testify that this return would provide the opportunity for equity stock to sell sufficiently above book value that additional capital could be raised on reasonable terms.

Witness Kosh also testified generally on the comparable earnings method as employed by the company's Witness Dean. He explained that the comparable earnings method as an economic method is perfectly fine and that it simply says that the cost of anything is equal to what you would have to pay in an alternative situation. He pointed out that the comparable earnings method as an economic theory requires two things: (1) that the comparable companies you choose

should be of equal risk to the one that you are interested in, not exact risk, but reasonably similar risks; (2) it also has to set the requirement that the rates earned by your comparable companies are reasonable rates that would exist under reasonable competition. Witness Kosh's conclusion in this case was that the testimony presented by the company's witness made no real effort to determine similarity of risk. He stated that there was general consideration of risk, but no attempt to measure risk. He pointed out that the rates earned by the comparable groups varied so widely, for example, some of the industrial companies' earnings during the period studies ranged from losses of 30% to earnings of 50% leading him to the conclusion, with that kind of range, they are neither of the same risk, nor are they all earning their competitive cost of capital. The witness also stated that it would be rather difficult to take an average which encompasses such ranges from losses of 30% to profits of 50% and find an average rate as being meaningful, even as a statistical matter. Witness Kosh concluded that neither of the basic criteria mentioned above, of general similarity of risk and reasonableness of the level of earnings, have been met by the company's witnesses, and therefore, it was his opinion that the comparable earnings method as presented by them in this case, does not meet the essential economic criteria.

In making its determination concerning a rate of return for Southern Bell Telephone and Telegraph Company, the Commission must deal with one of the most difficult tasks it faces in any proceeding. The Commission is faced with the delicate responsibility of protecting the ratepayer while at the same time assuring that the financial integrity of the company is maintained. The Bluefield and the Hope cases referred to above contain the formula expression of the Commission's responsibility, but there is considerable need to exercise judgment in its application. In the final analysis, whether you apply the formula developed in the Hope and Bluefield cases, or any other formula, the fairness and reasonableness of the rate of return in any particular proceeding is a matter for informed and impartial judgment directed toward providing the consumer with the lowest rate practicable, consistent with the protection of the utility's capability to furnish the public with satisfactory, efficient, and modern service. The Commission's decision must maintain this company's financial integrity in order for it to attract capital on reasonable terms, and to compensate its owners appropriately for the use of their money.

The company in this proceeding advocates that 12.5% is a fair rate of return on its common equity on the basis of comparable earnings of other enterprises. This comparison was made with broad samples of industrial companies as well as certain utilities. Witness Kosh states that a fair rate of return on equity in this proceeding would be 9.5% based on the discounted cash flow formula and that this is the maximum return the company is entitled to an opportunity to

earn. It is obvious that there is no single formula that will mathematically produce a fair rate of return on common equity but they may provide valuable guideposts for the Commission. The Commission will now comment upon its conclusions as to certain evidence and factors that have been mentioned in this proceeding.

Witness Dean, testifying for the company in this proceeding, used what he termed the "comparable earnings" approach in his determination of a rate of return. However, the Commission cannot agree with the manner in which the company's witness applied the comparable earnings method.

The comparable earnings approach, as an economic principle, is perfectly valid, and holds under effective competition, i.e., when various companies are earning their competitive rates of return, the cost of equity to a given enterprise is the rate of return the investor can earn on investments in other enterprises of similar risk. This is the doctrine our Supreme Court enunciated in both Bluefield and Hope. It should be noted here that there are two requirements or conditions that must be met under the comparable earnings approach. They are: (1) the enterprise to be compared must be of similar, not identical, but of generally the same risk; and (2) the rates of earnings used in the guide must be those being earned under effective competition, on investments in these enterprises of similar risk. It is obvious that both economic logic and the law as laid down in Bluefield and Hope require that substantial similarity of risk be established.

It is obvious from Witness Dean's testimony that he realized that similarity of risk is an essential prerequisite to the application of the comparable earnings test. He discussed risk in his testimony and drew certain broad conclusions, but in his testimony he never sought to measure either absolute or relative risk.

Not only did Witness Dean fail to demonstrate similarity of risk, his own data suggests considerable dissimilarity of risk. Witness Dean provided the staff with certain worksheets as to the earnings of the component companies making up his groups and was questioned about these on cross-examination. Consider the sixty high-grade electrics shown on Mr. Dean's Exhibit No. 3. He shows an average rate earned by them from 1968 to 1972 of 12.9%, but in one of the years considered by him (1972) the rates earned range from lows of 8.4% to a high of some 17.1%. Witness Dean's data also indicated the same was true in prior years. It should be noted that these ranges are for regulated utilities, where one would expect some similarity of earnings. This range is magnified many times in the case of the industrials used by Mr. Dean where we see earnings varying from losses of over 30% to profits of over 50%.

Under these circumstances we cannot entertain the thought that the companies compared with Southern Bell have the same

risk. The substantial differences in the earnings lead us to one of two conclusions: (1) These companies are not of the same risk; or (2) if they are of the same risk, then competition has not acted to adjust their earnings to a competitive level. In either case the basic requirements of the comparable earnings test have not been met.

Witness Kosh, in his testimony before this Commission, used the "discounted cash flow", DCF, method in reaching his conclusion as to a fair and reasonable rate of return. The basic premise underlying this method is that an investor in a financial asset makes his evaluation of the value of that asset based on his beliefs as to the yield he will be likely to receive on this asset and his supply price of capital (the yield which he requires to make the investment in question).

The yield which an investor in fact receives on an investment depends on the dividends which he receives during the period he holds the asset and the capital gains or losses which he realizes when he liquidates the investment. An investor will pay no more for an asset than the present value to him of the dividends and capital appreciation which he expects to receive from the asset. The present value of expected future returns can be found by discounting these future returns by the investors yield requirement.

The DCF method is then an attempt to measure the rate at which a firm's equity securities have been discounted and to infer from the implicit market discount rate the cost of equity capital to the firm. From a mathematical standpoint, if the dividend payout ratio (earnings per share divided by dividends per share) is expected to remain relatively constant and the growth in earnings per share is expected to remain relatively stable, then the implicit market discount rate for a firm's equity shares (the rate which investors have required the shares to yield - the cost of equity) can be found by the summation of the ratio of dividends divided by stock price plus the rate of growth in earnings per share.

The application of the DCF method requires that reasonable estimates of the dividend-price ratio and the growth component be made. It is in this phase that the analysts skill is put to the test. These estimates of dividend-price ratios and growth must adequately reflect investors anticipations or expectations. The usual assumptions made are that investors future expectations depend in large measure on the past realizations of dividend-price and growth. If the analyst exercises both judgement and skill in the application of the DCF, it is a reasonable tool for estimating the cost of equity capital for a firm.

Of major significance in arriving at the fair rate of return is the determination of the appropriate capital structure to be used. Company Witness Dean and Attorney General Witness Kosh both offered testimony concerning this

issue. Both witnesses agree that some of the Bell System consolidated capital structure should be used. However, neither witness proposed the actual Bell System consolidated capital structure at June 30, 1973, the end of the test year.

Company Witness Dean testified that the Commission should use an "objective" capital structure composed of 45% debt, 4.5% preferred stock, and 50.5% common equity. He testified at T. Vol. I, Pp. 149-150 as follows:

> "It shows that the proportion of debt in the total capital structure has increased significantly over the past few years from an average of about 33% in the early 1960's to 47.4% at June 30, 1973. The announced policy of the Bell System is to keep the debt ratio within the range of 40 - 45%. Such a capital structure would preserve some borrowing capacity for future periods as well as maintain our competitive position in the market place. At this time the debt ratio is somewhat above the upper end of this range. If all the new money requirements for 1971 and subsequent years had been obtained through debt, the debt ratio would now exceed 50% of the capital structure. Such a position, of course, would be completely contrary to the objectives of the 40 - 45% debt ratio. In light of these financial considerations a convertible preferred stock issue was made in July 1971 and subsequent preferred stock issues were made in January 1972 and March 1973."

Attorney General Witness Kosh testified that the Commission should use the actual consolidated capital structure which he believed would exist at December 31, 1974. This capital structure was composed of 45.8% debt, 5.2% preferred stock, 45.4% common equity, and 3.6% cost-free capital. He testified at T. Vol. VII, P. 62 concerning the development of the capital structure at December 31, 1974, as follows:

> "I adjusted the actual prospective capital structure for the Bell System at the end of 1973 to include the effect of cost free capital. As developed by Mr. Bolster, at June 30, 1973, Southern Bell's North Carolina intrastate operations had been able to finance 3.6% of its capital requirements with cost free capital. This fact must be reflected in the fair rate of return. Therefore, the capital structure I will use in the instant proceedings in arriving at the fair rate of return consists of 45.8% debt, 5.2% preferred, 45.4% equity, and 3.6% cost free capital."

The Commission does not agree with the capital structure proposed by Company Witness Dean containing an "objective" debt ratio. The record is replete on both direct and cross-examination with references by this witness to the "objective" debt ratio of 45% which is based on the stated or announced policy of the Bell System. This announced "objective" debt ratio is completely out of line with the

trend of the debt ratio since 1969. The following chart shows the debt ratios for 1969, 1970, 1971, 1972, and June 30, 1973, and were taken from Dean's Exhibit I:

| | TWELVE MONTHS ENDED | | | |
|---|---|---|---|---|
| 12/31/69 | 12/31/70 | 12/31/71 | 12/31/72 | 6/30/73 |
| 39.5% | 44.9% | 45.5% | 47.4% | 47.4% |

The Commission would note that on T. Vol. I, Page 15, Witness Dean states: "Furthermore, it is my opinion that investors make risk evaluations on the basis of this objective debt ratio."

The Commission is hard put to understand the basis for this opinion. We believe that investors would make risk evaluations based on the actual debt ratio particularly where such a clear trend is indicated. It seems to us that the contention that risk evaluations would be made by investors on the basis of a stated objective debt ratio is not supported by the evidence.

The Commission will adopt and use herein the estimated capital structure proposed by Witness Kosh with one exception. Witness Kosh included customer deposits in the capital structure at zero weight. In past decisions we have always deducted this item from the rate base and we see no reason to deviate in this case. The estimated capital structure at December 31, 1974, excluding customer deposits is 45.85% debt, 5.20% preferred stock, 45.46% common equity, and 3.49% cost free. Consistent with our use of this estimated capital structure, we will also use the estimated embedded cost of 6.68% for debt and 7.89% for preferred stock recommended by Witness Kosh rather than the 6.40% debt and 7.90% preferred stock which existed at the end of the test year. The Commission would point out that the use of the capital structure, debt, and preferred stock cost estimated at December 31, 1974, is a departure from the end of test period concept. The reason for this departure is simple. The record is full of testimony concerning the effects inflation and rising interest cost has had and will continue to have on the company's ability to achieve the return found fair by this Commission. We believe we have a statutory obligation, not only to make a finding as to the fair rate of return but to set rates based on a level of cost which will afford the company an opportunity to earn the return found fair. In addition, it should be pointed out that at this point we are only some eight months from December 31, 1974. It does not seem realistic to us to ignore the increase in the estimated embedded debt cost or capital structure expected to exist at December 31, 1974. It is for these reasons the Commission is using the estimated capital structure and the estimated higher embedded debt cost at December 31, 1974.

While the Commission feels that the method used by Witness Kosh is a rational approach to the complicated problem of what is a fair and reasonable determination concerning rate of return, we do not feel, based upon all of the evidence in this proceeding that we can per se accept Witness Kosh's recommendation of a 7.8% rate of return and certainly we reject the Company Witness's recommended rate of return of 9.5%.

Evidence as to what is a fair and reasonable rate of return is often conflicting and by its very nature lacks complete objectivity. We have carefully considered the criteria laid down in the Bluefield and Hope cases and have applied our informed judgment based upon all of the evidence to reach the necessary conclusions. We have weighed all the factors considered by the witnesses testifying in this proceeding and we have discussed certain points we felt appropriate heretofore in this Order.

The Commission has given serious consideration to all of the relevant evidence presented in this case, concerning the cost of capital, in view of the company's need for a competitive position in the capital market in order to pursue the programs of expansion which will provide both additional and improved service to the ratepayers. Based on the foregoing and the entire record in this matter, and applying its informed judgment, the Commission finds that fair rate of return of 7.55% is fair and reasonable for this company to earn on its fair value rate base. The following charts summarize the rates of return which the company will be able to achieve based on the approved increase:

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
DOCKET NO. P-55, SUB 733
STATEMENT OF OPERATING INCOME FOR RETURN AND ORIGINAL COST OF TELEPHONE PLANT IN SERVICE PLUS ALLOWANCE FOR WORKING CAPITAL FOR PRESENT RATES AND AFTER APPROVED RATES

| | Present Rates | Approved Increase | After Approved Increase |
|---|---|---|---|
| Operating Revenues | | | |
| Local service | $133,158,404 | $8,271,000 | $141,429,404 |
| Toll service | 60,801,571 | | 60,801,571 |
| Miscellaneous | 9,840,314 | | 9,840,314 |
| Uncollectibles - debt | 798,329 | 37,550 | 835,879 |
| Total operating revenue | 203,001,960 | 8,233,450 | 211,235,410 |
| Operating Revenue Deductions | | | |
| Maintenance expenses | 37,561,681 | | 37,561,681 |
| Traffic expenses | 17,662,378 | | 17,662,378 |
| Commercial expenses | 14,802,833 | | 14,802,833 |
| General expenses | 7,096,629 | | 7,096,629 |
| Relief and pensions | 9,551,530 | | 9,551,530 |
| General services and licenses | 1,891,939 | 82,335 | 1,974,274 |
| Other operating expenses | 7,503,014 | | 7,503,014 |
| Total operating expenses | 96,070,004 | 82,335 | 96,152,339 |
| Depreciation and amortization | 29,284,759 | | 29,284,759 |
| Taxes other than income | 21,949,007 | 494,007 | 22,443,014 |
| Income taxes - state | 1,137,128 | 459,427 | 1,596,555 |
| Income taxes - Federal | 11,549,765 | 3,454,887 | 15,004,652 |
| Deferred income taxes | 6,530,760 | | 6,530,760 |
| Allocation of AT&T Income taxes | - | | - |
| Total operating revenue deductions | 166,521,423 | 4,490,656 | 171,012,079 |
| Net operating revenues | 36,480,537 | 3,742,794 | 40,223,331 |
| Less: Interest on customer deposits | 60,364 | | 60,364 |
| Add: Annualization adjustment-3.61% | 1,314,768 | | 1,314,768 |
| Net operating income for return | $ 37,734,941 | $3,742,794 | $ 41,477,735 |

| | | | |
|---|---|---|---|
| Investment in Telephone Plant | | | |
| Telephone plant in service | $606,237,216 | $ | $606,237,216 |
| Less: Accumulated provision for depreciation | 126,706,712 | | 126,706,712 |
| Net investment in telephone plant in service | 479,530,504 | | 479,530,504 |
| Allowance for Working Capital | | | |
| Material and supplies | 3,472,330 | | 3,472,330 |
| Cash | 7,598,584 | | 7,598,584 |
| Average prepayments | 1,943,251 | | 1,943,251 |
| Less: Average tax accruals | 8,805,990 | 661,575 | 9,467,565 |
| Average customer deposits | 1,340,606 | | 1,340,606 |
| Total allowance for working capital | 2,867,569 | (661,575) | 2,205,994 |
| Net investment in telephone plant in service plus allowance for working capital | $482,398,073 | (661,575) | $481,736,498 |
| Rate of return on original cost net investment | 7.82% | | 8.61% |
| Fair value rate base | $550,352,876 | (661,575) | $549,691,301 |
| Rate of return on fair value rate base | 6.86% | | 7.55% |

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
DOCKET NO. P-55, SUB 733
RETURN ON COMMON EQUITY

| | Original Cost Net Investment or Fair Value Rate Base | Ratio % | Embedded or Return on Common Equity % | Net Operating Income for Return |
|---|---|---|---|---|
| | Present Rates - Fair Value Rate Base | | | |
| Capitalization | | | | |
| Debt | $22|,|79,5|6 | 40.|8 | 6.68 | $|4,774,792 |
| Preferred stock | 25,084,700 | 4.56 | 7.89 | |,979,|83 |
| Cost-free capital | |6,835,693 | 3.06 | | |
| Common equity | 287,252,967 | 52.20 | 7.30 | 20,980,966 |
| Total | $550,352,876 | |00.00 | | $37,734,94| |
| | Approved Rates - Fair Value Rate Base | | | |
| Capitalization | | | | |
| Debt | $220,876,|84 | 40.|8 | 6.68 | $|4,754,529 |
| Preferred stock | 25,050,298 | 4.56 | 7.89 | |,976,469 |
| Cost-free capital | |6,8|2,604 | 3.06 | | |
| Common equity | 286,952,2|5 | 52.20 | 8.62 | 24,746,737 |
| Total | $549,69|,30| | |00.00 | | $4|,477,735 |

We conclude that the 7.55% return should enable the company to finance satisfactorily and at the same time avoid undue burden on the ratepayers of North Carolina. Use of the embedded debt cost at December 3|, |974, plus inclusion of the wage increase effective one day after the end of the test year will, we believe, afford the company a reasonable opportunity to earn the 7.55% return found fair on the fair value rate base. The Commission, of course, cannot guarantee, nor is it required to guarantee the attainment or realization of these returns. The ultimate return realized by the company will depend in a large part on the future actions of management and unforeseeable events in the future, neither of which can enter into our decision at this time.

EVIDENCE AND CONCLUSIONS FOR FINDINGS REGARDING RATE DESIGN

Evidence pertaining to rate design was presented by Southern Bell and the Commission Staff.

Mr. David Denton, Rate Planning Supervisor, Southern Bell, introduced Exhibit No. |, showing the present and proposed rate group limits. Mr. Denton further testified substantially as follows: that the relative value of service concept should be the basis for pricing of basic services; that he proposed a change based on usage studies in the relationships between PBX trunk rates and B-| rates from |.6 to | to |.75 to | and a change in relationship

between individual lines arranged for rotary service and regular individual lines.

Mr. Denton proposed that a monthly flat rate for semi-public telephone service should replace the present guarantee basis. In comparing semi-public service with normal business service, Mr. Denton stated that semi-public telephone service provided added value to the subscriber and caused added costs to the Company. The proposed flat rate should help to simplify administration of the service.

Mr. Denton stated message-rate services are priced in relation to flat-rate business service, and proposed increases in these basic messenger services and a one-and-one-half-cent increase in the rate for each additional message.

Mr. Denton proposed an increase in the local coin call charge from $.10 to $.20. He cited as examples of increased costs of the service the weekly wage rate of coin collectors and the cost per coin telephone set. He stated that operating expenses with a $.15 coin call charge would be greater than with the $.20 charge. Mr. Denton further cited a study by Audits and Surveys, Inc., which indicated that 75% of pay telephone users would have been willing to pay $.20 for their most recent local call from a pay telephone.

Mr. Denton proposed increases in various Centrex charges and charges in the method of billing. Mr. Denton proposed to bring the charges for service connections, moves, and charges to the level of labor costs involved in doing the work. The charges would be applied in a way in which the charge appropriate for each request will normally depend on the work functions required to complete the request. Mr. Denton stated that charges for service connection, moves, and changes are unduly low and, because of this, customers who seldom move are having to pay the unrecovered costs caused by those customers who move often.

Mr. Denton proposed to adjust rates for local private line service so that they would be more in line with facility arrangements. He offered as an example increasing the rate for sub-voice grade local channels to the same rate as voice-grade channels.

Mr. Denton stated that it is possible to develop useful cost estimates for supplemental services and equipment and that equity considerations suggest that provision of supplemental services and equipment should not result a burden upon subscribers to basic services. He also stated a need for pricing flexibility so that market factors as well as cost may be considered.

Mr. Vern W. Chase, Chief Engineer, Telephone Rate Section, testified substantially as follows:

That it is reasonable to price service charges at or near cost so that those customers causing the work to be performed will pay a fair share of the cost; that subscribers should be encouraged through an appropriate rate schedule to request that all their service needs be met while the installer repairman is on the premises; that subscribers who assume the entire service which was left in place should receive a substantial reduction in service charges.

Regarding zone charges, Mr. Chase testified that from information submitted by the Company, it can be determined that the Company based on units as of June 30, 1973, is collecting $1,480,838.40 in zone charge revenue annually; that it has become difficult to determine proper limits for base rate areas in highly industrialized areas of North Carolina, and that he would recommend the elimination of zone charges which would, at the same time, eliminate the need for consideration of base rate area extensions.

Mr. Chase further testified that semi-public telephone service has been offered for many years at locations which were reasonably accessible to the public but which were not suitable for the installation of public telephones. Features this service offers to the subscriber are: (1) protection from unauthorized local and toll usage by the subscriber's customers, and (2) the privilege of having a directory listing and ability to receive incoming calls. The service is more expensive to provide than flat rate service and it is doubtful that the present 110% guarantee is compensatory. The proposed change to a flat rate of 55% of the applicable one-party business rate would cause the Company to find, in many instances, that the nature and amount of usage would not justify continuing to offer the service. Therefore, the service should continue to be available at an equitable rate.

Basic Rate Schedule

The Commission concludes that the present rate schedule should be revised to equalize the ratios between business individual line rates and residential individual line rates. The final ratio between B-1 and R-1 should be approximately 2.5 to 1, a level which the Commission, in its discretion, believes to be just and reasonable.

The Commission concludes that the present rate group limits should be revised as proposed by the Company so that a minimum of regrouping is necessary.

Service Whose Rates are Related to Basic Service

The Commission concludes that rates for PBX trunks and individual lines arranged for rotary service should be adjusted to more accurately reflect relative value of service and relative costs. The Company's proposed relationship for PBX trunks is fair and reasonable. The

proposed increase in rates for rotary lines is excessive; however, a more moderate increase should be allowed.

The Commission concludes that rates for services which are related to basic exchange service rates should be adjusted in accordance with adjustments in basic exchange service rates.

Coin Telephone Service

The Commission concludes that there is a need to adjust the local coin call charge from 10¢ to 20¢. We recognize that percentage-wise, this is a large increase. However, based upon the evidence of increases in the cost of this service, the fact that the charge has not been increased for over 20 years and our desire to alleviate further increase on basic service, we conclude this increase is necessary at this time. Thus basic residential telephone service will only be increased 10¢ per month under this order, rather than 35¢ per month in the absence of an increase on pay station calls and approximately 75¢ over the amount granted herein on business service.

The Commission concludes that an increase in the coin call charge will cause a reduction in the number of coin calls made. However, there is insufficient evidence to support the twenty-five percent reduction claimed by the Company. The Commission feels that, after calling habits have stabilized, the increase to 20¢ for each local call will cause a decrease in local coin calls from public paystations on the order of fifteen percent. Due to the fact that semi-public stations are often located in fair-to-poor revenue-producing locations, a twenty-five percent reduction in messages is probable.

The Commission concludes that in order to maintain the amount of revenue paid to the property owner, in the form of a commission on local coin calls, the rate of commission must be reduced. After conversion to 20¢ local calls, the commission paid on local calls should be reduced to 9%.

The Commission concludes that a flat monthly rate for semi-public telephone service should be adopted which, in conjunction with local coin revenue, would adequately compensate the Company for costly service. The tariff should be revised to provide a method for review, at the Company's discretion, of the total revenue collected from semi-public stations on an individual basis over a period of six months, and to specify the maximum amount of revenue required from any station over such a period in order to insure continuation of the service.

Service Charges

The Commission concludes that service charges should be increased to a level which more closely approximates the level of costs involved in doing the work, and the charges

applicable for each request should depend on the actual work functions involved.

Zone Charges

The Commission concludes that all zone charges should be eliminated in order to provide more equitable treatment to all customers regardless of their location within the exchange.

Supplemental Services and Equipment

The Commission concludes that the provision of supplemental services and equipment should not result in a burden upon subscribers to basic service.

Local Private Line Service

The Commission concludes that rates for local private line service should be adjusted so that they are more in line with facility arrangements and present costs.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Applicant, Southern Bell Telephone and Telegraph Company, be and hereby, is, authorized to increase the North Carolina intra-state local exchange telephone rates and charges to produce additional annual gross revenue not exceeding $8,271,000, by applying total increases of $10,352,403 less total decreases of $2,081,403, based upon stations and operations as of June 30, 1973, as hereinafter set forth in Appendix "A".

2. That the local monthly rates, service charges, and general exchange item rates prescribed and set forth in Appendix "A" hereto attached, which will produce additional gross revenue of $8,271,000 from said end of test period customers be, and are hereby, approved to be charged by Southern Bell in North Carolina effective on service to be rendered on and after May 15, 1974.

3. That Southern Bell shall file, within 7 days of this order, the necessary revised tariffs reflecting the above increases and decreases, said tariffs to be effective as of the dates prescribed above.

4. That Southern Bell shall file monthly reports on the conversion of coin paystations to the $.20 charge until such conversion is completed.

5. That Southern Bell take action to: (a) clear on the day received, at least 90% of the out-of-service trouble reports received before 5 P.M.; (b) maintain repeat trouble reports so that repeat reports as a percentage of total subscriber trouble reports will be 10% or less; and (c) complete at least 90% of regular negotiated service orders within five (5) days.

Southern Bell shall report monthly to the Commission for a period of six (6) months the results of each of the above three (3) service indices. The Commission staff shall continue its evaluation of the progress of Southern Bell in meeting the service requirements specified herein and those other areas of service where the staff testified further improvement was needed.

6. That Southern Bell provide once monthly for the months of March, April, May, and June, |974, daily directory assistance and "0" level operator answer time results for the Shelby and Gastonia toll centers.

7. That Southern Bell submit by May |5, |974, an updated report as of April |5, |974, showing the relief provided in each equipment and trunk group shown on Item |0C in response to the Commission order in this docket dated July 20, |973.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of April, |974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

SOUTHERN BELL TELEPHCNE AND TELEGRAPH COMPANY

DOCKET NO. P-55, SUB 733

EXCHANGE RATE GROUPING

Main Stations and PBX Trunks
in Local Service Area

| | Monthly Flat Rate | | | | | |
|---|---|---|---|---|---|---|
| | RESIDENCE | | | BUSINESS | | |
| GROUP | Ind. | 2-Pty. | 4-Pty.* | Ind. | 2-Pty. | 4-Pty.* |
| \| 0-8,000 | 5.50 | 4.55 | 4.05 | \|3.90 | \|2.75 | \|\|.95 |
| 2 8,00\|-\|4,000 | 5.70 | 4.70 | 4.\|5 | \|4.40 | \|3.25 | \|2.30 |
| 3 \|4,00\|-25,000 | 5.90 | 4.90 | 4.30 | \|4.90 | \|3.75 | \|2.65 |
| 4 25,00\|-37,000 | 6.\|5 | 5.\|0 | 4.45 | \|5.55 | \|4.40 | \|3.\|5 |
| 5 37,00\|-53,000 | 6.40 | 5.30 | 4.60 | \|6.\|5 | \|5.00 | \|3.60 |
| 6 53,00\|-87,000 | 6.60 | 5.50 | 4.75 | \|6.65 | \|5.25 | \|3.85 |
| 7 87,00\|-\|20,000 | 6.85 | 5.70 | 4.95 | \|7.35 | \|5.95 | \|4.\|5 |
| 8 \|20,00\|-UP | 7.\|0 | 5.90 | 5.\|5 | \|8.85 | \|7.45 | \|5.25 |

*Obsolete service offering

Rates By Exchange

| EXCHANGE | RESIDENCE Ind. | RESIDENCE 2-Pty. | RESIDENCE 4-Pty.* | BUSINESS Ind. | BUSINESS 2-Pty. | BUSINESS 4-Pty.* |
|---|---|---|---|---|---|---|
| Acme | 6.15 | 5.10 | 4.45 | 5.55 | 4.40 | -- |
| Anderson | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Apex | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Arden | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Asheville | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Atkinson | 5.50 | 4.55 | 4.05 | 3.90 | 2.75 | 1.95 |
| Belmont | 7.10 | 5.90 | -- | 8.85 | 7.45 | -- |
| Bessemer City | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Black Mountain | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Blowing Rock | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Bolton | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Boone | 5.70 | 4.70 | 4.15 | 4.40 | 3.25 | -- |
| Burgaw | 5.50 | 4.55 | 4.05 | 3.90 | 2.75 | 1.95 |
| Burlington | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Canton | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Caroleen | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Carolina Beach | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Cary | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Castle Hayne | 6.15 | 5.10 | 4.45 | 5.55 | 4.40 | -- |
| Charlotte | 7.10 | 5.90 | -- | 8.85 | 7.45 | -- |
| Cherryville | 6.15 | 5.10 | 4.45 | 5.55 | 4.40 | 3.15 |
| Claremont | 5.70 | 4.70 | 4.15 | 4.40 | 3.25 | -- |
| Cleveland | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Clyde | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Davidson | 7.10 | 5.90 | -- | 8.85 | 7.45 | -- |
| Denver | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Ellenboro | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Enka-Candler | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Fairmont | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Fairview | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Forest City | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Gastonia | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Gatewood | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Gibson | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Goldsboro | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Grantham | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Greensboro | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Grover | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Hamlet | 5.70 | 4.70 | -- | 4.40 | 3.25 | -- |
| Hendersonville | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Huntersville | 7.10 | 5.90 | -- | 8.85 | 7.45 | -- |
| Julian | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Kimesville | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Kings Mountain | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Knightdale | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Lake Lure | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Lattimore | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Laurinburg | 5.70 | 4.70 | -- | 4.40 | 3.25 | -- |
| Lawndale | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Leicester | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Lenoir | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Lincolnton | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Locust | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Long Beach | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Lowell | 6.40 | 5.30 | 4.60 | 6.15 | 5.00 | -- |
| Lumberton | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Maggie Valley | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Maiden | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Milton | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Monticello | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Morganton | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Mt. Holly | 7.10 | 5.90 | -- | 8.85 | 7.45 | -- |
| Mt. Olive | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Newland | 5.50 | 4.55 | 4.05 | 3.90 | 2.75 | -- |
| Newton | 6.15 | 5.10 | 4.45 | 5.55 | 4.40 | 3.15 |
| Pembroke | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Raleigh | 6.85 | 5.70 | -- | 7.35 | 5.95 | -- |
| Reidsville | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Rockingham | 5.70 | 4.70 | -- | 4.40 | 3.25 | -- |
| Rowland | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Ruffin | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Rutherfordton | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Salisbury | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Saxapahaw | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Scotts Hill | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Selma | 5.70 | 4.70 | -- | 4.40 | 3.25 | -- |
| Shelby | 6.15 | 5.10 | 4.45 | 5.55 | 4.40 | -- |
| Southport | 5.50 | 4.55 | -- | 3.90 | 2.75 | -- |
| Spruce Pine | 5.50 | 4.55 | 4.05 | 3.90 | 2.75 | 1.95 |
| Stanley | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Statesville | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | 2.65 |
| Stony Point | 5.90 | 4.90 | -- | 4.90 | 3.75 | -- |
| Summerfield | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Swannanoa | 6.40 | 5.30 | -- | 6.15 | 5.00 | -- |
| Taylorsville | 5.50 | 4.55 | 4.05 | 3.90 | 2.75 | 1.95 |
| Troutman | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Waynesville | 5.90 | 4.90 | 4.30 | 4.90 | 3.75 | -- |
| Wendell | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |
| Wilmington | 6.40 | 5.30 | 4.60 | 6.15 | 5.00 | -- |
| Winston-Salem | 6.85 | 5.70 | -- | 7.35 | 5.95 | -- |
| Wrightsville Beach | 6.15 | 5.10 | -- | 5.55 | 4.40 | -- |
| Zebulon | 6.60 | 5.50 | -- | 6.65 | 5.25 | -- |

*Obsolete service offering

Zone Charges

All zone charges are eliminated.

## CENTREX SERVICE

### CENTREX INTERCOMMUNICATION CHARGE

a. Centrex I Systems where the dial switching equipment is located on the customer's premises:

| Per CENTREX Main Station Per Month | | | | | | | |
|---|---|---|---|---|---|---|---|
| (i) At First Location | | | | (ii) Each Additional Location | | | |
| 1st 100 | 101- 300 | 301- 900 | over 900 | 1st 50 | 51- 300 | 301- 900 | over 900 |
| 3.05 | 7.25 | 6.60 | 4.75 | 8.75 | 8.30 | 6.60 | 4.75 |

b. Centrex I Systems where the dial switching equipment is located on the Telephone Company's premises:

In all exchanges, the Centrex Intercommunication monthly charge per main station is 25 cents higher than where the dial switching is located on the customer's premises.

c. Centrex II Systems

The Centrex Intercommunication monthly charge per main station is 75 cents higher than an equivalent station on a Centrex I System.

### CENTREX EXCHANGE ACCESS CHARGE

| Per CENTREX Main Station Per Month | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | (i) At First Location | | | | (ii) Each Additional Location | | | |
| Group | 1st 100 | 101- 301 | 301- 900 | over 900 | 1st 50 | 51- 300 | 301- 900 | over 900 |
| 1 | 3.10 | 2.15 | 1.85 | 1.50 | 2.60 | 2.50 | 1.85 | 1.50 |
| 2 | 3.35 | 2.20 | 2.00 | 1.65 | 2.70 | 2.60 | 2.00 | 1.65 |
| 3 | 3.60 | 2.35 | 2.15 | 1.75 | 2.80 | 2.65 | 2.15 | 1.75 |
| 4 | 3.85 | 2.50 | 2.30 | 1.90 | 2.90 | 2.75 | 2.30 | 1.90 |
| 5 | 4.10 | 2.65 | 2.45 | 2.00 | 3.00 | 2.85 | 2.45 | 2.00 |
| 6 | 4.35 | 2.80 | 2.60 | 2.15 | 3.10 | 2.95 | 2.60 | 2.15 |
| 7 | 4.60 | 3.00 | 2.75 | 2.25 | 3.20 | 3.05 | 2.75 | 2.25 |
| 8 | 4.85 | 3.15 | 2.90 | 2.40 | 3.30 | 3.15 | 2.90 | 2.40 |

### CENTREX SUPPLEMENTAL SERVICE

d. Interior CENTREX Stations

| | Monthly Rate |
|---|---|
| Centrex I | |
| At principal location, each | $4.45 |
| At secondary location, each | |
| Centrex CO | 6.85 |
| Centrex CU | 7.00 |
| Centrex II | |
| At principal location, each | 6.00 |
| At secondary location, each (Centrex CO only) | 8.30 |

e. Extension Stations

| | |
|---|---|
| Centrex I, each | 3.70 |
| Centrex II, each | 3.95 |
| Dormitory, each | 1.30 |

f. Dormitory Main Stations, each, per month

(1) Where the dial switching equipment is located on the Company's premises:

| Group | Centrex I | Centrex II |
|---|---|---|
| 1 | 5.70 | 5.95 |
| 2 | 5.90 | 6.15 |
| 3 | 6.10 | 6.35 |
| 4 | 6.35 | 6.60 |
| 5 | 6.60 | 6.85 |
| 6 | 6.80 | 7.05 |
| 7 | 7.00 | 7.25 |
| 8 | 7.05 | 7.30 |

(2) Where the dial switching equipment is located on the customer's premises:

| Group | Centrex I | Centrex II |
|---|---|---|
| 1 | 5.55 | 5.80 |
| 2 | 5.75 | 6.00 |
| 3 | 5.95 | 6.20 |
| 4 | 6.20 | 6.45 |
| 5 | 6.45 | 6.70 |
| 6 | 6.65 | 6.90 |
| 7 | 6.75 | 7.00 |
| 8 | 6.80 | 7.05 |

g. Attendant's Console or 608 type switchboard, each, per month 148.65

## PBX TRUNKS

PBX Trunks Flat Rate

1.75 times Business one-party rate

## MESSAGE RATE SERVICE

Business Individual Message Rate Lines

.70 times Business one-party rate

PBX Message Rate Trunks

| | |
|---|---|
| 1st Trunk | .70 times Business one-party rate |
| additional trunks, each | .35 times Business one-party rate |

Excess Message Charge

All message services

Per message $.065

SEMI-PUBLIC TELEPHONE SERVICE

Rates

Monthly flat rate of .75 times the business individual line flat rate for the particular exchange

Local message charge $.20

New Regulations pertaining to semi-public telephone service:

1. Definition and Requirements -

a. Semipublic telephone service is that class of individual line exchange service furnished in locations which are reasonably accessible to the public. It is not intended as a substitute for other service or as a means of providing an alternative service at a lower charge. Semipublic telephone service shall be furnished if the prospective nature and amount of usage indicate that the installation will meet revenue requirements at the following types of locations:

(1) Where there is an appreciable demand for service on the part of transients but where in the opinion of the Company, the installation of a public telephone is not warranted.

(2) Where there is a collective use of the service by a relatively stable body of guests, members of clubs or transients.

(3) Where the demand for service is for a combination of customer and transient usage.

b. Subscribers may display telephone signs furnished by the Company and allow the use of the station to the general public.

c. The Company may terminate service at locations where in its judgement losses by theft are likely to occur, unless the subscriber executes an agreement to indemnify the Company against such losses.

2. Revenue Requirements for Continuation of Service

The Company shall maintain records of the local coin revenue collected from each semipublic station. After any period of six consecutive months in which a substantial overall deficit (based upon an additional monthly local coin revenue requirement of .75 times the business individual line flat rate) is realized from any semipublic station, the Company shall notify the customer in writing of the deficit and provide him with a record of local coin revenue taken from the box for each collection period during the test period. The customer may continue the semipublic service by paying the Company the deficit amount. Excess amounts of coin revenue which may have been collected from one collection period will be applied to reduce the deficits from other collection periods within the same test period.

If there is a deficit and the customer elects not to supplement the local coin revenue, the semipublic service will be terminated and the proper category of basic local service will be offered to the customer in accordance with the normal rules for establishment of service.

Applications for semipublic service at locations which have been shown in past test periods to be incapable of attracting sufficient coin revenue will not be considered unless substantial changes have been made which would drastically affect the coin revenue potential, or unless the customer is willing to provide the revenue to offset the possible deficit.

PUBLIC COIN TELEPHONE SERVICE

| | |
|---|---|
| Local message charge | $.20 |
| Rate of commission on local coin revenue | 9% |

JOINT-USER SERVICE

Semipublic telephone
Monthly flat rate of .25 times the semipublic flat rate

ROTARY SERVICE

Residence individual lines arranged for rotary service, in addition to regular monthly rate
(RIF) Monthly, per line $2.00

Business individual lines arranged for rotary service, in addition to regular monthly rate (BIF)
Monthly, per line $2.00

Service Charges

| | Residence | Business |
|---|---|---|
| Service Connection or Service Transfer | | |

| | | |
|---|---|---|
| (1) Service Ordering, each order | 8.00 | 12.00 |
| (2) Equipment work | | |
| (a) Main station, each | 3.00 | 6.00 |
| (b) Extension station, bell and gong, each unit | 1.75 | 4.00 |
| (3) Access line work, each line | 4.00 | 7.00 |

Extension Stations, bells, gongs, inside moves and changes (on separate order)

| | | |
|---|---|---|
| (1) Service ordering, each order | 5.00 | 6.00 |
| (2) Equipment work | | |
| (a) First unit | 2.50 | 4.50 |
| (b) Each additional unit | 1.75 | 4.00 |

Service Charges

| | Non-recurring Charge |
|---|---|
| Service Connection or Service Transfer | |
| Main service, PBX trunk Centrex main, and tie line (not in place) | |
| Business | 25.00 |
| Residence | 15.00 |
| Main service, PBX trunk, Centrex main, and tie line (in place) | |
| Business | 19.00 |
| Residence | 12.00 |
| Extension Station, PBX Station, Bell, Gong | |
| Business - Special Visit | 10.50 |
| Additional on same S.O. | 4.00 |
| Residence - Special Visit | 7.50 |
| Additional on same S.O. | 1.75 |
| Centrex Extension Station - Special Visit | 10.50 |
| Additional on same S.O. | 4.00 |
| Residence Package Installation Charge | |
| Rotary | -- |
| TOUCH-TONE | -- |
| Trimline Telephone Installation Charge | -- |
| Move and Change | |
| Business - Special Visit | 10.50 |
| Additional on same S.O. | 4.00 |
| Residence - Special Visit | 7.50 |
| Additional on same S.O. | 1.75 |
| Restoration of Service | 7.50 |
| Number Change | 7.50 |

| | |
|---|---|
| Mobile Telephone Service | 19.00 |
| Secretarial Lines | 7.50 |
| Restoration of service after request for temporary suspension | 7.50 |

LOCAL PRIVATE LINE SERVICE

a. Channels, half duplex, per month

| | | |
|---|---|---|
| (1) | Same building | |
| | Two point channel 30 baud | $1.00 |
| | Other, up to voice grade | 1.00 |
| (2) | Different buildings, same premises | |
| | Channels, per 1/10 mile 30 baud | .60 |
| | Minimum charge | 2.40 |
| | Other, up to voice grade | .60 |
| | Minimum charge | 2.40 |
| | Voice grade | .60 |
| | Minimum charge | 2.40 |
| (3) | Different buildings, different premises | |
| | Channels, per 1/4 mile | |
| | 30 baud | 1.50 |
| | 60 speed | 1.50 |
| | 75 speed | 1.50 |
| | 100 speed and 150 baud | 1.50 |
| | Voice grade | 1.50 |
| | Minimum monthly channel charge, per premises served, other than the first premises* | |
| | 30 baud | 6.00 |
| | 60 speed | 6.00 |
| | 75 speed | 6.00 |
| | 100 speed and 150 baud | 6.00 |
| | Voice grade | 6.00 |

*Present minimum charge applies on a per-channel basis

b. Additional terminations, same premises, per month

| | | |
|---|---|---|
| (1) | Per Additional termination* | |
| | 30 baud | .50 |
| | Other, up to voice grade | .50 |

*Plus on-premises channel charges where applicable

c. Duplex Service, where offered

Monthly rates for duplex channel mileage, minimum charges and additional terminations are proposed at twice the half-duplex rates.

While the present monthly rate is generally twice the half-duplex rate, in some instances it is 5-cents more or 5-cents less. All such differences over or under twice the rate for half-duplex service will be eliminated.

d. Bridging arrangements

Multi-point voice grade channels

| | | |
|---|---|---|
| (1) | All stations on the same premises per station, per month | 2.00 |
| (2) | Stations located on different premises | |
| | First station on a premises, per month | 4.00 |
| | Each additional station at the same premises per month | 2.00 |

e. Non-recurring charges

| | | |
|---|---|---|
| (1) | Per service termination | |
| | Installation or outside move | 14.00 |
| | Inside move, same premises | 10.00 |
| | Change in type of instrument | 10.00 |
| (2) | Per bridging arrangement | |
| | All stations on the same premises | 10.00 |
| | Stations located on different premises | |
| | First station on a premises | 14.00 |
| | Each additional station at the same premises | 10.00 |

SUPPLEMENTAL SERVICES AND EQUIPMENT

| | Monthly Rate |
|---|---|
| Miscellaneous Service Arrangements | |
| Special Billing Numbering Plan | |
| Each group of 20 stations or special billing numbering codes, (whichever is greater), or fraction thereof | -- |
| Minimum charge | -- |
| Arrangements for Night, Sunday and Holiday Service | |
| Directory listings | as specified in Directory Listings |
| Special Multiple Jack, each | .70 |
| Night service arrangement for cord switchboards, manual or dial systems: | |
| Night service jacks and strapping cord equipment to provide for connection of more than one PBX station to any one trunk for night service, each group of either 3, 4, or 5 jacks | 1.85 |
| Night service arrangement for dial systems: | |

| | |
|---|---|
| Auxiliary line circuit, including night service line, for completing incoming night calls to dial PBX systems, each | 3.80 |
| **Automatic Answering and Recording Service and Automatic Answering Service** | |
| With two or three minute announcement time capacity and remote operation (including remote operating keys) | 14.50 |
| Optional Features | |
| Foot control | 1.30 |
| Two-hour recording | 1.30 |
| Backspace Unit | 1.75 |
| Earphone, each (where applicable) | .90 |
| Grouping Arrangement - to permit connection of a maximum of 5 lines alternately, to either of 2 automatic answering equipments (includes a key for transfer function) | 25.00 |
| Arrangement to limit the length of time allotted for each incoming message (Code-A-Phone machine) | 1.30 |
| **Municipal Emergency Reporting Service** | |
| Two-position console with capacity of 400 reporting lines and power plant | 275.00 |
| One-position console with capacity of 100 reporting lines and power plant | 180.00 |
| One-position console with capacity of 40 reporting lines and common equipment, including dispatch and status indicating equipment | 160.00 |
| Additional console position, each | 44.00 |
| PBX emergency standby power plant | 70.00 |
| Terminal equipment at PBX, each | |
| Central office trunk | 4.85 |
| Equipment status line | .80 |
| Common equipment at each central office for concentrator operation | 190.00 |
| Common equipment at PBX for concentrator operation | 105.00 |
| Terminal Equipment | |
| Recorder trunks each | 11.00 |
| Outdoor Reporting telephone set including line equipment | |
| without selective routing* | 5.00 |
| *Service connection charge applicable for PBX station. | |
| Equipment for each additional 100 direct lines in a direct line or combined system | 15.25 |
| **Group Emergency Alerting and Dispatching Systems** | |
| Small system - limited to one dial central office area with a maximum capacity of 63 called lines | |
| Common equipment | 23.00 |
| Supplementary Items | |

| | |
|---|---|
| Line equipment - each called line | 2.20 |
| Dispatcher set - (maximum of one)** | 2.45 |
| **Rates and charges applicable for pushbutton telephone service as quoted in Section A10. of the General Subscriber Services Tariff | |
| Automatic Announcement and one-way transmission | |
| Automatic ringing and timecut control | 6.75 |
| Control unit for automatic announcement set, each | 7.10 |
| Twenty-four line system - (For use within a single dial central office and having a maximum capacity of twenty four call receiving individual exchange lines) | |
| Common equipment, including two connector terminations, one directory listing and fifteen called lines | 63.00 |
| Common equipment for additional called lines up to a maximum of twenty-four called lines, each group of three | 10.50 |

Civil Air Defense Warning Service

| | |
|---|---|
| In exchanges with estimated ultimate requirements of 100 or more warning stations | |
| Dial stations | |
| Alternate control point dial stations, each | 6.35 |
| Warning stations, each | 6.35 |
| In exchanges with estimated ultimate requirements of less than 100 warning stations | |
| Dial stations | |
| Alternate control point dial stations, each | 6.20 |
| Warning stations, each | 6.20 |
| Automatic termination of alert signal | |
| Each 8 warning stations lines, or fraction thereof | 2.30 |

Directory Listings

| | |
|---|---|
| Private telephone number | 1.20 |
| Semiprivate telephone number | .60 |
| Additional Listings | |
| Business | .90 |
| Residence | .60 |
| Additional line matter, each | |
| Business | .90 |
| Residence | .60 |
| Temporary listing | |
| Business | .90 |
| Residence | .60 |
| Alternate Listing | |
| -nights, Sundays, and holidays, each, per line | .90 |
| -If no answer Business | .90 |
| -If no answer - Residence | .60 |
| Reference Listing | .90 |
| Foreign Listing | |
| Business | .90 |
| Residence | .60 |

NOTE: Business listings include Centrex and mobile telephone service.

Telephone Answering Service Facilities

| | |
|---|---|
| No. 557-B non-multiple telephone answering switchboard position, equipped for 40 secretarial lines and including common equipment | 65.00 |
| Additional equipment units for 10 secretarial lines (limit of 6), each | 5.00 |
| Additional intercept cord units (limit of 4), each | 1.90 |
| Switchboard clock, each position | 1.60 |
| Auxiliary tone signal indication, each system | 3.30 |
| Arrangement to provide multiple of a maximum of 5 C.O. trunks with the addition of busy lamp feature | |
| First position | 4.25 |
| Each additional position | 1.75 |
| Recessed switchboard card dialer including 40 cards, each (Rotary dial or TOUCH-TONE type) | 12.85 |
| Lamp test key equipment, per position | 10.00 |

Concentrator and Identifier Units

| | |
|---|---|
| Concentrator | 68.00 |
| Identifier | 68.00 |
| Concentrator basic termination charge | 2,200.00 |
| Identifier basic termination charge | 1,600.00 |

Auxiliary Equipment

Feature Telephone Sets

| | |
|---|---|
| Portable moisture-proof sets, in addition to regular tariff rates and charges for class of service involved: | |
| Chest transmitter type | |
| With single head receiver, each | 6.10 |
| With double head receiver, each | 6.35 |

Elevator Telephones

| | |
|---|---|
| Black finish | 4.25 |

Explosive Atmosphere Telephone Equipment

| | |
|---|---|
| Explosive atmosphere telephone sets | |
| Wall or pedestal 320 type set, each | 8.00 |
| 8" or 10" bell (115 volt AC or DC) | |
| Indoor locations | 3.50 |
| Outdoor locations | 4.25 |

| | |
|---|---|
| Outdoor Telephone Sets | 4.50 |

Operators' Sets

| | |
|---|---|
| Handset, headset or combination hand-headset and chest transmitter set equipped with single head receiver, each | 1.60 |
| Combination hand-headset equipped with push-to-talk or push-to-listen switch, each | 1.95 |

Speakerphone

| | |
|---|---|
| Optional Features | |
| Loudspeaker - Type L or M, in lieu of standard speaker, each | 1.50 |
| Conference arrangement | |
| Additional loudspeaker (maximum of 1) | 1.50 |
| Auxiliary Transmitters, each (maximum of 5) | 1.75 |

Microphone and Loudspeaker Station - High Volume

| | |
|---|---|
| Equipment required to permit private 2-way telephone conversations (telephone instrument required) | .95 |
| Microphone | 1.20 |

Extension Bells, Extension Gongs and BELL-CHIME and Tone Ringers

| | |
|---|---|
| Extension bells, each | 1.10 |
| Extension gongs, each | 1.35 |
| BELL-CHIME Ringer | 1.35 |
| Tone ringer | 1.05 |

Buzzer Circuits, Push-Button Pads and 7-C Bell

| | |
|---|---|
| Individual push-buttons, each | .30 |
| Pad Push-buttons, for buttons of the pad in use, each pad: | |
| 2-button pad | .70 |
| 3 or 4-button pad | 1.00 |
| 5-button pad | 1.30 |
| 6 or 8-button pad | 1.65 |
| 10 or 12-button pad | 1.95 |
| Each buzzer of No. 7 type bell | .55 |

Station Auxiliary Signals

| | |
|---|---|
| Signals operated by power from dry cells or power from central offices: | |
| 4-inch bells, each | .85 |
| 6-inch bells, each | 1.00 |
| Signal control equipment for one or more signals on the same circuit: | |
| Continuous | 2.70 |
| Non-continuous | 1.90 |
| Signals with self-contained non-continuous control equipment: | |
| Xylophone signal, indoor, 980 cycle, each | 3.05 |
| Single and duo-potential signals operated by commercial power: | |

| | INDOOR | OUTDOOR |
|---|---|---|
| Bell-single stroke or vibrating, controlled volume, single potential, each | 1.85 | 2.55 |
| Horn, single potential, each | 2.00 | 3.25 |
| Horn, duo-potential, each | 2.60 | -- |
| Chime (250 Cycle), single potential, each | -- | 3.10 |
| Lamps, each | | |
| 16 type lamp indicator, each | | 1.00 |
| Busy Lamp Signals | | |
| Signal control equipment, for one or more signals on same circuit, each | | 1.50 |

Receivers

Receivers in place of, or in addition to, regular hand receivers will be provided at the following monthly rates without installation charge:

| | |
|---|---|
| Watch-case receivers, each | .30 |
| Single-head receivers, each | .50 |
| Double-head receivers, each | .80 |

Automatic Dialer Equipment

| | |
|---|---|
| Card Dialer | |
| Card Dialer, including 40 cards, each | 4.70 |
| Magicall | |
| When associated with telephone instrument | |
| Repertory dialer unit - including tape cartridge (400 name capacity) and dial-in-unit | 12.35 |
| Repertory dialer unit, including tape cartridge (1,000 name capacity) and dial-in-unit | 13.00 |

Conference Equipment

| | |
|---|---|
| Loudspeaker conference equipment | |
| 107-A loudspeaker set | 2.25 |
| Horn type loudspeaker - | |
| Small, Type A | 1.10 |
| Medium, Type B | 1.50 |
| Surface mounted loudspeaker, Types K,L | 1.10 |

Dial Code Sending Equipment

| | |
|---|---|
| 3-A code calling unit with one talking path and including one appearance in switchboard or six link inter-communicating arrangement | 20.00 |
| Additional talking path with one appearance | 9.00 |
| Additional appearance of existing talking path, each | 2.25 |
| Slow interval operation of signals | .70 |

Order Receiving Equipment

| | |
|---|---|
| Usage indicator readout arrangement | |
| Common equipment including 200 character input unit, each | 31.45 |
| Additional 200 character input unit (maximum of one), each | 30.00 |
| Converter Units: | |
| Digital to Five Level Serial, each | 30.00 |
| Digital to Five Level Parallel, each | 22.25 |
| Digital to Eight Level Serial, each | 35.50 |
| Digital to Eight Level Parallel, each | 24.50 |
| Register decade switch mounting unit with 16 switch capacity, each | 7.50 |
| Register decade switch control unit, each | 8.00 |
| Register decade switch, each | 5.50 |
| Optional: | |
| Switchboard calendar and clock unit, each | 22.00 |
| Break in rotary number group | |
| Common equipment | 10.00 |
| For each additional ten lines | 6.00 |

## Data-Phone Data Service

| | |
|---|---|
| Data-Phone data sets | |
| 100 series | |
| Suitable for conditioning signals at rates up to 300 bits per second in sequence | |
| Originate only, manual operation without data lamp and terminal control | 11.50 |

## Pushbutton Telephone Service

| | INSTALLATION CHARGE | MONTHLY RATE |
|---|---|---|
| Dial Intercommunicating Selector Arrangement | 15.00 | 7.50 |
| One-Digit Nine Station Arrangement | 10.00 | |
| Stations | | |
| 6-Button Set | | |
| 2-Wire non-illuminated | | 2.05 |
| Equipped with jack | | 3.05 |
| 2-Wire illuminated | | 3.15 |
| Equipped with jack | | 4.15 |
| 4-Wire illuminated | | 5.30 |
| Equipped with jack | | 6.30 |
| 6-Button Card Dialer Set | | |
| 2-Wire non-illuminated | | 6.30 |
| Equipped with jack | | 7.80 |
| 2-Wire illuminated | | 7.40 |
| Equipped with jack | | 8.90 |
| 6-Button CALL-A-MATIC Set | | |
| 2-Wire non-illuminated | | 16.30 |
| Equipped with jack | | 18.45 |
| 2-Wire illuminated | | 17.40 |
| Equipped with jack | | 19.55 |
| 10-Button Set | | 6.60 |
| Up to 12 Buttons | | |

| | |
|---|---|
| 2-Wire | 8.50 |
| Equipped with jack | 9.50 |
| 4-Wire | 12.00 |
| Equipped with jack | 13.00 |
| Up to 18 buttons | |
| 2-Wire | 11.00 |
| Equipped with jack | 12.00 |
| 4-Wire | 14.50 |
| Equipped with jack | 15.50 |
| Up to 24 buttons | |
| 2-Wire | 13.50 |
| Equipped with jack | 14.50 |
| 4-Wire | 17.00 |
| Equipped with jack | 18.00 |
| Up to 30 buttons | |
| 2-Wire | 16.00 |
| Equipped with jack | 17.00 |
| 4-Wire | 19.50 |
| Equipped with jack | 20.50 |

DOCKET NO. P-55, SUB 733

DEANE, COMMISSIONER, CONCURRING: While I am in agreement with the revenue requirement found herein to be necessary for Southern Bell, I am faced with great reluctance to impose as a part of the revenue requirement such a large percentage increase on the use of coin telephone service from the present 10¢ to 20¢.

Although the value of the public coin telephone service is substantial and serves the public on a when needed basis, its use by the general telephone company subscriber in making outgoing calls is usually neither frequent nor regular. Also, rarely are incoming calls taken on public coin telephones (not to be confused with semipublic coin telephones). In addition, the testimony in this case seems to indicate that revenues from public coin stations seriously lag the cost of service.

After studying the sources of revenue available to meet the overall revenue requirements in this order, it became apparent that the alternative to increasing the coin telephone service rate was to place the burden on the basic residential and business service subscriber. However, I consider it extremely important to avoid placing significant additional basic rate increases on these services which, if imposed, would have been as follows: an additional 25¢ per month over the 10¢ increase granted on the basic residential rate and about 75¢ per month additional over the granted increases on the basic business rate. This would have had the effect of increasing basic residential service $2,001,579 annually and basic business service $858,337 annually.

Tenney I. Deane, Jr.
Commissioner

DOCKET NO. P-55, SUB 733

WELLS, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART: I concur in the overall result of this Order, but I do not agree that Bell has justified increasing the rate for local pay phone calls from 10¢ to 20¢. I feel that the 20¢ rate will be burdensome to the thousands of North Carolinians - school children, industrial workers, salesmen, economically deprived persons - who depend upon and use pay phones frequently. For these reasons, I would continue the 10¢ pay phone rate in effect until we have conclusive evidence which would justify an increase.

Hugh A. Wells
Commissioner

DOCKET NO. P-42, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>National Merchandising Corporation,<br>Complainant,<br>vs.<br>North State Telephone Company,<br>Defendant,<br>vs.<br>Southern Bell Telephone and<br>Telegraph Company, Inc., et al.,<br>Respondents, | ) | ORDER ESTABLISHING UNIFORM TARIFF PROVISIONS |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina on October 9, 1973 and March 12 and 13, 1974

BEFORE: Chairman Marvin R. Wooten - October 9, 1973 hearing Commissioner Hugh A. Wells, presiding, Commissioners Ben E. Roney and Tenney I. Deane, Jr., - March 12 and 13, 1974 hearing.

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BY THE COMMISSION: On July 11, 1973, National Merchandising Corporation (hereinafter "National" or "Complainant") a corporation organized and existing under the laws of Massachusetts but not domesticated in the State of North Carolina filed a complaint naming North State Telephone Company (hereinafter "North State") defendant, requesting that the Commission declare unjust and unreasonable Tariff No. 25 of the general exchange tariff of North State which provides that:

"Directories which are the property of the Telephone Company are furnished to subscribers as part of the telephone service. Binders, covers, folders, tags, stickers or other devices not furnished by the Telephone Company are prohibited and any persons, firm or corporation who violates this rule, or permits it to be violated, is made subject to the penalty of having the telephone service suspended."

By Order issued July 24, 1973 the Commission set the complaint of National for hearing on October 9, 1973 indicating in said order that the burden of proof would be upon National to establish the alleged unjustness and unreasonableness of said tariff. In that order the Commission required that the complaint of National attached to said order be served upon North State.

North State filed its answer on September 13, 1973 to the complaint and requested that the complaint be dismissed.

On September 25, 1973, the Commission entered an order authorizing North State to file its answer and denied the request of North State to dismiss the complaint. The

complaint proceeding was called for hearing on October 9, 1973 and appearances were entered as reflected hereinabove except for respondents.

After receipt of direct testimony of Mr. Arthur M. Sells, II, President of National, Hearing Commissioner Wooten on the record of the proceeding recessed the hearing indicating that the Commission should take judicial notice of similar tariffs on file with the Commission to the tariff of North State with respect to prohibition of directory covers by other telephone companies and further indicated that the matters raised at the hearing involved a general application of Commission policy and that members of the public and other telephone companies at that time had not been furnished with proper notice.

Upon consideration of the complaint and record of the proceeding taken on October 9, 1973, the Commission issued an order on October 19, 1973 indicating that the Commission had reviewed the action of Hearing Commissioner Wooten and concluded that a general investigation should be made a part of this docket wherein all telephone companies under the jurisdiction of the Commission are made respondents with a resumed hearing to be scheduled. In that order the Commission took judicial notice of similar tariffs on file of all telephone companies operating under the jurisdiction of the Commission and ordered that the complaint proceeding be enlarged and declared to be a general investigation of the justness and reasonableness of the tariffs on file with the Commission by all telephone companies under the jurisdiction of the Commission which to any extent involved limitations and prohibition of the use of telephone directory covers not furnished by the respective telephone companies. In that order the Commission set the matter for resumed hearing to begin on March 12, 1974 and made all operating telephone companies respondents with exception of First Colony Telephone Company. All respondent telephone companies, including North State, were required to publish the notice attached to the Commission's order.

Additionally, there was attached to the Commission's Order of October 19, 1973 the amended complaint filed by National on October 18, 1973 to which reference had been made in the record of the hearing of October 9, 1973.

Answer to the amended complaint was filed on February 11, 1974.

By order issued March 11, 1974, the Commission denied North State's Motion to Dismiss the amended complaint which was made in its answer.

This matter was called for hearing on March 12, 1974 and appearances were entered for various parties as reflected hereinabove. At the resumed hearing, Mr. Arthur M. Sells, II, President of National was tendered for cross-examination. Thereafter, testimony of William C. Hilton,

Commercial Manager and Administrative Assistant of North State Telephone Company; James T. Hudson, owner of Nu-Way Carpet Cleaning in Kannapolis; Phil W. Widenhouse, Executive Vice President, Treasurer and Assistant Secretary of Concord Telephone Company; L. S. Blades, III, President of Norfolk and Carolina Telephone and Telegraph Company; James E. Heins, President of Heins Telephone Company; Thomas S. Moncho, North Carolina Division Commercial Manager of Central Telephone Company; Frank E. Via, Vice President of The Oldtown Telephone System, Inc.; T. P. Williamson, Assistant Vice President of Carolina Telephone & Telegraph Company; C. W. Pickelsimer, Jr., Vice President and General Manager of Citizens Telephone Company; Philip W. Hamrick, President of North Carolina Telephone Company, Eastern Rowan Telephone Company, Mid-Carolina Telephone Company, Mooresville Telephone Company and Thermal Belt Telephone Company; Barbara Jean Howerton, Tariffs Supervisor of General Telephone Company of the Southeast; William C. Harris, President of Lexington Telephone Company; W. R. Hupman, President of Mebane Home Telephone Company; Hugh R. Thornberry, Rate and Tariff Supervisor of Southern Bell Telephone & Telegraph Company at company headquarters in Atlanta, Georgia; Wiley Martin, General Directory Manager of Southern Bell for North Carolina; J. M. Bigsbee, Vice President and General Manager of United Telephone Company of the Carolinas; Edwin H. Guffey, Vice President and Area Commercial Manager of Western Carolina Telephone Company and Westco Telephone Company; Vern W. Chase, Chief Engineer of the Telephone Rate Section of the Utilities Commission Staff; and E. Thomas Aiken, Senior Accountant with the Utilities Commission Staff. Various exhibits were introduced as reflected in the transcript of the proceeding including the plastic directory covers containing advertisements issued by National and several other such directory covers which are at issue in this proceeding. At the conclusion of the proceeding, Commissioner Wells, presiding, requested simultaneous briefs be filed by National Merchandising Corporation, North State Telephone Company, Carolina Telephone and Telegraph Company, Central Telephone Company, General Telephone Company of the Southeast, Southern Bell Telephone and Telegraph Company, United Telephone Company of the Carolinas, Inc., and Western Carolina Telephone Company.

Briefs have been filed by the designated parties in this proceeding along with certain findings of fact and conclusions of law by National.

Based upon the entire record of this proceeding, the Commission makes the following

## FINDINGS OF FACT

### Jurisdiction

1. This Commission has jurisdiction and authority to adopt rules and regulations relating to use of telephone

directories issued by the telephone companies operating under the jurisdiction of the Commission which are subject to the jurisdiction of, and supervision by, the Commission pursuant to provisions of the laws of North Carolina relating to public utilities including G. S. 62-2, G. S. 62-30, G. S. 62-31 and G. S. 62-32 et seq.

2. National Merchandising Corporation, (National), Complainant, is a Massachusetts Corporation not domesticated to do business in North Carolina, with its home office located at Seven Strathmore Road, Natick, Massachusetts.

3. North State Telephone Company (North State), defendant, is a public utility corporation organized under the public utility laws of North Carolina having its principal place of business at 111 North Main Street, High Point, North Carolina, and is subject to the jurisdiction and supervision of this Commission with respect to the matters involved in this complaint and general investigation and is subject to the rules and regulations promulgated by the Commission.

4. Carolina Telephone and Telegraph Company, Central Telephone Company, Citizens Telephone Company, Concord Telephone Company, Eastern Rowan Telephone Company, General Telephone Company of the Southeast, Heins Telephone Company, Lexington Telephone Company, Mebane Home Telephone Company, Mid-Carolina Telephone Company, Mooresville Telephone Company, Norfolk and Carolina Telephone and Telegraph Company, North Carolina Telephone Company, North State Telephone Company, Oldtown Telephone System, Inc., Sandhill Telephone Company, Service Telephone Company, Southern Bell Telephone and Telegraph Company, Thermal Belt Telephone Company, United Telephone Company of the Carolinas, Inc., Westco Telephone Company, Western Carolina Telephone Company and Chapel Hill Telephone Company are corporations organized under or are authorized to do business under the laws of the State of North Carolina, and as respondents in this general investigation are public utility corporations subject to the jurisdiction of the Commission and to the rules and regulations promulgated by the Commission.

5. Barnardsville Telephone Company, Ellerbe Telephone Company, Randolph Telephone Company and Saluda Mountain Telephone Company are public utility corporations subject to the jurisdiction of the Commission and to its rules and regulations as respondents in this general investigation and, although excused from the hearing at their respective requests, are subject to the provisions of this order.

6. First Colony Telephone Company, although not made a respondent in this general investigation by the Commission's Order of October 19, 1973, is a public utility corporation subject to the jurisdiction of this Commission and its rules and regulations and because of the significance of a need in the public interest for a uniform rule with respect to directory covers approved pursuant to this order is subject

to the provisions of this Order. First Colony presently has no directory cover tariff on file.

Complainant's Business

7. Complainant is engaged in the business of promotional advertising, which involves the manufacture and distribution of plastic covers which may be used by the recipient to cover a telephone directory. On the covers appear printed advertisements of local merchants together with their telephone numbers, as well as several emergency numbers from the particular locality.

8. Complainant's business operation is conducted initially by an "independent contractor" who goes into the community and conducts a survey. The contractor contacts, among others, the Chamber of Commerce and the Better Business Bureau. Information is gathered with respect to the mailing routes to be used in distributing the cover. An information sheet indicates a market breakdown of the community for the purpose of determining which businesses would be appropriate for the sales representative to contact.

9. Complainant is currently operating its advertising business in other states by means of a direct sales force. Complainant has distributed covers in approximately six areas of North Carolina, including High Point, Cary, Greensboro, and Winston-Salem.

Complainant's Product

10. The covers manufactured by the Complainant, Complainant Exhibit No. 4, are made of a vinyl plastic material in a variety of colors. The inside flaps of Complainant's cover are made of a clear plastic. Front and back outside flaps are opaque.

11. The Complainant sells advertising space on an exclusive basis, that is, only one business of a particular type is permitted to advertise on the cover. Complainant's advertisements are printed only on the front outside cover, numbering from six to sixteen.

12. The outside back of Complainant's cover contains the name of several emergency facilities and their telephone numbers. The inside flaps of Complainant's cover are made of clear plastic, and thus, information printed on the inside front cover of the telephone directory is readily viewed.

13. Complainant's current practice is to issue new covers in a given community every two years, although the Complainant in one instance issued a plastic cover in a community only once.

Errors in Listed Telephone Numbers on Plastic Covers

14. Complainant has procedures by which it endeavors to insure that the telephone numbers appearing on the plastic cover for each advertiser and emergency facility are accurate.

15. Errors do, however, appear on the plastic cover for any one of several reasons. First, the telephone number listed may have been incorrect when obtained, or incorrect as printed. Second, the Complainant may not have coordinated the distribution of the plastic cover with the issuance of a new telephone directory which usually involves a change of several numbers upon the effective date of the new directory. Third, even with coordinated distributing, the telephone company normally issues new directories before the Complainant issues a new plastic cover after a two-year period, and Complainant has indicated that it does not coordinate its cover preparation or distribution with the telephone companies. A change in numbers is usually associated with such new directories. Fourth, the distribution area for plastic covers may not coincide with the areas served by the emergency facilities listed on the back cover. For example, the distribution area may cover two or more fire or rescue districts while the number listed is for only one of the districts. And finally, the subscriber may simply discontinue the number. For some of these errors, the Complainant has distributed a gummed sticker with the correct number printed on it.

16. Errors in telephone listings cause several problems. First, the public relations with the customer is adversely affected in that people tend to blame the telephone company for any error in telephone numbers. When a number is incorrectly listed, the caller must dial three calls to eventually reach his party, one call to a wrong number, a second call to the operator for the correct number, and finally, the correctly dialed number. The party incorrectly called also blames the telephone company for the inconvenience. Secondly, the events described above tie up circuits and an operator's time. Thirdly, these unnecessary delays could cause harm to the caller were he trying to contact an emergency facility.

17. It is readily apparent that the error in the number printed on the plastic directory cover is compounded by the number of plastic covers distributed.

Other Distributors of Plastic Covers

18. Manufacturers and distributors of plastic covers, other than National, such as Universal Plastics, Inc., Hi-Neighbor Enterprises, Inc., Universal Sales of Greensboro, Inc., and National Merchandising of Georgia have apparently operated within North Carolina and are not affiliated with National or are licensees thereof. The Commission observes that a rule with respect to plastic directory covers should be applicable to all such manufacturers and distributors and not just National.

19. Accordingly, while National makes what might be termed commendable efforts at attempting to reduce inaccuracies in telephone numbers listed on its plastic covers, it is readily apparent that there are others conducting the same type of operation which National conducts which very well may not possess a capacity for reducing the probability of error in telephone number listings on plastic covers. Certainly, as between the various companies, the telephone companies have a greater capacity, being the owner of the telephone directory in the first instance, for an absence or a lower degree of error as to the numbers reflected in both the regular directory listings and the classified or yellow page advertisements.

Telephone Directories

20. Telephone directories are an essential part of the adequate, efficient and useful telephone service.

21. The furnishing of telephone directories to their subscribers by telephone operating companies within this state is an essential and indispensable part of the provision of adequate and efficient telephone service to those subscribers. This is the case both with respect to the alphabetical individual and business subscriber listings in the principal portion of the telephone directory and the classified, yellow page advertising which is also of value to telephone company subscribers.

22. All telephone directories are the property of the respective telephone companies issuing such directories and are copyrighted in virtually all instances by the telephone operating companies.

23. The tariffs which are the subject of this proceeding have been approved by this Commission and become a part of the contract between telephone companies and their subscribers.

24. Telephone companies in the State of North Carolina issue telephone directories on an annual basis for use by their subscribers.

25. Errors in the listing of telephone numbers are corrected by any of the following methods: one, the company may assign to the customer the telephone number incorrectly listed; two, the company may issue a correction list or errata sheet; or, three, the company may utilize an operator or recorder intercept to advise the caller as to the correct number of the party sought.

26. The directory's front and back outside covers are utilized by the telephone company to convey, simply and directly, important information. Such information includes, inter alia:

(1) Telephone Exchanges listed in the directory

(2) Toll free exchanges

(3) Area code

(4) Effective date of the directory

(5) Exchanges with limited access

(6) Reference to Statutes and Rules and Regulations

(7) Location of emergency numbers

The directory's front and back inside covers are also utilized in several ways: Emergency numbers of the several fire districts, as the case may be, space to write in other emergency numbers; and directions on what to tell the operator in case of an emergency.

27. Telephone operating companies within the State of North Carolina are prohibited as public utilities from granting unreasonable preferences or advantages to any persons in their franchised service area under G. S. 62-|40. Historically, this Commission has prohibited any telephone operating company from causing to be published advertising on the directories except in the classified or yellow page section. We note that there are one or two telephone operating companies which have done so and that practice will be subject to the requirements of this order.

Effect of Plastic Covers Upon Telephone Service

28. There is a substantial probability that plastic directory covers will reflect incorrect telephone numbers at some time while they are outstanding. This is obviously the case where covers are not reissued or old ones collected.

29. The distribution of plastic covers such as those distributed by National unduly and unreasonably interfere with the service afforded by telephone companies to their subscribers in that such plastic covers obscure vital information and tend to reflect inaccurate telephone number listings.

30. Such errors result in unnecessary and potentially harmful delay to the telephone caller, inconvenience to the party called, and increased expense to the telephone company.

3|. Even the best of plastic covers, Complainant's included, impede reference to essential, vital and useful information printed on the front and back outside cover of the directory.

32. Some plastic covers may impede reference to emergency and other essential information printed on the inside covers of the telephone directory.

33. The Commission cannot be assured of, nor can it demand, consistently high quality plastic directory covers for jurisdictional reasons. Without this capacity, the Commission cannot adequately protect telephone subscribers in the absence of a uniform rule prohibiting such plastic covers.

Distribution of Covers as Interference With Contractual Relationships

34. National's distribution of directory covers, as well as the distribution of directory covers by other such companies, constitute an unwarranted interference with the contractual relationship between the telephone companies and their subscribers.

Tariffs

35. The Commission takes judicial notice of the numerous tariffs relating to provision and ownership of directories on file by telephone companies with the Commission and in evidence which the Commission heretofore approved as just and reasonable and found necessary in the public interest.

36. The main purpose of these tariffs is to prohibit the attachment of plastic directory covers to telephone directories because such covers may contain incorrect telephone numbers, and, furthermore, impede reference to essential service information. These tariffs were not approved, nor would they continue to be approved by this Commission for the ultimate purpose of prohibiting advertising on plastic directory covers.

37. Many of the telephone companies' tariffs now on file condition continued telephone service upon customer adherence to the tariff. The evidence indicates the manner generally used to enforce these tariffs is by persuasion or by seeking a court injunction to halt the distribution of these covers. This may be expected because the tariffs are for the protection of the telephone subscribers.

38. None of the telephone operating companies have consented to the distribution in their areas of franchise plastic covers such as those manufactured by National in violation of tariffs on file with the Commission.

39. The Commission has directed several telephone companies to print information on the front outside cover of their telephone directories. For example, the Commission required Carolina Telephone to list exchanges served by other companies as well as the printing of directions informing the subscriber where further information was located. Moreover, the Commission required Southern Bell to print foreign exchange listings for parties located on an exchange border area.

Effect of Plastic Covers Upon Telephone Rates

40. The expense of preparation of the telephone directories borne by the telephone operating companies has historically been offset by the revenues received from yellow page or classified advertising. Gross revenues received from all operating companies for North Carolina directory advertising and sales for 1972 amounted to approximately $12,850,000 with net directory advertising and sales as income to the telephone operating companies for 1972 being approximately $7,485,000. Therefore, the yellow page or classified advertising revenues have inured to the benefit of the ratepayers and subscribers of all telephone companies. To the extent that any advertiser in the yellow pages would discontinue its advertising therein and purchase advertising on a plastic cover such as that distributed by National, there would be a detriment and effect upon the ratepayers and telephone subscribers of companies operating within the State of North Carolina. Customers have refused to pay for yellow page advertising and have cancelled or reduced their advertising indicating that their actions were based upon the distribution of plastic covers such as those manufactured and distributed by National. Advertising revenues have consistently been included in general rate proceedings involving all telephone operating companies within the State of North Carolina. Therefore, there is a direct benefit accruing to the ratepayers. The manufacture and distribution of plastic covers such as those by National have a direct effect upon telephone company revenues and, therefore, the rates charged to telephone subscribers.

Ownership of Directories

41. All telephone directories are the property of the respective telephone companies issuing such directories and are copyrighted in virtually all instances by the telephone operating companies.

Distribution of Plastic Covers
Are Unfair Competition

42. The distribution of directory covers by National and other such companies constitute unfair competition with the telephone operating companies which are and have been subject to permanent injunctions issued by the Courts upon the basis of irreparable injury cited hereinafter.

Uniform Tariffs

43. The directory covers distributed by National and other such companies impede and obstruct reference to essential, vital and useful information which should be available readily on telephone directories to the inherent advantage of the telephone subscribers of all telephone operating companies within this State, such as references to state and federal laws, Rules and Regulations lawfully promulgated by the Commission, the effective date of the directory, the various exchanges to which the directory

applies and other such vital, essential and indispensable information.

44. Tariffs prohibiting the use of directory covers which obscure vital information are a reasonable objective under telephone regulation. All tariffs under consideration in this proceeding and, in particular, Tariff No. 25 of North State are found to be just and reasonable with respect to their respective provisions and free from ambiguity; however, said tariffs should be superseded by a uniform rule in the public interest determined to be essential in this order.

45. The Commission finds that it is in the public interest, in order to promote the inherent advantage of regulated telephone utilities in the provision of adequate and efficient telephone service to all ratepayers and subscribers within the State of North Carolina and to provide just and reasonable rates therefor, that a uniform rule with respect to prohibition of plastic directory covers, or any cover which obscures vital information as defined in part herein, should be established in this proceeding by the Commission.

46. The tariffs heretofore approved by the Commission and the uniform tariff approved pursuant to this order do not violate the provisions of the Sherman Act (15 U.S.C.A. §1), the Clayton Act (15 U.S.C.A. §14) or any provision of Chapter 75 of the North Carolina General Statutes.

Based upon the foregoing Findings of Fact, the Commission makes the following

## CONCLUSIONS

This Commission has jurisdiction and authority to adopt rules and regulations relating to the use of telephone directory covers. The telephone directories issued by the telephone companies operating under the jurisdiction of the Commission in intrastate commerce are subject to the jurisdiction of, and supervision by, the Commission pursuant to the provisions of the laws of North Carolina relating to public utilities including G. S. 62-2, G. S. 62-30, G. S. 62-31 and G. S. 62-32 et seq.

Telephone operating companies subject to the jurisdiction of this Commission in the regular course of business furnish as an integral and indispensable part of basic telephone service telephone directories which are placed in homes, offices and places of business of their subscribers without any charge to those subscribers.

All telephone directories are owned by and title is vested in the various telephone operating companies and such directories in most instances bear a copyright by the telephone companies.

Under the provisions of the rules adopted by the Commission pursuant to lawful authority, the tariff provisions subject to this proceeding and general investigation are part of the contract between the telephone company and its subscribers.

We conclude that distribution of plastic directory covers such as those by National which obscure vital information and those distributed by other companies some of which are in evidence, constitute an unwarranted and unlawful interference with the contractual relationship between the telephone companies and their subscribers.

We have reviewed the decisions of other jurisdictions cited by the various parties in their briefs and general treatises such as 74 Am. Jur. 2d §37 and 63 ALR 2d 1096 and conclude upon this record that to allow the distribution and use of plastic directory covers on telephone directories owned by telephone companies would constitute trespass to the property rights of the telephone companies as well as an infringement of the copyright privileges vested in the telephone companies to the extent that directories are copyrighted, however, these are not the principal bases for the Commission's determination herein.

While National has indicated that it has convinced Courts in New York and Massachusetts upon other records and factual situations that the tariffs of other telephone companies in those jurisdictions are unreasonable, we cannot so hold. On the contrary, we conclude that the majority of jurisdictions have prohibited plastic covers such as those furnished by National at least in part for the reasons set forth in this order.

The Courts of the various states and in particular North Carolina have not been inclined to award monetary damages to complainants such as National under related factual situations but have found irreparable injury to the telephone operating companies and accordingly have issued permanent injunctions to prohibit the very activity which is the subject of this complaint and general investigation proceeding.

In Citizens Telephone Co., v. Tel Service Company, Inc., 214 F. Supp. 627 (1963) Judge Craven, then Chief Judge of the District Court of the United States, Western District of North Carolina, Asheville Division, reviewed the authority of other jurisdictions and acting in that diversity suit as a local court of the State of North Carolina permanently enjoined and restrained that telephone directory cover company from distributing its telephone directory covers to the customers of Citizens Telephone Company, one of the respondents herein and dismissed the alleged counterclaim of Tel Service company, Inc. The Judgment was entered in that proceeding on March 13, 1963.

In the record of this proceeding there is a Judgment of the Superior Court of Moore County in United Telephone Company of the Carolinas, Inc., v. Universal Sales of Greensboro, Inc., reflecting a decision of the Superior Court regarding a telephone directory cover distributor similar to National and permanently enjoining and restraining Universal Sales of Greensboro, Inc., from soliciting, selling and taking orders for, directly or indirectly, advertising space on any type of telephone directory cover or attachment.

In addition to the foregoing, we take judicial notice of a Judgment entered by Resident Judge John D. McConnell in the General Court of Justice, Superior Court Division, County of Moore in United Telephone Company of the Carolinas, Inc., v. Universal Plastics Inc., wherein Judge McConnell on August 29, 1974 enjoined and restrained the defendent in that proceeding, Universal Plastics, Inc., a telephone directory cover distributor similar to National from soliciting, selling, or taking orders for, directly or indirectly, advertising space on any type of telephone directory cover or attachment. . . ." A certified copy of this Judgment has been placed in the official file of the Commission.

There is absolutely no question but that to the extent that directory covers are distributed in a telephone company's franchised service area and are used by subscribers on telephone directories there is a substantial potential for inaccuracies in telephone number listings including even rural fire numbers. One of the directory covers by National in evidence reflects only one rural fire number whereas there are in fact in a service area of a given telephone company a number of rural fire district numbers. Certainly, the telephone companies are in a better position to obviate inaccuracies in telephone number listings in directories. While Mr. Sells of National has to some extent made what might be termed good efforts to eliminate inaccuracies of telephone numbers of the plastic covers of National, it is obvious that there are other plastic cover manufacturers and distributors which have operated on occasion and which may operate in the future within the State of North Carolina in intrastate commerce affecting telephone service provided to subscribers within the State. Unquestionably, the errors which do result in telephone number listings have a detrimental and adverse effect upon the service provided to telephone company subscribers. Additionally, when a wrong number is called there is an additional burden and expense of the telephone company in each and every instance which must ultimately be borne by the companies ratepayers and subscribers.

National issues its plastic covers and distributes them on a two-year basis. There is no assurance of re-issue. They may in fact exist in a given area for a considerably longer given time. Mr. Sells of National testified that National would have to double its personnel to accommodate an annual distribution. There is no indication that these covers are

retrieved after the original distribution. The time element involved alone comparing National with the regulated telephone companies, virtually all of which issue their directories on an annual basis, creates a substantial possibility of errors in telephone listings on the plastic directory covers distributed by National and such covers as may be distributed by other such manufacturers and distributors.

We conclude that telephone directories are essential and indispensable to the provision of adequate, efficient and useful telephone service, and further that distribution of plastic covers which obscure vital information identified in part herein create a potential for and actual detrimental effect upon telephone service within the State of North Carolina. The distribution of plastic covers such as those distributed by National unduly and unreasonably interfere with the service afforded by telephone companies to their subscribers in that such plastic covers obscure vital information and tend to reflect inaccurate numbers.

We conclude that the directory covers distributed by National and other such companies impede and obstruct reference to essential vital and useful information which should be available readily on telephone directories to the inherent advantage of the telephone subscribers of telephone operating companies within this State such as references to state and federal laws, Rules and Regulations lawfully promulgated by the Commission, the effective date of the directory, the various exchanges to which the directory applies and other such essential and indispensable information. We do not undertake in this order or the uniform rule adopted herein to list each and every item of vital information. We list the principal illustrations in order that the rule herein adopted upon a uniform basis may not be subject to question with respect to its clarity and meaning.

For the past two decades this Commission has prohibited any telephone operating company from causing to be published advertising on the directories except in the classified or yellow page section. (This historical development is reflected in the testimony of Mr. Chase). We note that there are one or two operating telephone companies which have done so and herein reiterate that no telephone operating company should place advertising in or on a telephone directory except in the classified or yellow page section with the exception of references to services provided by or advertisements relating to the telephone operating company issuing the directory.

We conclude that the distribution of directory covers by National and other such companies constitute unfair competition with the telephone operating companies which as hereinabove noted are and have been subject to permanent injunctions issued by the Courts upon the basis of irreparable injury which would exist in the absence of such

injunctions. There is obviously a potential that telephone subscribers might view the plastic covers as being "passed off" as sponsored, approved or issued by a telephone company.

The expense of preparation of the telephone directories borne by the telephone operating companies in the first instance has been historically more than offset by the revenues received from yellow page or classified advertising. Advertising revenues have consistently been included in general rate proceedings as well as expenses involving all telephone operating companies within the State of North Carolina. Distribution of plastic covers such as those by National bearing advertising have a potential for creating a loss of revenues attendant to the yellow pages or classified advertising section of the telephone directories. To the extent that there is any loss in that regard there is a detriment and effect upon the rates paid by the telephone subscribers within the State of North Carolina. We conclude that plastic covers such as those by National which obscure vital information and contain advertising have a potential for an actual effect upon the rates charged telephone subscribers./ Although the degree of effect is not susceptible to mathematical certainty, the impact and effect upon telephone company revenues and, accordingly, the potential for effect upon rates clearly exists.

We conclude that all tariffs under consideration in this proceeding and particular Tariff No. 25 of North State are just and reasonable and are free from ambiguity with respect to their meaning and that the relief requested in the complaint of National should be denied and the complaint dismissed.

The Commission concludes that it is in the public interest, in order to promote the inherent advantage of regulated telephone utilities in the provision of adequate and efficient telephone service to all ratepayers and subscribers within the State of North Carolina and to provide just and reasonable rates therefor, to adopt as just and reasonable a uniform rule with respect to prohibition of directory covers which obscure vital information as defined in part herein and that such uniform rule should be made applicable to all telephone operating companies within the State of North Carolina.

In adopting the uniform rule for provision and ownership of directories found to be required in the public interest herein for all telephone operating companies the Commission should clarify the date of issuance of directories by requiring telephone directories to be issued at least every twelve months. The Company should provide one directory for each telephone company-owned station and may provide additional copies or replacement copies at a reasonable charge. For subscribers providing their own station equipment, the telephone company shall provide one directory per central office line without charge. Further, consistent

with this order the uniform rule should prohibit directory covers which obscure vital and essential information.

Although this Commission does not have jurisdiction to determine violations of the antitrust laws in the enforcement of such laws whether federal or state, the Complainant in this proceeding has raised this issue by asserting that the tariffs which are the subject of this proceeding violate both Section 1 of the Sherman Act (15 U.S.C.A § 1) and Section 3 of the Clayton Act (15 U.S.C.A § 14) and, in particular, contends that the tariffs constitute an "unlawful tying agreement". Inasmuch as the allegations have been raised by the Complainant herein the Commission should determine whether the matters complained of are within the antitrust laws.

We conclude that the tariffs heretofore approved by the Commission and the uniform tariff approved pursuant to this order prohibiting telephone directory covers for the reasons set forth hereinabove do not violate either the provisions of the Sherman Act or the Clayton Act or Chapter 75 of the North Carolina General Statutes.

While the regulatory actions of this Commission are not specifically exempt as are certain federal agencies from the provisions of the Sherman and Clayton Acts, the Supreme Court of the United States has for some years recognized that reasonable restraints upon commerce based upon state action are not violative of antitrust laws and constitute an exemption under such laws.

The Supreme Court of the United States in Parker v. Brown 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed 315 (1943) stated:

> "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.
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> "There is no suggestion of a purpose to restrain state action in the Act's legislative history." 63 S. Ct. at page 313

We conclude that the tariffs which are the subject of this proceeding primarily involve intrastate commerce. Even if it were viewed to the contrary, any restraint imposed by the tariffs which are the subject of this proceeding and the uniform tariff herein adopted is deemed by us to be a reasonable restraint imposed by state governmental action by a regulatory commission in the public interest for all of

the reasons set forth hereinabove which neither the Sherman Act nor the Clayton Act were enacted to prohibit. It has often been said that antitrust laws and regulation by administrative agencies have essentially the same objectives namely, economic regulation designated to reach the most efficient allocation of resources that may be possible.

Rates and practices approved by this Commission become rates and practices of this Commission. Such approval is state action as distinguished from mere private action. This Commission heretofore approved the tariffs in controversy.

When the Parker "state action" exemption is applied to a regulated industry, such as a state utility, it extends only to those activities which fall under state supervision. Washington Gas Light Co., v. Virginia Electric & Power Co., 438 F. 2d 248, 252, 438 F. 2d 248, 252, 88 PUR 3d 258 (4th Cir. 1971). The Commission has heretofore demonstrated the bases for its authority and its determinations herein with respect to the tariffs which are the subject of this proceeding and the uniform tariff adopted herein.

Additionally, we conclude that the tariffs herein are not violative of the Clayton Act constituting "unlawful tying agreements" as contended by the Complainant because that Section deals with a sale of goods, wares, merchandise, machinery or other "commodities". Telephone directories are so inextricably a part of telephone service that the provision thereof by telephone utilities as a part of service can only be regarded as service. Therefore, there is not involved in this case two "commodities" with a purchaser required to take one commodity as a condition of his purchasing the other "tied commodity". Telephone subscribers do not purchase the telephone instrument nor do they purchase the telephone directory. Both are provided by the telephone utility as service. Fortner Enterprises, Inc., v. United States Steel Corp., 394 U. S. 495, 507, 89 S. Ct. 1252, 1260, (1969); Times-Picayune Publishing Company v. United States, 345 U. S. 595, 73 S. Ct. 872, 97 L.Ed. 1277 (1953); United States v. Jerrold Electronics, 187 F. Supp. 545 (ED. Pa. 1960), aff'd 365 U. S. 567 (1961). Further, the evidence in this record indicates that telephone officials have not followed the practice of removing telephone service of a subscriber who violates the tariffs involved herein. On the contrary, it is readily apparent that telephone companies have sought to discourage the use of telephone directory covers in other ways including seeking permanent injunctions from the Courts of this State.

Judge Craven of the Court of Appeals of the 4th Circuit in a recent opinion in the Washington Gas Light Co., case cited hereinabove stated:

"We suggest that the rationale and underlying purpose of both the Sherman and Clayton Acts is to prevent monopoly

where it is not in the public interest. (emphasis supplied) 438 F. 2d at page 254.

Here, as in that case involving Virginia Electric and Power Company promotional practices found to be exempt from the application of antitrust laws and not a "tie in" sale, this Commission is confronted with "making lawful monopoly work best in the public interest". 438 F. 2d at page 254.

The Court also found in that case that VEPCO sells one product, namely, electricity and held that concessions to contractors who build all electric homes for the cost of underground transmission lines was not a "tie in" sale under the Parker exemption.

In an even more recent case the Court of Appeals of the 4th Circuit in Business Aides, Inc., v. Chesapeake & Potomac Tel. Co., of Va., 480 F. 2d 754 (4th Cir. 1973) considered the refusal by a telephone company under a Commission approved tariff to provide certain equipment and service to a telephone answering service. The Court stated:

"If (the telephone company's) actions were occasioned by adherence to the rules and regulations of its operative tariff, then it is shielded from liability from any possible antitrust violations:

> "Our view is that the Parker exclusion applies to the rates and practices of public utilities enjoying monopoly status under state policy when their rates and practices are subjected to meaningful regulation and supervision by the state to the end that they are the result of the considered judgment of the state regulatory authority (citations omitted)."

In light of all of the above circumstances and the applicable law derived from the Parker doctrine, the Commission concludes that the tariffs heretofore approved by the Commission and the uniform tariff approved pursuant to this order constitute reasonable state action by this Commission which is not violative of the federal or state antitrust laws.

IT IS, THEREFORE, ORDERED as follows:

1. That the complaint of National Merchandising Corporation be, and the same hereby is, dismissed and the relief sought therein denied.

2. That the tariffs of all telephone operating companies subject to this proceeding as described herein while herein determined to be just and reasonable should be superseded by the adoption of a uniform rule made applicable to all telephone operating companies.

3. That the uniform rule relating to provision and ownership of directories attached heretc as Appendix "A" be, and the same hereby is adopted in the public interest.

4. That each and every telephone operating company under the jurisdiction of this Commission shall within thirty (30) days from the date of this order file with the Commission tariffs relating to the provision and ownership of directories consistent with this order and Appendix "A" attached hereto with said tariffs being made effective from and after the date of filing and said tariffs shall cancel existing tariff provisions heretofore approved by the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 7th day of November, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

GENERAL INVESTIGATION INVOLVING ALL TELEPHONE UTILITIES OPERATING WITHIN THE STATE OF NORTH CAROLINA

DOCKET NO. P-42, SUB 80

PROVISION AND OWNERSHIP OF DIRECTORIES

A. Telephone directories shall be issued by each telephone utility operating in North Carolina at least every twelve months. The directory shall remain the property of the utility until the succeeding issue becomes effective. Current directories shall not be mutilated or destroyed and shall be surrendered upon request of the utility.

B. Each utility shall provide one directory for each telephone company-owned station and may provide additional copies or replacement copies at a reasonable charge. For subscribers providing their own station equipment, the telephone utility shall provide one directory per central office line without charge.

C. Directories which are the property of the telephone utility are furnished to subscribers as part of the telephone service. No binder, holder, insert, or auxiliary cover or attachment of any kind not furnished by the telephone utility shall be attached to the telephone directories owned by the utility, except that this prohibition shall not apply to a subscriber-provided binder, holder, insert, or auxiliary cover which is attached so that it does not obstruct vital and essential information such as the identity of the exchanges covered by the directory, the

effective date of the directory, emergency numbers and federal and state laws and Rules and Regulations of the Commission pertaining to telecommunication services, and any person, firm or corporation violating this rule, or permits it to be violated is made subject to having telephone service suspended.

D. All non-telephone utility advertising shall be confined to the yellow pages only.

DOCKET NO. P-42, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>National Merchandising Corporation,<br>Complainant,<br><br>vs.<br><br>North State Telephone Company,<br>Defendant,<br><br>vs.<br><br>Southern Bell Telephone and<br>Telegraph Company, Inc., et al.,<br>Respondents, | ) | ORDER ALLOWING MOTION OF SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY IN PART |

BY THE COMMISSION: On November 22, 1974, Southern Bell Telephone & Telegraph Company, one of the Respondents in this general investigation proceeding filed Motion to Rescind, Alter or Amend the Commission's Order entered in this matter on November 7, 1974 establishing uniform tariff provisions.

Upon consideration of said Motion which is more in the nature of a request for reconsideration, the Commission observes that it indicates on its face that the practice of Southern Bell is to publish directories every twelve (12) months. In its motion Southern Bell seeks some degree of flexibility in the issuance requirement. Accordingly, the first sentence of Item A of the uniform tariff provisions contained in Appendix A of the Commission's Order of November 7, 1974 should be clarified to read "approximately every twelve (12) months."

The Motion of Southern Bell further indicates that it has published non-telephone utility advertising on the inside back cover and on the opposite inside page of its directories and this practice is reflected in the record. The Commission regards this practice as discriminatory and preferential as it relates to all non-telephone utility advertising and inconsistent with the general requirement of yellow page and classified advertising which policy the Commission has followed for the past two decades. The discriminatory potential of this practice is no different from the practice followed years ago of placing advertisements on the front and back of the telephone directory which said practice was prohibited by the Commission. Accordingly, the practice of Southern Bell should be discontinued notwithstanding the statement in its motion regarding demand for space.

With respect to Item B of the uniform tariff provisions relating to the number of directories which may be provided and the charges therefor, Southern Bell contends that no

notice was given prior to the entry of the Commission's Order. Accordingly, upon reconsideration of Item B of Appendix A of the Commission's Order of November 7, 1974, the Commission is of the opinion that it should be deleted from the tariffs required to be filed pursuant to the Commission's Order.

For the above stated reasons, the Commission is of the opinion that the Motion of Southern Bell treated as a request for reconsideration should be allowed in part consistent with this order as reflected in Appendix A attached hereto.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Motion of Southern Bell Telephone & Telegraph Company filed on November 22, 1974 treated as a request for reconsideration be, and the same hereby is, allowed in part consistent with this order.

2. That a copy of this Order on reconsideration with respect to the uniform tariff provisions adopted in this proceeding be mailed to each telephone utility operating within the State of North Carolina.

3. That each respondent telephone company shall file on or before January 8, 1975 tariffs relating to the provision and ownership of directories consistent with Appendix "A" attached hereto as clarified by this order with said tariffs being made effective from and after the date of filing.

ISSUED BY ORDER OF THE COMMISSION.

This 10th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

GENERAL INVESTIGATION INVOLVING ALL TELEPHONE UTILITIES OPERATING WITHIN THE STATE OF NORTH CAROLINA

DOCKET NO. P-42, SUB 80

PROVISION AND OWNERSHIP OF DIRECTORIES

A. Telephone directories shall be issued by each telephone utility operating in North Carolina approximately every twelve months. The directory shall remain the property of the utility until the succeeding issue becomes effective. Current directories shall not be mutilated or destroyed and shall be surrendered upon request of the utility.

B. Directories which are the property of the telephone utility are furnished to subscribers as part of the telephone service. No binder, holder, insert, or auxiliary cover or attachment of any kind not furnished by the telephone utility shall be attached to the telephone directories owned by the utility, except that this prohibition shall not apply to a subscriber-provided binder, holder, insert, or auxiliary cover which is attached so that it does not obstruct vital and essential information such as the identity of the exchanges covered by the directory, the effective date of the directory, emergency numbers and federal and state laws and Rules and Regulations of the Commission pertaining to telecommunication services, and any person, firm or corporation violating this rule, or permits it to be violated is made subject to having telephone service suspended.

C. All non-telephone utility advertising shall be confined to the yellow pages only.

DOCKET NO. P-89, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Poole Realty and Insurance Company of Fayetteville, Inc. - Proposal to Adjust the Exchange Service Area Boundary of Carolina Telephone and Telegraph Company from Lillington to Fayetteville on a Portion of a Tract of Land Owned by Poole Realty and Insurance Company of Fayetteville, Inc. | ) | ORDER APPROVING TRANSFER OF SERVICE AREA |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, February 13, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Ben E. Roney and Tenney I. Deane with Commissioner Hugh A. Wells to read the record and participate in the decision

APPEARANCES:

For the Complainant:

N. Hector McGeachy
McGeachy & Altman
410 Ramsey Street
Box 747
Fayetteville, North Carolina
Appearing for: Poole Realty and Insurance Company of Fayetteville, Inc.

For the Respondent:

William W. Aycock, Jr.
Taylor, Brinson & Aycock
P. O. Box 308
Tarboro, North Carolina 27886
Appearing for: Carolina Telephone and Telegraph Company

For the Protestants:

Edward H. McCormick
Woodall & McCormick
P. O. Box 38
Lillington, North Carolina
Appearing for: County of Harnett by Chairman of the Board and Manager, M. H. (Jack) Brock

Robert H. Jones
Bryan, Jones, Johnson, Hunter & Greene
101 E. Front Street
Lillington, North Carolina
Appearing for: Harnett County Board of Education

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: This matter arose upon the filing with the North Carolina Utilities Commission on December 14, 1973, by Poole Realty and Insurance Company of Fayetteville, Inc., Fayetteville, North Carolina, requesting the change in the exchange boundary line between Fayetteville and Lillington exchanges of Carolina Telephone and Telegraph Company, Tarboro, North Carolina.

The Commission, being of the opinion that there is a public interest in this matter, by Order dated December 20, 1973, among other things set this matter for hearing on February 13, 1974, at 10:00 a.m. in the Commission's Hearing Room, One West Morgan Street, Ruffin Building, Raleigh, North Carolina.

All parties were present and represented by counsel: For the Complainant, N. Hector McGeachy; for the Respondent, William W. Aycock, Jr.; for the Protestants, Edward H. McCormick, appearing for the County of Harnett; Robert H. Jones, appearing for the Harnett County Board of Education; and E. Gregory Stott, appearing for the Commission Staff.

Complainant offered the testimony of Mr. James Edward Poole, who stated that he owned approximately one hundred fifty (150) acres which was separated by the Anderson Creek, which represents the boundary line between the Fayetteville and Lillington exchanges. He further stated that the fact that his property was split between the Fayetteville and Lillington telephone exchanges would impede his development of the aforementioned property.

Mr. Donald Rayborn Stamper and Mr. Arthur George Moore testified that they would buy homes in the subdivision Mr. Poole proposes to build if they were able to obtain telephone service from the Fayetteville exchange.

Mr. T. P. Williamson testified on behalf of the Respondent, Carolina Telephone and Telegraph Company, providing cost and technical information in regard to the factors involved in moving the boundary line.

Mr. M. H. Brock and Mr. Robert A. Gray testified that the moving of the Fayetteville and Lillington telephone exchange line would create hardship upon the people of the Lillington telephone exchange. Mr. Becky Mann and Mr. Watson were tendered as adopting the testimony of Mr. Brock.

Mr. Charles Sikes and Mr. Gibbons Crews testified that they were opposed to any boundary line changes between the Fayetteville and Lillington telephone exchanges which would erode the calling scope of the Lillington telephone exchange. Mr. Johnny Taylor and Mr. Neil Alex Stewart were tendered as adopting the testimony of Mr. Sikes and Mr. Crews.

Mr. Millard L. Carpenter testified for the Staff giving a brief description of the facilities presently in place in the area described in the complaint.

Based on testimony given, exhibits presented and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. Carolina Telephone and Telegraph Company, Respondent, under and in accord with the laws of the State of North Carolina, is authorized to do business in this State and is a duly created and existing corporation with headquarters in Tarboro, North Carolina; the Respondent is a public utility providing general telephone service in North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. The Company's Lillington telephone exchange adjoins the Company's Fayetteville telephone exchange and is located north thereof.

3. Mr. Poole owns approximately a hundred and fifty acre tract of land within Harnett County near the Cumberland County line which is split by Anderson Creek which represents the boundary line between the Fayetteville and Lillington exchanges of Carolina Telephone and Telegraph Company.

4. Mr. Poole plans to build approximately 300 to 350 homes in the area ranging in price from $35,000 to $45,000.

5. That the majority of prospective purchasers will come from Fort Bragg, Pope Field, and Kelley-Springfield Tire Manufacturing Plant, of whom most of their business interests, church interests, and calling interests will be in the Fayetteville-Fort Bragg area.

6. That there is very little plant presently in service in the area described in the complaint.

7. That the proposed boundary change will erode the present calling scope of the Lillington exchange by only a minimal amount.

8. That the public convenience and necessity will be best served by requiring the Carolina Telephone and Telegraph Company to institute the proposed boundary line changes.

Based on the above Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Commission concludes that the public convenience and necessity can be best served by allowing change in the boundary line in the above-captioned case. It is apparent from the record that there is very little development in the area in question and that any future development will be utilized by people with their primary calling interest in the Fayetteville exchange rather than the Lillington exchange. It is, therefore, apparent that in order to best serve future residents of this area it will be well advised to require a change in boundary line in order to have the entire subdivision as proposed by Mr. Poole, Complainant, encompassed in the Fayetteville exchange.

The Commission further concludes that it has an affirmative obligation under North Carolina General Statute 62-42 to compel efficient service, extensions of service and facilities, and additions and improvements whenever the Commission, after notice of hearing finds that additions, extensions, repairs, or improvements to or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, or any two or more public utilities, ought reasonably to be made. In this case, it is apparent from the evidence presented and the Complainant has carried the burden of proof in showing that the needs of the public can most reasonably be served by the changing of the boundary line between the Fayetteville and Lillington exchanges.

IT IS, THEREFORE, ORDERED

1. That the Commission hereby approves the transfer of the portion of the Lillington Exchange Service Area reflected by Complainant's Exhibit No. 1 herein described as:

"Beginning at an iron stake in the Eastern margin of N. C. Highway #210, said iron stake being the Southeast corner of a tract of land recorded in book of Plats 19, page 27, Harnett County Registry, and runs thence as the Eastern margin of N. C. Highway #210, North 15 degrees 50 minutes 20 seconds East - 876.10 feet to an iron stake, thence North 70 degrees 11 minutes 29 seconds East - 1465.22 feet to an iron stake, thence South 12 degrees 33 minutes West

- 1447.26 feet to an iron stake, thence South 86 degrees 51 minutes 40 seconds East - 1405.00 feet to a point in the Run of Anderson Creek, thence up the Run of Anderson Creek in Southwesterly direction, about 2,650.00 feet to a point in the old line, thence North 86 degrees 07 minutes 40 seconds West - 150 feet to an iron stake, thence North 07 degrees 54 minutes 20 seconds East - 1419.50 feet to an iron stake, thence North 86 degrees 44 minutes 40 seconds West - 906.80 feet to the point of beginning."

from the Lillington exchange to the Fayetteville exchange.

2. That the Company shall file with this Commission new revised exchange area maps for both the Fayetteville and the Lillington telephone exchanges which shall effectively transfer that portion of the Lillington exchange telephone service area as reflected in Complainant's Exhibit No. 1 and as described hereinabove from the said Lillington exchange to the Fayetteville exchange to be effective with the inauguration of service contemplated thereby and showing the effective date immediately after the same is determined.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-9, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>United Telephone Company of the Carolinas, Inc. - Consideration of Extended Area Service Between the Telephone Exchanges of Siler City, Bonlee, and Goldston | ORDER ALLOWING EAS |

HEARD IN: The District Courtroom in Siler City, North Carolina, on Tuesday, January 15, 1974, at 10:00 a.m.

BEFORE: Marvin R. Wooten, Hearing Commissioner, with Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane to read the record and participate in the decision

APPEARANCES:

For the Respondent:

R. C. Howison, Jr.

Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: By Commission Order dated December 10, 1971, in Docket No. P-9, Sub 113, allowing portions of a rate increase to United Telephone Company of the Carolinas, Inc., the Commission, among other things, ordered United Telephone to take the necessary action to install and place in service extended area calling for its Goldston and Bonlee exchanges to its Siler City exchanges as soon as practical. United Telephone appealed the Commission's decision to the Court of Appeals on the issue of extended area service. The Court of Appeals affirmed the Commission's Order with the exception of that portion which required, without notice and hearing, the installation of extended area calling service for Goldston and Bonlee exchanges to Siler City and the filing of new tariffs upon the completion of such installation.

The Commission, being of the opinion that there is a reasonable need for a larger calling scope at Bonlee and Goldston, decided that the matter should be considered in a public hearing. After the public notice and by Order dated October 1, 1973, set hearing to be held in the Courtroom, City Hall, 311 North 2nd Avenue (U. S. 421), Siler City, North Carolina, on Tuesday, January 15, 1974, at 10:00 a.m. United Telephone Company was required to give sufficient public notice and was directed to provide copies of said Order to the Mayors of the Towns of Bonlee, Goldston, and Siler City by first-class mail.

Prior to beginning the proceeding, it was stipulated and agreed to by all the parties present that the absent Commissioners would be allowed to read the record and participate in this docket as if they were present.

United Telephone Company offered testimony of Mr. John Bigbee, Vice President and General Manager of United Telephone Company of the Carolinas, Inc. Mr. Bigbee stated that United Telephone Company was not opposed to the installation of EAS service between Bonlee, Goldston, and Siler City, but he thought that United Telephone Company would need additional revenues in order to institute this service. Mr. Bigbee offered an exhibit showing what he considered to be rates that would be high enough to properly compensate the Company for the increased expenses incurred

by the imposition of EAS. United Telephone Company offered no other witnesses.

At this time the residents of Bonlee were allowed to give their oral testimony. Mr. N. E. Cunnup, Route 2, Bear Creek, from the Bonlee exchange, served as spokesman for the Bonlee group. He stated that due to the small calling scope in the Bonlee exchange almost every telephone call that he has to make is long distance. He further testified that as a result of the great number of long distance telephone calls required by the small calling scope, he incurs a considerable expense to his business, and, therefore, has to limit his calls to as few as possible. The following people gave their name, address, and telephone number as adopting the testimony of Mr. Cunnup:

Leon Marsh, Bear Creek, Box 222, 837-5929
Leon Teague, Oldham Road, Route 1, 837-5682
Allen Overton, Route 2, Bear Creek, 837-5408
Mrs. A. R. Brooks, Bonlee, 837-5531
Ina Andrews, Bonlee, 837-5544
Mrs. Henry Dunlap, Bonlee, 837-5335
Mrs. Lynn T. Campbell, Route 2, Bear Creek, 837-5702
Mrs. Eleanor Harmon, Route 1, Bear Creek, 837-5819
Mrs. Dallas Bright, Route 2, Bear Creek, 837-5458
Mrs. Roy Phillips, Bonlee, 837-5610
Mrs. Giles E. Watkins, 837-5318, Bonlee
R. G. Hancock Lumber Company, 837-5311
Hancock Lumber Sales, 837-2295
H & W Floor and Wall Company 837-5542
Mrs. B. C. Webster, Bonlee, Box 27, 837-5393
Mrs. Gordon Brooks, Bonlee, Box 34, 837-5638
Mrs. A. R. Pugh, Bonlee, 837-5327
Alex G. Dunn, 837-2234
Bonlee Hardware, 837-5551
Mrs. Bessie Lee Goldston, P. O. Box 74, Bonlee, 837-2200
Carolina Bynum, Route 2, Box 60, Bear Creek, 837-5384
Louise Hanner, Bear Creek, Route 1, Box 18, 837-5527
Mrs. C. E. Paschal, Bonlee, 837-5628
B & B Tire Service, 837-5810
Brewer Restaurant, 837-5711
Brewer's Service Station, 837-5698
Ledford Brady
Arnold Cox, 837-5698, Route 1, Bear Creek
Floyd Cooper, P. O. Box 87, Bonlee, 837-2206
Herbert R. Gaines, 837-5546, Bonlee
Mrs. Jimmie Kidd, Route 2, Bear Creek, 837-5921
Dale Wilkie, Route 1, Goldston, 837-5698
Russell Webster, Bonlee, 837-5626
Mrs. Jack Dark, Route 1, Bear Creek, 837-5351
Mrs. Herbert Dowd, Route 1, Bear Creek, 837-5341
A. J. McLaurin, Route 3, Siler City, 837-5680
McLaurin Garage, Route 3, Siler City, 837-5712

At this time Mrs. Don Roscoe stated that she is a resident of Sanford, North Carolina, and that she and her husband own a farm in Bear Creek on the Bonlee exchange. She stated

that due to the small calling scope and size of Bonlee few people had ever heard of that area, and, therefore, they were not able to get in touch with her or her husband because the number was not listed in the Siler City or Pittsboro exchange. Also, she stated that their telephone bills were extremely high due to the fact that almost every telephone call she made had to be a long distance telephone call.

Mrs. Gladys P. Kerrick, who is a resident of Siler City, stated that she had a mother who lived in Bonlee and that it worked an extreme hardship on her and her mother. She further stated that the people of Bonlee and Goldston cannot contact a doctor, drug store, a police station, an ambulance service, or a hospital without making a long distance telephone call. Mrs. Kerrick stated that this causes an undue hardship due to the considerable expense incurred by the fact that almost all calls from Bonlee and Goldston must be long distance calls in order to receive any vital service.

Next the residents of Goldston received an opportunity to state their case. Mr. E. M. Harris, Jr., Goldston, North Carolina, stated that Goldston has only approximately a two mile radius of area to call and that Bonlee does not have that much of a calling radius. He further stated that if one lives in Goldston or Bonlee they have to make a long distance telephone call to call almost all of their schools and to get a fire department. He further stated that the expense of long distance telephoning places an undue burden on the residents of Bonlee and Goldston.

Mr. John Iwaniec stated that he was principal of and represented the Goldston School. He stated that he could call only approximately twenty percent of the parents of the children in his school without incurring a long distance telephone charge. He further stated that he could not call any of the other schools in the area without placing a long distance call and that this increased expense and created an undue hardship on the school system due to the fact that the school had to spend money that would normally be used for children's education in order to pay the increased telephone bills incurred because of the limited calling scope of the Goldston exchange.

Mr. R. C. Roper stated that he lived in Gulf, North Carolina, and had a home and a business telephone. He stated that he knows many people, quite a few of these being elderly people, in the community who are retired and quite often find it necessary to make long distance telephone calls due to the very small calling scope in the Bonlee and Goldston areas. He stated that it was extremely hard to complete a telephone call from Bonlee or Goldston due to the inability of getting a long distance operator or long distance directory assistance. He stated that this creates an extreme hardship in the case of an emergency when quick telephone service is vital. At this point in the record the

following witnesses expressed their desire to adopt and support testimony offered by Mr. Roper and Mr. Harris:

Talmadge Caudle, Goldston, 898-2267
Howard DeGraffenreaidt, 898-46|4, Goldston, P.O. Box 53|
Josie Ivey, Box |A, Goldston, 898-6667
Dewey Barber, P.O. Box 533, Goldston, 898-4683
George J. Jones, Goldston, 898-2282
John Harris, 898-4467, Goldston
Mrs. John Harris, P. O. Box 35, Goldston, 898-4467
Mrs. Earl Goldston, P.O. Box 525, Goldston, 898-4625
Jack Harvey Causey, Jr., Hillcrest, Box |3, Goldston, 898-44|6
Mary Causey, Hillcrest Avenue, Box |3, Goldston, 898-44|6
Pat Harris, Box 63, Goldston, 898-4420
Mrs. Roy Stout, Goldston, 898-2269
Mrs. B. D. Barber, Goldston, 898-4695
Mrs. E. M. Harris, Jr., Goldston, 898-225|
Mrs. Hal B. Gaines, Box ||3, Goldston, 898-4495
Mrs. Richard Moore, Gulf, North Carolina 898-4695
Richard Moore, Gulf, North Carolina 898-4659
Maida Caudle, Goldston, 898-2267
Mrs. John S. Jones, Goldston, Route |, 898-4475
Mrs. Richard Dowd, Goldston, 898-4587
Mrs. E. C. Hart, Bear Creek, Route 2, 898-448|
Mrs. Ralph Wicker, Goldston, 898-2263
Mr. & Mrs. W. L. Thames, Box |26, Goldston, 898-4448
Mrs. Pat Stuart, Goldston, 898-46|9
Mrs. F. M. Barber, Goldston, 898-2287
Mrs. Robert Palmer, Goldston, 898-440|
Olive Turner, Goldston, 898-4486
Mrs. Lenon Carroll, 898-4602, Goldston
Rev. Mrs. Theresa Turner Braye, P.O. Box 58|, Goldston, 898-4486
Adolphe M. Braye, Sr., P.O. Box 58|, Goldston, 898-4487
Mrs. Harold McLaurin, Route 2, Bear Creek, 898-4740
Mrs. Raymond Elkins, 898-4630, Bear Creek, Route 2
Mrs. Addison Hausley, Goldston, 898-44|5
Lalur Edwards, Goldston, P.O. Box 5||, 898-4404
Calvin W. Taylor, Route 2, Bear Creek, 898-4569
John T. Gaines, Goldston, 898-4459
Carolina Bank, 898-22|3
Welford Harris, Goldston, 898-4420
James Summey, Goldston, 898-4678
United Methodist Church, 898-4523
Mary H. Jones, Route |, Box |65, Goldston, 898-4663
Mrs. C. A. Fields, Jr., Box 523, Goldston, 898-4489
Faye Elkins, 898-2220, Box 555, Goldston
Lucille Thornton, P.O. Box |33, Goldston, 898-468|
Flossie Dawkins, Route 2, Bear Creek, Box |22, 898-448|
Gus Murchison, Jr., Gulf, P.O. Box 86, 898-4476
Larry Miller, P.O. Box ||, Goldston, 898-2226
Jerry Gaines, P.O. Box 547, Goldston, 898-4754
Thurman Lucas, 898-2238, P.O. Box 568, Goldston

Mr. Harvey Causey, Jr., Goldston, North Carolina; Mrs. Roy Stout, Goldston, North Carolina; Mrs. Charlie A. Fields, Jr., Goldston, North Carolina; Mrs. Holland B. Gaines, Goldston, North Carolina; James Summey, Goldston, North Carolina, gave testimony which was essentially the same and corroborated the testimony of the previous witnesses.

At this time, Mr. Royce Williams, Route 4, Siler City, North Carolina, testified that he did not think that Siler City would receive any additional service from an EAS line to Bonlee and Goldston exchanges. He further stated that he did not wish to pay higher telephone bills in order to allow the Bonlee and Goldston exchanges to be connected by EAS to the Siler City exchange. Mr. Royce Williams' testimony was corroborated by Mr. Max Sears, Russell Lawson, and Floyd Ingold, all of Siler City.

Mr. H. W. Pearce, Homewood Acres, Siler City, North Carolina, stated that even though he made very few calls to the Bonlee or Goldston exchanges he would be willing to pay a fair additional rate for what he feels to be the overall benefit of the area.

Based on the record in Docket No. P-9, Sub 128, and Docket No. P-9, Sub 113, the exhibits presented therein, and the evidence adduced, the Commission makes the following

## FINDINGS OF FACT

1. United Telephone Company of the Carolinas, Inc., is a duly certificated public utility providing telephone service to its subscribers in fourteen (14) local exchanges in Piedmont North Carolina, including the Siler City, Bonlee, and Goldston Exchanges in Chatham County, which said exchanges are contiguous.

2. That United Telephone Company is providing reasonable, adequate, and efficient telephone service to its subscribers in its service area in this State; however, evidence introduced in this case and by the Commission Staff at the earlier hearing, Docket No. P-9, Sub 113, involving this matter and by public witnesses reveals that certain areas of service should be improved.

3. That the Bonlee and Goldston telephone exchanges do not afford their subscribers in said exchanges local toll free access to either fire, police, ambulance service, doctors, drug stores or hospitals.

4. That the calling scope for subscribers in United Telephone Company's Goldston and Bonlee Exchanges is 395 and 582 respectively, which is found to be relatively small, and when considered in the light of the fact that said subscribers do not have local access to either fire, police, ambulance service, doctors, drug stores or hospitals, the Commission further finds that the telephone service afforded such subscribers is inadequate and insufficient.

5. That extended area service from and between the exchanges of Bonlee, Goldston and Siler City will effectively increase the calling scope of Bonlee and Goldston and will afford the subscribers therein access to fire, police, ambulance service, doctors, drug stores and hospitals.

6. That additions, extensions, improvements to or changes in the existing plant, equipment, apparatus, facilities or other physical property of United Telephone Company at its Siler City, Goldston and Bonlee Exchanges ought reasonably to be made to effect and afford extended area service to, from and between said exchanges in order to secure reasonably adequate service in order to reasonably and adequately serve the public convenience and necessity of the subscribers located in the exchanges of Bonlee and Goldston.

7. That the Commission, in Docket No. P-9, Sub 113, on December 10, 1971, found and set just and reasonable rates to be charged by the utility herein in its Bonlee, Goldston and Siler City Exchanges as follows:

LOCAL SERVICE RATES

| | Ind. | 2-Pty. | 4-Pty. | Rural |
|---|---|---|---|---|
| Siler City | | | | |
| Residence | 7.75 | 6.00 | 4.50 | 4.50 |
| Business | 13.15 | 11.05 | 8.30 | - |
| Bonlee | | | | |
| Residence | 5.45 | 3.95 | 3.30 | - |
| Business | 9.40 | 7.60 | 5.60 | - |
| Goldston | | | | |
| Residence | 5.45 | 3.95 | 3.30 | - |
| Business | 9.40 | 7.60 | 5.60 | - |

8. That the establishment of extended area service herein found ought reasonably to be made will impose a moderate financial burden on the Utility which the Commission finds ought reasonably to be borne, in part, by the customers of United in the exchanges of Bonlee and Goldston, and the Commission further finds that the level of rates established in Docket No. P-9, Sub 113 as just and reasonable for the Siler City Exchange, to be just and reasonable rates for the subscribers in the Bonlee and Goldston Exchanges, which said rates are found to be just and reasonable both to the subscriber and to the Company.

Based upon the Findings of Fact as set forth above, the Commission makes the following

CONCLUSIONS

The Commission concludes that the Bonlee and Goldston Exchanges are exchanges within United Telephone Company's telephonic network. The Company in setting up these exchanges made the decision as to what should be the area to be encompassed by each of these exchanges. It is apparent from the record that the Bonlee and Goldston telephone exchanges do not have access to either fire, police, ambulance service, doctors, drug stores or hospitals without making a long distance call. The Commission is of the opinion that the combination of all these factors places an undue hardship upon the residents of these two communities because of the limited calling scope.

The Commission upon its own motion instituted this proceeding and after notice and hearing has found that the service afforded in this instance is inadequate and insufficient; that additions, extensions, improvements and changes in existing plant, equipment, apparatus, facilities or other physical property ought reasonably to be made as being necessary to secure reasonably adequate service which will reasonably and adequately serve the public convenience and necessity of the involved subscribers, and now concludes, under the provisions of G. S. 62-42, that such additions, extensions, improvements and additional services and changes should be made within a reasonable time in order to afford the provision of adequate and sufficient in the public interest, which should be concluded no later than June 1, 1976.

The Commission further concludes that since the Bonlee and Goldston Exchanges are a direct result of a management decision by United Telephone Company that the Company should bear a part of the financial responsibility of correcting a situation that places a burden upon the residents of these two aforementioned areas. United Telephone Company should institute EAS from the Bonlee and Goldston exchange areas to the Siler City Exchange in order to afford the residents of Bonlee and Goldston reasonably adequate telephone service. We conclude that further rate or financial adjustments would only be warranted in the context of a general rate case where the equities as between the Company and all of its subscribers would be at issue and subject to balance.

IT IS, THEREFORE, ORDERED:

1. That United Telephone Company shall take the necessary action to install and place in service extended area calling service for its Goldston and Bonlee Exchanges to its Siler City Exchange no later than June 1, 1976.

2. That United Telephone Company should submit to this Commission a plan with a time schedule for instituting EAS

between the Bonlee, Goldston and Siler City Exchanges and should file status reports every sixty (60) days therefrom reporting to this Commission the progress toward compliance with the Commission's Order.

3. That United Telephone Company shall file tariffs with this Commission making its Siler City Exchange local service rates approved in Docket No. P-9, Sub 113, applicable to its Goldston and Bonlee exchange customers effective upon the in service date of the said extended area service installation herein ordered.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of April, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-115
DOCKET NO. P-84, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Broadcast and Communications, Inc. for Certificate of Public Convenience and Necessity to Own, Maintain and Operate a Common Carrier Paging Service and Mobile Radio Service in Lumberton, North Carolina<br><br>and<br><br>Tariff Filing of Two-Way Radio of Carolina, Inc. to Establish a Control Point for Radio Common Carrier Service at Lumberton, North Carolina | ) | RECOMMENDED ORDER DENYING APPLICATION, APPROVING TARIFF, REQUIRING PROVISION OF SERVICE AND EXTENDING SERVICE AREA |

HEARD IN: Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, beginning at 10:00 A. M. on January 22, 1974

BEFORE: Commissioner Hugh A. Wells

APPEARANCES:

For: Broadcast and Communications, Inc.

Charles P. Wilkins
Broughton, Broughton, McConnel & Boxley
Attorneys at Law
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Raleigh, North Carolina 27602

For: Two-Way Radio of Carclina, Inc.

Ted R. Reynolds and E. Cader Howard
Reynolds & Russell
Attorneys at Law
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Raleigh, North Carolina 27611

For: The Commission Staff

Wilson B. Partin, Jr., and E. Gregory Stott
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER: Broadcast and Communications, Inc., (Broadcast), Lumberton, North Carolina, filed with the Commission on February 28, 1973 in

Docket No. P-115 an application for a Certificate of Public Convenience and Necessity to own, maintain and operate a common carrier mobile radio and paging service in Lumberton, North Carolina. By Order dated March 14, 1973, the Commission set the application for hearing on May 8, 1973 and required public notice in a newspaper having general coverage of the proposed service area.

Two-Way Radio of Carolina, Inc., (Two-Way), Charlotte, North Carolina, filed with the Commission on April 24, 1973 in Docket No. P-84, Sub 12, tariff sheets with an effective date of May 30, 1973 to establish a landline interconnect point at Lumberton, North Carolina for radio common carrier service provided through an existing base station located near Aberdeen, North Carolina. By Commission Order dated April 30, 1973, the tariff filing of Two-Way was suspended and set for hearing at the same time and place as scheduled for the application of Broadcast.

On April 27, 1973, Two-Way filed a petition to intervene in Docket No. P-115, and Commission Order dated April 30, 1973 allowed the intervention and continued hearing from May 8 to June 12, 1973. The hearing date was subsequently rescheduled as follows: from June 12 to June 23, 1973 by Commission Order dated May 8, 1973; from June 23 to September 28, 1973 by Commission Order dated June 25, 1973; from September 28, 1973 to November 15, 1973 by Commission Order dated September 19, 1973; from November 15, 1973 to November 8, 1973 by Commission Order dated September 28, 1973; and from November 8, 1973 to January 22, 1974 by Commission Order dated November 7, 1973. On January 14, 1974, Broadcast filed a petition for leave to intervene in Docket No. P-84, Sub 12. Commission Order dated January 15, 1974 allowed intervention of Broadcast in Docket No. P-84, Sub 12.

The matters in Docket No. P-115 and Docket No. P-84, Sub 12 came on for hearing at 10:00 A. M. on January 22, 1974.

## SUMMARY OF TESTIMONY AND EVIDENCE

Testimony of Mr. Milton A. Newsom was presented in support of the application of Broadcast for a Certificate of Public Convenience and Necessity to provide mobile radio and paging service in and around Lumberton, North Carolina. Mr. Newsom testified that he operates Broadcast, that he and his wife are the only shareholders; that the primary business of Broadcast is installation and maintenance of two-way radio equipment; that paging and radio common carrier service is not available in Lumberton; that the proposed service is needed in the area and that he can provide the service.

Broadcast further called the following witnesses to testify concerning their interest in and need for radio common carrier service in the Lumberton area: S. Frank McNeill of Communication Specialists Company, Wilmington, North Carolina; Albert Kahn of Southeastern Broadcasting,

Lumberton; James T. Driscoll of T. R. Driscoll Sheet Metal Works, Lumberton; and Donald Thorndyke of Gene's Electric, Heating and Air Conditioning, Lumberton.

Mr. John E. Dettra, Jr., associated with the Engineering Firm of Steel, Andrews and Adair, 2029 K Street, N. W., Washington, D. C., testified in behalf of Broadcast concerning the reliable service area of the base station proposed by Broadcast and Communications as defined by Section 21.504 of the Federal Communications Commission's Rules and Regulations. Mr. Dettra testified that he had calculated the distances to the 37 dbu contours using radio wave propagation charts as contained in Section 21.504(b) of the FCC Rules and presented exhibits showing that the distance to the 37 dbu contour from the proposed base station of Broadcast ranged from 12.1 miles to a maximum of 18.72 miles. Mr. Dettra testified that these distances represented the reliable service area as defined in Section 21.504 of the FCC Rules. Mr. Dettra further testified that he had calculated the 37 dbu contour of the existing Two-Way Radio of Carolina base station KIY754 and concluded that the 37 dbu contours of KIY754 and the proposed Broadcast and Communications base station did not overlap.

Mr. Allen L. Guin, President of Two-Way Radio of Carolina, testified and presented evidence describing the financial condition, operation, facilities and service offerings of Two-Way Radio of Carolina. Mr. Guin further testified that Two-Way Radio of Carolina was certificated by the Commission in Docket No. P-84 in January, 1966; that Lumberton is within Two-Way's certificated service area; that there is a limited need for mobile telephone service in Robeson County; that there is a significant need for paging service in Robeson County; that Two-Way now serves three customers in Robeson County; that Two-Way serves 31 customers and 47 mobile units from the Aberdeen base station and that Two-Way stands ready, willing and able to meet the radio common carrier needs of customers within its service area.

Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section of the North Carolina Utilities Commission staff testified concerning radio common carrier service in the Lumberton area. The witness testified that the certificated service area of Two-Way Radio of Carolina includes an area within a 42 mile radius measured from a base station and antenna located near Aberdeen; that the service area of Two-Way extends a few miles beyond Lumberton; that there is not presently an interconnect, control point or base station located in Lumberton; that Two-Way's existing tariffs offer one-way paging, two-way mobile service and landline interconnection; that one-way paging service is not now provided in Lumberton; that the usable radio coverage from the existing base station of Two-Way at Aberdeen extends to the Robeson County line in a direction south of Lumberton and to the vicinity of Bladenboro in the east; that usable radio coverage is not provided beyond these points from the existing Aberdeen base station of Two-Way; that paging

cannot be provided in Lumberton without construction of additional facilities since the distance from the existing Aberdeen base station is too great for communication to paging units; that if paging service is desired in the Lumberton area, a combination two-way and paging channel or a dedicated paging channel would have to be established.

FINDINGS OF FACT

1. That the Applicant, Broadcast and Communications, Inc., is required by Chapter 62 of the General Statutes to obtain a Certificate of Public Convenience and Necessity from this Commission to operate as a radio common carrier in North Carolina and that this matter is properly before this Commission.

2. That Two-Way Radio of Carolina, Inc., is a certificated radio common carrier with authority granted in Docket No. P-84, by Commission Order issued January 20, 1966 which established a service area of 42 miles airline distance from base station KIY754 located 2.7 miles southeast of Aberdeen, North Carolina at coordinates 35° 07' 18" north latitude and 79° 23' 17" west longitude.

3. That the Town of Lumberton is within the certificated service area of Two-Way Radio of Carolina as granted by this Commission in Docket No. P-84.

4. That Two-Way Radio of Carolina now provides radio common carrier service to at least four subscribers in Robeson County.

5. That Two-Way Radio of Carolina has not heretofore provided landline interconnection at Lumberton with its Aberdeen radio system but has filed tariffs in Docket No. P-84, Sub 12 to provide such interconnected service at Lumberton.

6. That one-way paging service is not now provided at Lumberton.

7. That there is a public need for one-way paging service at Lumberton.

8. That Two-Way's existing Aberdeen base station KIY754 does not extend a usable signal beyond the Robeson County line in a direction south of Lumberton or beyond Bladenboro in a direction east.

9. That there is a need for radio frequency coverage and radio common carrier service in an area east and south of Lumberton in Robeson, Bladen and Columbus Counties which is not now within the certificated area of a radio common carrier.

10. That Two-Way is willing and able to provide adequate radio common carrier service in its certificated service area.

## CONCLUSIONS

Broadcast and Communications, the applicant in this proceeding, seeks a Certificate of Public Convenience and Necessity to provide radio common carrier service within a 30 to 35 miles radius of Lumberton, North Carolina. Two-Way Radio of Carolina, Inc., is now certificated to provide radio common carrier service within a 42 mile radius of its Aberdeen base station. Chapter 62 of the North Carolina Public Utilities Law sets forth in Article 62-123 the provisions relating to the granting of a Certificate for operation in the established service area of a radio common carrier as follows:

> "The Commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof into the established service area which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the person operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service."

It has been found that Lumberton is within the existing service area of a certificated radio common carrier, Two-Way Radio of Carolina, Inc.; and that the certificated carrier is able and willing to provide adequate service in the Lumberton area. It is, therefore, concluded that G. S. 62-123 is controlling and that a new certificate for the proposed radio common carrier operation of Broadcast and Communications, Inc. in Lumberton is not necessary to insure that reasonably adequate radio common carrier service is provided. It is further concluded that the application of Broadcast and Communications, Inc. should be denied; that Two-Way Radio of Carolina should provide one-way paging service at Lumberton, interconnection with the landline telephone system at Lumberton and establish a radio base station at Lumberton which will provide a usable radio signal within a distance of approximately 35 airline miles east and south of Lumberton and that the certificate granted by this Commission in Docket No. P-84 should be modified to extend the service area of Two-Way to include an area of 35 miles radius of coordinates 79° 00' west longitude and 34° 37' 30" north latitude in Lumberton. Two-Way Radio of Carolina should immediately initiate the necessary filings with the Federal Communications Commission to establish a one-way paging and two-way mobile radio base station at Lumberton.

IT IS, THEREFORE, ORDERED:

1. That the application of Broadcast and Communications, Inc., filed in Docket No. P-115 for a Certificate of Public Convenience and Necessity to operate a radio common carrier service within a 30 to 35 mile radius of Lumberton is hereby denied.

2. That the tariff filed by Two-Way Radio of Carolina, Inc., in Docket No. P-84, Sub 12 to provide interconnection with the landline telephone system at Lumberton is hereby approved to become effective upon commencement of the interconnected service.

3. That the certificate of Two-Way Radio of Carolina, Inc. is hereby modified so as to extend the service area to include an area of 35 miles radius of coordinates 79° 00' west longitude and 34° 37' 30" north latitude in Lumberton.

4. That Two-Way Radio of Carolina, Inc., immediately proceed to file an application with the Federal Communications Commission to establish a one-way paging and two-way mobile base station located at Lumberton and that a copy of the application to the FCC for a construction permit be filed with this Commission at such time as it is filed with the FCC.

5. That further hearings on these matters will be considered if Two-Way Radio of Carolina has not established one-way paging and two-way mobile service through a base station located at Lumberton on or before July 1, 1975.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-115
DOCKET NO. P-84, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of Application of Broadcast and Communications, Inc. for Certificate of Public Convenience and Necessity to Own, Maintain and Operate a Common Carrier Paging Service and Mobile Radio Service in Lumberton, North Carolina, | ) | ORDER OVERRULING EXCEPTIONS AND AFFIRMING ORDER OF APRIL 10, 1974 |
| and | ) | |
| Tariff Filing of Two-Way Radio of Carolina, Inc. to Establish a Control Point for Radio Common Carrier Service at Lumberton, North Carolina. | ) | |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 19, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners Ben E. Roney and George T. Clark, Jr.

APPEARANCES:

For: Broadcast and Communications, Inc.

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For: Two-Way Radio of Carolina, Inc.

Ted R. Reynolds, Esq.
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For: The Commission's Staff

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding arose out of an Application filed February 28, 1973, by Broadcast and

Communications, Inc., in Docket No. P-115 for a Certificate of Public Convenience and Necessity to own and operate a mobile radio and paging service in Lumberton, North Carolina. On April 24, 1973, Two-Way Radio of Carolina, Inc. filed tariff sheets to establish a landline interconnecting point at Lumberton for radio common carrier service through an existing base station near Aberdeen, North Carolina. Each party was granted leave to intervene in the docket of the other. The matters in these two dockets were heard on January 22, 1974, before Commissioner Hugh A. Wells, Hearing Commissioner. On April 10, 1974, Commissioner Wells, Hearing Commissioner, issued an Order denying the Application of Broadcast and Communications, Inc. in Docket No. P-115 and approving the tariff filing of Two-Way Radio of Carolina, Inc. in Docket No. P-84, Sub 12; the Order of Commissioner Wells also extended the service area of Two-Way Radio to include an area within a 35-mile radius of Lumberton and ordered Two-Way Radio to establish a one-way paging and two-way mobile base station in Lumberton.

Thereafter, in apt time, Broadcast and Communications, Inc. filed Exceptions to the Recommended Order and requested oral argument thereon. The oral argument on these Exceptions was heard before the Commission on June 19, 1974.

After a careful review of the entire record in these dockets and the argument of counsel at the hearing on June 19, 1974, the Commission is of the opinion, and so concludes, that the Exceptions of Broadcast and Communications, Inc. to the Recommended Order should be overruled and that the Recommended Order of Commissioner Wells, dated April 10, 1974, should be affirmed and adopted as the Order of the Commission.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Exceptions filed by Broadcast and Communications, Inc. to the Recommended Order of Commissioner Wells, Hearing Commissioner, dated April 10, 1974, in this docket be, and the same hereby are, overruled.

(2) That the Recommended Order of Commissioner Wells in this docket dated April 10, 1974, be, and the same hereby is, affirmed and is adopted as the Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of June, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-123

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application of Carolina Ra-Tel Corporation, for a Certificate of Public Convenience and Necessity to Provide Common Carrier Radio and Paging Service to Wilson, North Carolina. | ) ) ) ) ) | ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY |

HEARD IN: Rocky Mount District Courtroom, Second Floor, Municipal Building, Rocky Mount, North Carolina, on Wednesday, January 23, 1974.

BEFORE: Chairman M. R. Wooten, Presiding, (Commissioners Wells, Roney and Deane to Read the Record and Participate in the Decision).

APPEARANCES:

For the Applicant:

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Tharrington, Smith & Hargrove
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For the Commission Staff:

Wilson B. Partin, Jr., Esquire
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: Carolina Ra-Tel, a North Carolina corporation with its principal office in Wilson, North Carolina, filed an Application on December 7, 1973, for a Certificate of Public Convenience and Necessity to own, maintain and operate a common carrier radio and paging service in an area within a thirty-five (35) mile radius of the City of Wilson. (Hereinafter, Carolina Ra-Tel will be referred to as the Applicant). Prior to this date, Applications to serve the Wilson area had been filed by Campbell Broadcasting, Inc. of Wilson, North Carolina, and by Ra-Tel of Selma, Inc., a previously certificated radio common carrier whose service area included a major part of the City of Wilson. These two Applications, which were denominated P-122 and P-92, Sub 7, respectively, were withdrawn upon the filing of Carolina Ra-Tel's Application in this docket.

By Order dated December 17, 1973, the Commission set the matter for hearing and required public notice in a newspaper having general coverage of the Wilson area. The requisite notice was published in the Wilson Daily Times.

The Application came on for hearing on Wednesday, January 23, 1974, in the Municipal Building, Rocky Mount, North Carolina. The Applicant was represented by counsel and offered the testimony of witnesses in support of its Application. The Commission's Staff was represented by counsel, who cross-examined the Applicant's witnesses. There were no protestants or intervenors to oppose the granting of the Certificate.

Based on the Records of the Commission and the evidence and exhibits adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) Carolina Ra-Tel is a North Carolina corporation with its principal address at 113 East Nash Street, Wilson, North Carolina; the corporation was organized on December 4, 1973, for the purpose of engaging in the business of rendering radio common carrier service. The incorporators were Lynwood A. Williams, L. Vann Campbell and A. Hartwell Campbell.

(2) The Applicant proposes to provide a fully automatic mobile radio telephone service and radio paging service in the Wilson area. The Applicant plans to utilize, for the mobile radio service, the WGTM transmitting tower, which is located eight to ten miles west of Wilson; the coordinates of the tower are 35° 43' 04" north latitude and 78° 03' 33" west longitude. A tower for the paging service will be located in downtown Wilson at a site which has not yet been decided upon.

(3) Due to the unavailability of channels in the VHF band, the Applicant will be forced to transmit and receive on an ultrahigh frequency channel in the 450 megahertz band. The use of the 450 megahertz band by Carolina Ra-Tel will be incompatible with the VHF service offered by Ra-Tel of Selma, Inc., as well as with other VHF radio common carrier services in this State.

(4) The radio coverage of the base station at the WGTM tower is estimated to have a maximum range of about 28 miles.

(5) The business of the Applicant will be located in the office of Campbell Broadcasting Company, 113 East Nash Street, Wilson, North Carolina.

(6) The Applicant proposes to offer its services 24 hours a day, 7 days a week; both the radio and telephone paging service will be fully automatic and will not require the

assistance of an operator. Subscribers to the radio telephone service will be able to send and receive telephone calls both to and from other mobile radio subscribers of the Applicant and to and from subscribers of the landline telephone system. Subscribers to the paging service can be reached through the pocket paging units when the telephone number assigned to each subscriber is dialed over a telephone; the paging subscriber will receive a "beep" signal through his pager, then a voice message.

(7) There is no radio common carrier service or paging service now available in Wilson.

(8) The Applicant is prepared to serve customers from the neighboring Rocky Mount area who wish to use the Applicant's mobile telephone service. (On the day preceding the hearing in this docket, an Application by Franchise Enterprises, Inc., to serve the Rocky Mount area, Docket No. P-116, was withdrawn.) Although the coverage for a UHF service is less than that for a VHF service, Rocky Mount subscribers could very probably be served from the WGTM transmitting tower. Paging service in Rocky Mount will not be available from any transmitting tower located in Wilson.

(9) The minimum rate for the Applicant's radio telephone service, single channel, is $60 per month; $32 for the rental of a 5--10 watt single channel radio telephone; $10 for maintenance service; and $18 for the first 60 calls not exceeding 2 minutes duration per call. A call includes incoming and outgoing local and long distance communications.

(10) Witnesses for the Applicant testified as to the need for the Applicant's service in the Wilson area and their interest in obtaining such service when it becomes available. The witnesses included people in the real estate, motel and used automobile businesses.

(11) The Applicant proposes to interconnect telephone calls through the landline service of Carolina Telephone and Telegraph Company.

## CONCLUSIONS

The Applicant, Carolina Ra-Tel, Inc., has established to the satisfaction of the Commission that radio common carrier service is needed in the Wilson, North Carolina, area and that the Applicant is fit, willing and able to provide such service. The Commission, therefore, concludes that the Applicant should be granted a Certificate of Public Convenience and Necessity to provide radio common carrier service, including interconnection with the landline telephone system, in a service area of 30 miles of Wilson, North Carolina. The Commission further concludes that the tariff filed by the Applicant should be approved.

IT IS, THEREFORE, ORDERED:

(1) That Carolina Ra-Tel Corporation be granted a Certificate of Public Convenience and Necessity under Chapter 62 of the North Carolina General Statutes to provide radio common carrier service within a service area of 30 miles radius of coordinates 35° 44' 0" north latitude and 77° 55' 0" west longitude in Wilson, North Carolina.

(2) That the tariff filed with the Commission on January 4, 1974, is hereby approved to become effective upon the commencement of service to the public.

(3) That the Applicant file with this Commission the Application to the Federal Communications Commission for a construction permit, as well as a copy of the Federal Communications Commission license when issued.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-97, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of Petition of S. F. McNeill, d/b/a Communication Specialists Company for Extension of Radio Common Carrier Operations to Include an Area Defined by a Circle of 30-Mile Radius as Measured from Jacksonville, Onslow County, North Carolina | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING EXTENSION OF SERVICE AREA |

HEARD IN: Superior Courtroom, Onslow County Courthouse, Jacksonville, North Carolina beginning at 11:00 A.M., January 24, 1974

BEFORE: Commissioner Hugh A. Wells

APPEARANCES:

For: Ralph V. Pollmiller, d/b/a Ralph's Electronics

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P. O. Drawer W
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For: S. F. McNeill, d/b/a Communication

Specialists Company

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For: Carolina Telephone and Telegraph Company

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P. O. Box 991
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER: S. F. McNeill, d/b/a Communication Specialists Company (Communication Specialists), 3330 Wrightsville Avenue, Wilmington, North Carolina, filed with the Commission on January 7, 1974 in Docket No. P-97, Sub 5 a petition seeking authority to extend its existing radio common carrier operations located at Wilmington to include an area defined by a circle of 30 miles radius as measured from Jacksonville, Onslow County, North Carolina. Application of Ralph V. Pollmiller, d/b/a Ralph's Electronics (Ralph's Electronics), Jacksonville, North Carolina, seeking a Certificate of Public Convenience and Necessity to operate a radio common carrier service within a 35 miles radius of Jacksonville, North Carolina was filed on October 17, 1973 in Docket No. P-121 and set for hearing in Jacksonville on January 24, 1974 with public notice required. A petition for leave to intervene in Docket No. P-121 was filed by Carolina Telephone and Telegraph Company on December 20, 1973 and order allowing intervention was issued on January 8, 1974. The Commission Order of January 14, 1974 consolidated the application of Ralph's Electronics and Communication Specialists for hearing on January 24, 1974 in the Superior Courtroom, Onslow County Courthouse, Jacksonville, North Carolina and made parties in Docket No. P-121 and P-97, Sub 5 parties of record in both dockets for consolidated hearing. The Order further required that public notice of the hearing on the petition of Communication Specialists be published in a newspaper having general coverage of the proposed service area and further provided that Ralph's Electronics and

Communication Specialists Company be made parties of record in both dockets for consolidated hearing.

The matters in Docket No. P-12 and Docket No. P-97, Sub 5 came on for hearing at 11:00 A.M. on January 24, 1974 as scheduled. Motion was made by Ralph's Electronics at the scheduled hearing in Jacksonville on January 24, 1974, that he be allowed to withdraw his application in Docket No. P-12 and said motion was allowed. The petition of Communication Specialists Company in Docket No. P-97, Sub 5 came on for hearing as scheduled.

SUMMARY OF TESTIMONY AND EVIDENCE

Testimony of Mr. S. F. McNeill was presented in support of the application for authority to extend the radic common carrier operations of Communication Specialists to include an area defined by circle of 30 miles radius of Jacksonville, Onslow County, North Carolina. Mr. McNeill testified that Communication Specialists operates at Wilmington under a license granted by the Federal Communications Commission (FCC) and a certificate granted by the North Carolina Utilities Commission, that landline interconnected mobile telephone service with operator handling, message retention and one-way paging is provided in Wilmington, that the same type of service is proposed for Jacksonville, that he is willing to do whatever it takes to get the system going and to anticipate the public demands for more sophisticated or different types of equipment, that he has received 20 signal applications for mobile telephone service representing 28 mobile units, that he has received indications of interest in paging service, that the existing tariff filed with the Commission would be extended to include Jacksonville, that the base station transmitter would be located at coordinates 34° 45' 52" north latitude and 77° 24' 46" west longitude, and that maintenance service will be provided by technicians located in the Jacksonville area.

Communication Specialists Company further called as witnesses to testify concerning the interest in and need for radio common carrier service in the Jacksonville area as proposed by Communication Specialists the following: Mr. Billy Howard, a petroleum distributor; Mr. Shirley Smith, a general construction contractor; Mr. Stanley Willis, restaurant and food service business; Mr. Alexander Foxe, of Foxe's Bonding Company; Mr. Lynwood A. Williams, of Ra-Tel Company, a radio common carrier and Mr. James W. Hamilton, associated with Communication Specialists.

Mr. T. P. Williamson, Assistant Vice President, Carolina Telephone and Telegraph Company testified concerning the mobile telephone service provided by Carolina Telephone and Telegraph Company in the Jacksonville area. Mr. Williamson testified that an automatic two-way dial Improved Mobile Telephone Service (IMTS) is now offered; that Carolina has applied for a second radio channel from the FCC; that

Carolina is ready, willing and able to meet the public need for mobile service; that Carclina has about 20 held applications for mobile service; that Carolina does not have a proposal to offer paging service at Jacksonville; that message retention is not offered as a feature of telephone company provided mobile service; that radio common carriers and telephone companies have separate frequency assignments and that Carolina does not now serve any paging subscribers in North Carolina.

FINDINGS OF FACT

1. That the petition of S. F. McNeill, d/b/a Communication Specialists Company seeking authority to extend its radio common carrier operations to include an area defined by circle of 30 miles radius of Jacksonville, North Carolina, is a matter within the jurisdiction of this Commission and that the question of public convenience and necessity for radio common carrier service in and around Jacksonville is properly before this Commission.

2. That S. F. McNeill, d/b/a Communication Specialists Company is a certificated radio common carrier with authority granted in Docket No. P-97 by Commission Order issued July 25, 1969 which established a service area of 30 miles airline distance from base station KIY749 located at 3608 Wrightsville Avenue, Wilmington, North Carolina at coordinates 34° 13' 19" north latitude and 77° 54' 08" west longitude.

3. That the Town of Jacksonville is not within the existing certificated service area of Communication Specialists Company or any other radio common carrier.

4. That Carolina Telephone and Telegraph Company now provides two-way automatic dial Improved Mobile Telephone Service (IMTS) at Jacksonville.

5. That one-way paging service is not now provided or offered at Jacksonville.

6. That the radio channel used by Carolina Telephone and Telegraph Company to provide mobile telephone service has now reached capacity and that application has been made to the FCC for an additional channel at Jacksonville.

7. That Carolina Telephone and Telegraph Company does not provide message retention as part of its mobile telephone service offering.

8. That Carolina Telephone and Telegraph Company does not have any definite plans to offer one-way paging service in Jacksonville.

9. That Carolina Telephone and Telegraph Company is now holding 20 unserved applications for two-way mobile telephone service.

10. That there is a public need for two-way mobile telephone service with message retention and one-way paging service at Jacksonville with interconnection to the landline telephone facilities as testified to by witnesses for Communication Specialists Company.

11. That S. F. McNeill, d/b/a Communication Specialists Company is willing and able to provide radio common carrier service in Jacksonville.

12. That S. F. McNeill, d/b/a Communication Specialists Company does not now have radio maintenance service available in Jacksonville but plans to have adequate maintenance available at such time as radio common carrier service is initiated in Jacksonville.

## CONCLUSIONS

Chapter 62 of the North Carolina Public Utilities Law sets forth in Article 62-120 the requirements relating to a Certificate of Public Convenience and Necessity to operate as a radio common carrier as follows:

> "No radio common carrier shall begin, or continue, the construction or operation of any radio system, or any extension thereof, or acquire ownership or control thereof either directly or indirectly without first obtaining from the Public Utilities Commission a certificate that the present or future public convenience and necessity requires or will require such construction, operation or acquisition; provided this article shall not require, nor shall it be so construed as to require, any such carrier to secure a certificate for an extension within any authorized service area within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such carrier, necessary in the ordinary course of business, or for substitute facilities within or to any authorized service area or territory already served by such carrier, or for any extension into territory contiguous to that already served by such carrier and not receiving similar service from another such carrier when no certificate of convenience and necessity has been issued to or applied for by any other radio common carrier, or for the acquisition and operation of any plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued. The Commissioners are hereby authorized to prescribe appropriate and reasonable rules and regulations governing the issuance of such certificates."

It has been found that Jacksonville is not within the certificated service area of a radio common carrier and that there is a need for two-way mobile telephone service with message retention and one-way paging service which is not now provided by a radio common carrier or Carolina Telephone and Telegraph Company. The evidence presented in this case

support the conclusions that there is a public need for both radio common carrier and landline telephone company mobile telephone service in the Jacksonville area, that the petition of S. F. McNeill, d/b/a Communication Specialists Company should be granted to extend its radio common carrier service area to include Jacksonville and an area of 30 miles radius and that Communication Specialists Company should immediately submit the necessary filings to the Federal Communications Commission to establish one-way paging and two-way mobile radio service at Jacksonville.

IT IS, THEREFORE, ORDERED:

1. That the petition of S. F. McNeill, d/b/a Communication Specialists Company filed in Docket No. P-97, Sub 5 seeking authority to extend its radio common carrier operations to include an area defined by circle of 30 miles radius as measured from Jacksonville, North Carolina is hereby approved and that the 30 miles shall be measured airline distance from the coordinates of 34° 45' 52" north latitude and 77° 24' 46" west longitude.

2. That the tariffs of Communication Specialists Company now on file with the Commission shall apply to service at Jacksonville.

3. That Communication Specialists Company file with the Commission within six months of the date of this Order a report setting forth the arrangements made by the company for provision of adequate installation and repair of mobile radio equipment to subscribers in the Jacksonville area.

4. That Communication Specialists Company immediately proceed to file an application with the Federal Communications Commission to establish a one-way paging and two-way mobile base station located at Jacksonville, North Carolina and that a copy of the application to the FCC for construction permit be filed with this Commission at such time as it is filed with the FCC.

5. That further hearings on these matters will be considered if Communication Specialists Company has not established one-way paging and two-way mobile service with interconnection to the landline telephone network at Jacksonville on or before July 1, 1975.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-97, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>S. F. McNeill, d/b/a Communication Specialists Company, Petition for Extension of Radio Common Carrier Operations to Include an Area Defined by a Circle of 30-Mile Radius as Measured from Jacksonville, Onslow County, North Carolina. | ) | ORDER DENYING EXCEPTIONS AND AFFIRMING AND MODIFYING ORDER OF APRIL 12, 1974 |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 18, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners Ben E. Roney and George T. Clark, Jr. (Commissioner Tenney I. Deane to Read the Record).

APPEARANCES:

Ralph McDonald, Esq.
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Appearing for: S. F. McNeill, d/b/a Communication Specialists Company

William W. Aycock, Jr., Esq.
Taylor, Brinson & Aycock
P. O. Box 308
Tarboro, North Carolina 27886
Appearing for: Carolina Telephone and Telegraph Company

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602
Appearing for: the Commission's Staff

BY THE COMMISSION: This proceeding arose out of an Application filed with the Commission on January 7, 1974, by S. F. McNeill, d/b/a Communication Specialists Company (Communication Specialist), Wilmington, North Carolina, seeking authority to extend its existing radio common carrier operations in Wilmington to include an area within a 30-mile radius of Jacksonville, North Carolina. Carolina Telephone and Telegraph Company filed a petition for leave to intervene in this docket. Public hearing on the Application of Communication Specialists was heard on January 24, 1974, in Jacksonville, North Carolina. On April

12, 1974, Wells, Hearing Commissioner, issued a Recommended Order granting the Application of Communication Specialists. Thereafter, on April 29, 1974, Carolina Telephone and Telegraph Company filed Exceptions to the Recommended Order of April 12, 1974, and requested oral argument thereon before the Full Commission. The Commission granted the Motion and heard oral argument on the Exceptions on June 18, 1974.

After consideration of the record in this docket, including the Application and the evidence and exhibits adduced at the hearing, and the oral argument of counsel on the Exceptions, the Commission adopts the Findings of Fact set out in the Recommended Order of April 12, 1974, and makes herein the following additional

FINDING OF FACT

(13) The area proposed to be served by the Applicant Communication Specialists within a 30-mile radius of Jacksonville, North Carolina, is contiguous to the aforesaid certificated territory presently served by the Applicant. Communication Specialists in and around Wilmington, North Carolina.

CONCLUSIONS

Based upon the above additional Finding of Fact and the Findings of Fact in the Recommended Order of April 12, 1974, the Commission is of the opinion, and so concludes, that the Exceptions filed herein by Carolina Telephone and Telegraph Company should be denied and that the Recommended Order of April 12, 1974, together with the additional Finding of Fact contained herein, should be adopted and affirmed as the Order of the Full Commission, except as hereinafter modified. The Commission is of the opinion, and so concludes, that the territory proposed to be served by Communication Specialists in and around the Jacksonville area is contiguous to the area that is presently being served by the company in and around Wilmington. The Commission is of the opinion, and so concludes, that the Recommended Order of April 12, 1974, should be further modified by deleting therefrom Ordering Paragraph No. 5, which reads as follows:

> "5. That further hearings on these matters will be considered if Communication Specialists Company has not established one-way paging and two-way mobile service with interconnection to the landline telephone network at Jacksonville on or before July 1, 1975."

IT IS, THEREFORE, ORDERED as follows:

(1) That the Exceptions of Carolina Telephone and Telegraph Company to the Recommended Order of April 12, 1974, be, and the same hereby are, denied.

(2) That Ordering Paragraph No. 5 contained in the Recommended Order of April 12, 1974, be, and the same hereby is, deleted.

(3) That the Recommended Order of April 12, 1974, as modified by Paragraph (2) above, together with the additional Finding of Fact and Conclusions contained in the instant Order be, and the same hereby is, adopted as the Order of the Commission in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of August, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Morgan Drive-Away, Inc., and National Trailer Convoy, Inc. - Suspension and Investigation of Proposed Increase in Rates and Charges, Scheduled to Become Effective May 19, 1973, and September 6, 1973. | ) | ORDER AUTHORIZING 11% INCREASE IN RATES AND CHARGES AND DENYING PROPOSED TARIFF |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 1, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding; and Commissioners Hugh A. Wells, Ben E. Roney and Tenney I. Deane.

APPEARANCES:

For the Respondent:

Thomas S. Harrington, Esq.
Harrington & Stultz
Box 535
Eden, North Carolina 27288
Appearing for: Morgan Drive-Away, Inc.

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
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P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On April 13, 1973, Morgan Drive-Away, Inc., 2800 West Lexington Avenue, Elkhart, Indiana, filed with the Commission a tariff schedule proposing changes in its rules and increases in its rates and charges on the company's North Carolina intrastate traffic. The tariff, which was to become effective May 19, 1973, was designated Morgan Drive-Away Local Freight Tariff No. 8, N.C.U.C. No. 8. Morgan's existing tariff, N.C.U.C. No. 6, became effective July 7, 1969. (The Respondent will be hereinafter sometimes referred to as Morgan.)

The Commission, being of the opinion that the proposed tariff affected the public interest, suspended the tariff, declared the matter to be a general rate case, instituted an investigation into the lawfulness of the tariff, and set the matter for hearing. No protests or interventions were filed in this docket.

On February 1, 1974, the matter came on for hearing in the Commission Hearing Room, Raleigh, North Carolina. The Respondent Morgan Drive-Away, Inc. was present and represented by counsel. The Commission's Staff was present and represented by counsel. In support of its proposed tariff schedule, the Respondent Morgan offered the testimony of Mr. William G. Starnal, Vice President - Operations of Morgan Drive-Away. The following members of the Commission's Staff offered testimony: Mr. James L. Rose, Rate Specialist, III, Traffic Division; and Mr. James C. Turner, Staff Accountant.

Based upon the record in this proceeding, including the Application filed by the Respondent Morgan, and upon the evidence and exhibits offered at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) Morgan Drive-Away, Inc., 2800 West Lexington Avenue, Elkhart, Indiana, holds common carrier authority from this Commission to transport mobile homes, buildings, and sections of buildings in North Carolina intrastate commerce.

(2) On April 13, 1973, Morgan filed Local Freight Tariff No. 8, N.C.U.C. No. 8, proposing changes in its rules and increases in its rates and charges on North Carolina intrastate traffic. The proposed tariff would result in an increase of approximately $70,000 in operating revenues for Morgan's intrastate traffic.

(3) Morgan's hauling business in North Carolina intrastate commerce is conducted by approximately 60 owner-operators, who are independent contractors. These owner-operators are responsible for oil and gas expenses, repairs to parts and equipment, and social security and unemployment taxes; the owner-operators also purchase their own equipment used in hauling.

(4) Since Morgan's last rate increase in July 1969, the owner-operators have experienced significant increases in their operating costs for fuel, tires, repair parts and labor, new equipment, insurance, and taxes.

(5) Morgan's increased North Carolina operating expenses for the year 1974 will amount to approximately $60,000, which includes pay increases to the owner-operators.

(6) Morgan's intrastate operating ratio for the year 1972 was 97.2%; for the first 9 months of 1973, the operating ratio was 94.7%. The last 3 months of 1973 and the first 3 months of 1974 were noted for rapid increases in fuel costs.

(7) Morgan Drive-Away will use 65 to 70% of its requested revenue increase in order to increase the pay of its owner-operators.

(8) Approximately 80% of Morgan's North Carolina intrastate traffic consists of moving new mobile homes from the manufacturer to a dealer or to a retail customer; this is known as an initial movement. The remaining 20% of Morgan's intrastate traffic consists of moving used mobile homes for the ultimate consumer from a mobile home park in one part of the State to a mobile home part in another part; this is known as a secondary movement. A secondary movement involves the transportation of used mobile homes which have been lived in and which may or may not contain the personal effects of the owners. In addition to the line haul charges, accessorial or special service charges may be applicable to initial and secondary movements, for such services as packing and unpacking personal effects, blocking and unblocking, and escort services.

(9) The widths of the mobile homes transported by Morgan in North Carolina intrastate commerce are 8 foot, 10 foot, and 12 foot widths. The average distance per trip for all of Morgan's North Carolina intrastate traffic in 1972 was 126 miles. The 12 foot widths are the most widely transported mobile homes.

(10) The following tables show the percentage increases of Morgan's proposed rates over its present rates, with respect to initial and secondary moves of 8', 10' and 12' widths of varying lengths, transported for distances of 100 and 200 miles.

8 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer in Feet | 100 Miles | | 200 Miles | |
|---|---|---|---|---|
| | Initial | Secondary | Initial | Secondary |
| 20' | 21.4% | 94.5% | 9.9% | 68.2% |
| 25' | 24.5 | 97.3 | 13.0 | 71.0 |
| 30' | 27.5 | 100.0 | 16.1 | 73.7 |
| 35' | 35.3 | 106.9 | 12.4 | 80.4 |
| 40' | 43.4 | 114.1 | 31.3 | 87.1 |
| 50' | 62.6 | 131.2 | 39.1 | 87.2 |
| 60' | 27.5 | 73.4 | 6.4 | 40.4 |
| 70' | 6.6 | 48.6 | (12.5) | 20.3 |
| 80' | (9.2) | 30.1 | (30.9) | 5.3 |

10 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer in Feet | 100 Miles | | 200 Miles | |
|---|---|---|---|---|
| | Initial | Secondary | Initial | Secondary |
| 50' | 31.0% | 55.8% | 12.5% | 53.8% |
| 55' | 41.2 | 69.8 | 15.7 | 47.5 |
| 60' | 35.3 | 78.3 | 10.3 | 42.5 |
| 65' | 34.9 | 78.5 | 9.5 | 42.4 |
| 70' | 44.1 | 83.3 | 16.2 | 46.1 |
| 75' | 52.1 | 88.5 | 21.9 | 49.4 |
| 80' | 59.0 | 92.6 | 26.9 | 52.3 |

12 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer in Feet | 100 Miles | | 200 Miles | |
|---|---|---|---|---|
| | Initial | Secondary | Initial | Secondary |
| 50' | (4.2)% | 13.4% | 5.4% | 35.2% |
| 55' | 4.7 | 23.0 | 6.7 | 33.6 |
| 60' | 13.3 | 32.6 | 4.5 | 32.2 |
| 65' | 22.0 | 42.2 | 4.2 | 32.7 |
| 70' | 37.5 | 55.8 | 10.5 | 36.6 |
| 75' | 45.1 | 69.5 | 16.0 | 40.1 |
| 80' | 51.7 | 81.3 | 20.9 | 43.2 |

(11) Morgan's present rates (N.C.U.C. No. 6) were approved by the Commission pursuant to an Order dated July 7, 1969, which found, after investigation and hearing, that the rates and charges contained therein were just and reasonable. There have been no changes in Morgan's hauling conditions since 1969 which would justify Morgan's proposed rate structure.

(12) Under Morgan's proposed tariff N.C.U.C. No. 8, approximately 44.6% of the proposed revenue increase of $70,000 will come from increases in rates for initial movements; approximately 55.4% of the proposed revenue increases will come from increases in rates for secondary movements.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

Morgan Drive-Away, Inc., is engaged in the business of transporting new and used mobile homes, buildings, and sections of buildings in North Carolina intrastate commerce; the company is subject to the jurisdiction of this Commission with respect to the setting of rates. By its

proposed tariff N.C.U.C. No. 8, Morgan seeks approximately $70,000 in increased revenues. The company, and the independent owner-operators who do the hauling for Morgan in this State, have experienced increases in operating expenses since the company was last granted a rate increase in 1969.

The Commission approves an increase in Morgan's rates and charges which will yield increased operating revenues of approximately $70,000 for Morgan's North Carolina intrastate operations. The Commission notes the assurances of Morgan Drive-Away, Inc. that 65 to 70% of this increase will go to the owner-operators in the form of increased pay.

The Commission, however, finds and concludes that Morgan's proposed tariff, N.C.U.C. No. 8, is discriminatory. As shown in Finding of Fact No. 8, Morgan's proposed tariff unjustly favors the shipper of initial movements over the shipper of secondary or used movements. For example, the increases for initial movements of 10' wide trailers over a distance of 100 miles range from 31% to 51%, while increases for secondary movements of 10' wide trailers over 100 miles range from 55.8% to 92.6%. The disparity in the proposed increases is even more striking for moves of 8' widths over a 100-mile distance: from 9.2% to 62.6% for initial moves, and 30.1% to 131.2% for secondary moves. Such increases unjustly and unreasonably discriminate in favor of the shipper of initial movements, the mobile home manufacturer. Although the secondary moves account for approximately 20% of Morgan's total moves, the secondary moves are expected to account for 55.4% of Morgan's total increased revenues under the proposed tariff. There is admittedly evidence in the record as to the difficulities encountered by Morgan's operators in making secondary moves. However, there is no evidence that these difficulties arise out of changes in hauling conditions since 1969, when Morgan's present rates were found to be just and reasonable. Many difficulties in handling secondary moves are compensated for by the application of accessorial charges. In any event, the Commission finds and concludes that the differences in hauling conditions between initial and secondary moves are not so substantial as to justify Morgan's proposed rate structure.

The Commission, therefore, concludes that Morgan's proposed tariff N.C.U.C. Tariff No. 8 should be denied. The Commission further concludes that Morgan Drive-Away, Inc. should be allowed to increase all of the rates and charges contained in N.C.U.C. No. 6 by 11%. This 11% overall increase should produce approximately $70,000 in revenues, thereby offsetting Morgan's increased costs of operation in North Carolina intrastate commerce.

IT IS, THEREFORE, ORDERED as follows:

(1) That the proposed tariff filing of Morgan Drive-Away, Inc., Local Tariff No. 8, N.C.U.C. No. 8, scheduled to become effective on May 19, 1973, be, and it is, hereby

disallowed, and that appropriate tariff schedules shall be issued immediately to cancel the proposed Morgan Drive-Away, Inc., Local Tariff No. 8, N.C.U.C. No. 8, in its entirety.

(2) That the Respondent, Morgan Drive-Away, Inc., be, and the same is hereby, authorized to publish an appropriate tariff schedule providing for increases in all of its rates and charges by eleven (11%) percent over those rates and charges contained in the present Morgan Drive-Away, Inc., Local Freight Tariff No. 6, N.C.U.C. No. 6.

(3) That the publication authorized hereby may be made on ten (10) days' notice to the Commission and to the public, but shall otherwise comply with the rules and regulations of this Commission governing the publication, posting and filing of tariff schedules.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Morgan Drive-Away, Inc., and National Trailer Convoy, Inc., - Suspension and Investigation of Proposed Increase in Rates and Charges, Scheduled to Become Effective May 19, 1973, and September 6, 1973. | ORDER AUTHORIZING 11% INCREASE IN RATES AND CHARGES AND DENYING PROPOSED TARIFF |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on March 29, 1974.

BEFORE: Commissioner Hugh A. Wells, Presiding, and Commissioners Ben E. Roney and Tenney I. Deane. (Chairman Marvin R. Wooten to Read Record and Participate in Decision).

APPEARANCES:

For the Applicant:

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Jordan, Morris & Hoke
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Appearing for: National Trailer Convoy, Inc.

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

No Protestants.

BY THE COMMISSION: On August 6, 1973, National Trailer Convoy, Inc., 1925 National Plaza, Tulsa, Oklahoma, filed with the Commission a tariff schedule proposing changes in its rules and increases in its rates and charges on the company's North Carolina intrastate traffic. The tariff, which was to become effective September 6, 1973, was designated National Trailer Convoy, Inc., Local Freight Tariff No. 7, N.C.U.C. No. 7.

The Commission, being of the opinion that the proposed tariff affected the public interest, suspended the tariff, declared the matter to be a general rate case, instituted an investigation into the lawfulness of the tariff, and set the matter for hearing. No protests or interventions were filed in this docket.

On March 29, 1974, the matter came on for hearing in the Commission Hearing Room, Raleigh, North Carolina. The Respondent National was present and represented by counsel. In support of its proposed tariff schedule, the Respondent National offered the testimony of Mr. Irvin Tull, Traffic Manager of National Trailer Convoy, Inc. The following members of the Commission's Staff offered testimony: Mr. James L. Rose, Rate Specialist, III, Traffic Division; and Mr. George E. Dennis, Staff Accountant.

Based upon the record in this proceeding, including the Application filed by the Respondent National, and upon the evidence and exhibits offered at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) National Trailer Convoy, Inc., 1925 National Plaza, Tulsa, Oklahoma, holds common carrier authority from this

Commission to transport mobile homes, buildings, and sections of buildings in North Carolina intrastate commerce.

(2) On August 6, 1973, National filed Local Freight Tariff No. 7, N.C.U.C. No. 7, proposing changes in its rules and increases in its rates and charges on North Carolina intrastate traffic.

(3) National's hauling business in North Carolina intrastate commerce is conducted by owner-operators, who are independent contractors. These owner-operators are responsible for oil and gas expenses, repairs to parts and equipment, and social security and unemployment taxes; the owner-operators also purchase their own equipment used in hauling.

(4) Since National's last rate increase in July 1969, the owner-operators have experienced significant increases in their operating costs for fuel, tires, repair parts and labor, new equipment, insurance, and taxes.

(5) National's intrastate operating ratio for the year 1972 was 98.4%; for the first 9 months of 1973, the operating ratio was 106.8%.

(6) An 11% across-the-board increase in the rates and charges of National Trailer Convoy, Inc. will produce $7,020.00 in additional revenues and an operating ratio of 96.1%.

(7) According to National's Appendices 2 and 3, National proposed to give the owner-operators an increase in pay amounting to $3,671.00, which is 33% of the line-haul revenue increase requested under National's proposed tariff. Under the 11% allowed National by this Order, the owner-operator pay increase will amount to $2,019.00, which equals 33% of the line-haul revenue produced by the 11% increase.

(8) National has a terminal in Mocksville, North Carolina, which serves National's operations in both North and South Carolina; at this terminal National employs a district manager and several other employees. However, all of the expenses for the Mocksville terminal were allocated solely to the North Carolina operations. The expenses for this terminal are included in the following expense accounts for the period January 1, 1973, through September 8, 1973 (National Appendix 2 - Intrastate North Carolina Profit and Loss Statement): Terminal Expense, $10,359.00; Insurance and Safety Expense, $1,717.00; General and Administrative Expense, $7,518.00; Depreciation, $316.00; Tax and Licensing Expense, $5,421.00. The Commission disallows $2,124.00 of National's expenses as terminal expenses attributable to its South Carolina operations.

(9) The new rates and charges approved by the Commission will produce revenues of $70,840.00. After the $2,019.00 adjustment in additional owner-operator pay (which is

chargeable to the Purchased Transportation Expense Account), and after the disallowance of $2,|24.00 of those expenses attributable to the South Carolina operations, the operating expenses will be $68,049.00. The resulting operating ratio is 96.|%. This operating ratio the Commission finds to be just and reasonable and compensatory for National Trailer Convoy, Inc.

(|0) Approximately 30% of National's North Carolina intrastate traffic consists of moving new mobile homes from the manufacturer to a dealer or to a retail customer; this is known as an initial movement. The remaining 70% of National's intrastate traffic consists of moving used mobile homes for the ultimate consumer from a mobile home park in one part of the State to a mobile home park in another part; this is known as a secondary movement. A secondary movement involves the transportation of used mobile homes which have been lived in and which may or may not contain the personal effects of the owners. In addition to the linehaul charges, accessorial or special service charges may be applicable to initial and secondary movements, for such services as packing and unpacking personal effects, blocking and unblocking, and escort services.

(||) The widths of the mobile homes transported by National in North Carolina intrastate commerce are 8 foot, |0 foot, and |2 foot widths. The average distance per trip for all of National's North Carolina intrastate traffic during the first 9 months of |973 was 80.7 miles. The |2 foot widths are the most widely transported mobile homes.

(|2) The following tables show the percentage increases of National's proposed rates over its present rates, with respect to initial and secondary moves of 8', |0' and |2' widths of varying lengths, transported for distances of |00 and 200 miles.

8 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer | |00 Miles | | 200 Miles | |
|---|---|---|---|---|
| in Feet | Initial | Secondary | Initial | Secondary |
| 20' | 2|.4% | 94.5% | 9.9% | 68.2% |
| 25' | 24.5 | 97.3 | |3.0 | 7|.0 |
| 30' | 27.5 | |00.0 | |6.| | 73.7 |
| 35' | 35.3 | |06.9 | |2.4 | 80.4 |
| 40' | 43.4 | ||4.| | 3|.3 | 87.| |
| 50' | 62.6 | |3|.2 | 39.| | 87.2 |
| 60' | 27.5 | 73.4 | 6.4 | 40.4 |
| 70' | 6.6 | 48.6 | (|2.5) | 20.3 |
| 80' | (9.2) | 30.| | (30.9) | 5.3 |

10 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer in Feet | 100 Miles | | 200 Miles | |
|---|---|---|---|---|
| | Initial | Secondary | Initial | Secondary |
| 50' | 31.0% | 55.8% | 12.5% | 53.8% |
| 55' | 41.2 | 69.8 | 15.7 | 47.5 |
| 60' | 35.3 | 78.3 | 10.3 | 42.5 |
| 65' | 34.9 | 78.5 | 9.5 | 42.4 |
| 70' | 44.1 | 83.3 | 16.2 | 46.1 |
| 75' | 52.1 | 88.5 | 21.9 | 49.4 |
| 80' | 59.0 | 92.6 | 26.9 | 52.3 |

12 FOOT WIDE TRAILERS
PERCENTAGE INCREASES IN PROPOSED RATES
OVER PRESENT RATES

| Length of Trailer in Feet | 100 Miles | | 200 Miles | |
|---|---|---|---|---|
| | Initial | Secondary | Initial | Secondary |
| 50' | (4.2)% | 13.4% | 5.4% | 35.2% |
| 55' | 4.7 | 23.0 | 6.7 | 33.6 |
| 60' | 13.3 | 32.6 | 4.5 | 32.2 |
| 65' | 22.0 | 42.2 | 4.2 | 32.7 |
| 70' | 37.5 | 55.8 | 10.5 | 36.6 |
| 75' | 45.1 | 69.5 | 16.0 | 40.1 |
| 80' | 51.7 | 81.3 | 20.9 | 43.2 |

(13) National's present rates (N.C.U.C. No. 6) were approved by the Commission pursuant to an Order dated July 7, 1969, which found, after investigation and hearing, that the rates and charges contained therein were just and reasonable. There have been no changes in National's hauling conditions since 1969 which would justify National's proposed rate structure.

(14) On April 12, 1974, in this docket, the Commission approved an 11% increase in the rates and charges of Morgan Drive-Away, Inc., which, like National, is engaged in the transportation of mobile homes and buildings in North Carolina intrastate commerce. From 1969 to the present date, the tariffs of Morgan and National were identical. The proposed tariffs filed by Morgan and National in this docket were likewise identical. The operating conditions of Morgan and National in North Carolina intrastate commerce are very similar. The 11% increase granted to National Trailer Convoy, Inc. in this docket will make its rates and charges identical to those of Morgan.

Based upon the foregoing Findings of Fact, the Commission makes the following

## CONCLUSIONS

National Trailer Convoy, Inc., is engaged in the business of transporting new and used mobile homes, buildings, and sections of buildings in North Carolina intrastate commerce; the company is subject to the jurisdiction of this Commission with respect to the setting of rates. The company and the independent owner-operators who do the hauling for National in this State have experienced increases in operating expenses since the company was last granted a rate increase in 1969.

The Commission approves an 11% increase in all the rates and charges contained in N.C.U.C. No. 6. This 11% increase will yield increased operating revenues of approximately $7,020.00 for National's North Carolina intrastate operations and an operating ratio of 96.1%. The Commission finds and concludes that this increase is just and reasonable and compensatory to National Trailer Convoy, Inc.

The Commission finds and concludes that National's proposed tariff, N.C.U.C. No. 7 is discriminatory. As shown in Finding of Fact No. 12, National's proposed tariff unjustly favors the shipper of initial movements over the shipper of secondary or used movements. For example, the increases for initial movements of 10' wide trailers over a distance of 100 miles range from 31% to 59%, while increases for secondary movements of 10' wide trailers over 100 miles range from 55.8% to 92.6%. The disparity in the proposed increases is even more striking for moves of 8' widths over a 100-mile distance: from (9.2%) to 62.8% for initial moves, and 30.1% to 131.2% for secondary moves. Such increases unjustly and unreasonably discriminate in favor of the shipper of initial movements, the mobile home manufacturer. Although there is evidence as to the difficulties encountered by National's operators in making secondary moves, there is no evidence that these difficulties arise out of changes in hauling conditions since 1969, when National's present rates were found to be just and reasonable. Any difficulties in handling secondary moves are compensated for by the application of accessorial charges. In any event, the Commission finds and concludes that the differences in hauling conditions between initial and secondary moves are not so substantial as to justify National's proposed rate structure.

The Commission, therefore, concludes that National's proposed tariff N.C.U.C. Tariff No. 7 should be denied. The Commission further concludes that National Trailer Convoy, Inc. should be allowed to increase all of the rates and charges contained in N.C.U.C. No. 6 by 11%. This increase of 11% makes National's rates and charges identical to those of Morgan Drive-Away, Inc., whose rates and charges have already been approved by an Order issued in this Docket on April 12, 1974. Morgan and National's tariffs were identical from 1969 to the present date, and their proposed

tariff filings in this docket were identical. The operating conditions of Morgan and National in this State are similar.

IT IS, THEREFORE, ORDERED as follows:

(1) That the proposed tariff filing of National Trailer Convoy, Inc., Local Tariff No. 7, N.C.U.C. No. 7, scheduled to become effective on September 6, 1973, be, and it is, hereby disallowed, and that appropriate tariff schedules shall be issued immediately to cancel the proposed National Trailer Convoy, Inc., Local Tariff No. 7, N.C.U.C. No. 7 in its entirety.

(2) That the Respondent, National Trailer Convoy, Inc., be, and the same is hereby, authorized to publish an appropriate tariff schedule providing for increases in all of its rates and charges by eleven (11%) percent over those rates and charges contained in the present National Trailer Convoy, Inc., Local Freight Tariff No. 6, N.C.U.C. No. 6.

(3) That the publication authorized hereby may be made on ten (10) days' notice to the Commission and to the public, but shall otherwise comply with the rules and regulations of this Commission governing the publication, posting and filing of tariff schedules.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 173

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Motor Common Carriers - Suspension and Investigation of Proposed Increase of 10% in Rates and Charges, and the Revision of Certain Rules, Applicable on Shipments of Bulk Commodities in Tanks, Hoppers and Specialized Equipment, Scheduled to Become Effective March 4 and September 16, 1974, Respectively | ORDER APPROVING INCREASED RATES |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, September 10, 1974, at 9:30 a.m.

BEFORE: Commissioner Hugh A. Wells, presiding, and Commissioners Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald and Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: Bulk Carriers - Members of North Carolina Motor Carriers, and Participants in Tariff 2|-C

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 99| - Ruffin Building
Raleigh, North Carolina 27602

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 99| - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing with this Commission by the North Carolina Motor Carriers Association, Inc., Agent, P. O. Box 2977, Raleigh, North Carolina, for and on behalf of its member participating carriers proposing a general rate increase of |0% applicable on North Carolina intrastate shipments of bulk commodities in tanks, hoppers and specialized equipment and designated as follows:

North Carolina Motor Carriers Association, Inc., Agent - Tariff No. 2|-C, N.C.U.C. No. 99, Supplement No. 5, Item No. |, thereto,

and of an additional filing by the North Carolina Motor Carriers Association, Inc., Agent, for and on behalf of its member participating carriers of a tariff schedule proposing a revision of certain rules resulting in increased charges applicable to North Carolina intrastate shipments of bulk commodities, hoppers and specialized equipment scheduled to become effective September |6, |974, and designated as follows:

North Carolina Motor Carriers Association, Inc., Agent, Local Motor Freight Tariff No. 2|-C, N.C.U.C. No. 99, Supplement No. |2, thereto, Items Nos. 337-A and 370-A, therein.

The Commission, being of the opinion that the above captioned filing was a matter of public interest, by Order dated August 29, |974, suspended said tariff filing, ordered an investigation into this matter, declared same to be a general rate case and set the matter for hearing. Upon completion of the hearing and investigation by the Commission Staff, the Commission concludes that the requested rate relief should be granted subject to Commission Rule in Docket No. M-|00, Sub 52, entitled, "Order Reducing Emergency Fuel Surcharge for Motor Carriers," which order was issued on November |3, |974. This Order reduces the emergency fuel surcharge from 6% to an amount not to exceed 4%, effective December |, |974. The Order also provides that the emergency fuel surcharge itself shall terminate on June 30, |975. The Order in Docket No. M-|00, Sub 52, is applicable to the participating carriers in this docket. The Commission further concludes that good cause has been shown for withdrawal of the suspension of the tariffs herein and to allow the same to become effective on one day's notice in accordance with the filing made within.

IT IS, THEREFORE, ORDERED

|. That Commission Order in the above captioned matter dated February 24, |974, and August 29, |974, requiring suspension of the tariff schedules hereinabove described be, and the same hereby is, withdrawn.

2. That the North Carolina Motor Carriers Association, Inc., Agent, be, and the same is hereby, allowed to file an appropriate Supplement to its Local Motor Freight Tariff No. 2|-C, N.C.U.C. No. 99, Supplement No. 5, Item No. |, and Tariff No. 2|-C, N.C.U.C. No. 99, Supplement No. |2, thereto, Items No. 337-A and 370-A, placing into effect increases in rates and charges which filing may be made on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of November, |974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 175

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Motor Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges Applicable on North Carolina Intrastate Shipments of Cement and Related Commodities, Scheduled to Become Effective March 28, 1974 | ) | ORDER APPROVING INCREASED RATES |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina 27602, on Tuesday, October 8, 1974, at 2:00 p.m.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Ben E. Roney and Tenney I. Deane, Jr.

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: Schwerman Trucking Company
Central Transport, Inc.
Maybelle Transport Company
Motor Carriers participating in North Carolina Motor Carriers Association, Inc., Agent, Local Motor Freight Tariff No. 23-C, N.C.U.C. No. 101, Supplement No. 3

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing with this Commission by the North Carolina Motor Carriers Association, Inc., Agent, P. O. Box 2977, Raleigh, North Carolina 27602, for and on behalf of the participating member carriers of a tariff schedule proposing approximately 9.25% increase in rates and charges applicable on North Carolina intrastate shipments of cement, mortar, masons mix

and hydrated lime, dry, in bulk or in bags, scheduled to become effective March 28, 1974, and designated as follows:

North Carolina Motor Carriers Association, Inc., Agent, Local Motor Freight Tariff No. 23-c, N.C.U.C. No. 10, Supplement No. 3, thereto in full,

and of Application No. 482, and amendment thereto, filed by the North Carolina Motor Carriers Association, Inc., Agent, for and on behalf of its participating member carriers, requesting that it be permitted to cancel the Emergency Fuel Surcharge Supplement No. 2 to its Tariff No. 23-C, N.C.U.C. No. 10, contingent upon allowing Supplement No. 3 to said tariff to become effective on one day's notice but not earlier than March 28, 1974, and to cancel the point to point rate published in Item No. 2020 of Supplement No. 3 of said tariff and amend Item No. 2000-A as published in Supplement No. 3 to said tariff by reinstating the ten and fifteen mileage blocks, to become effective on one day's notice but not earlier than March 28, 1974. The Commission being of the opinion that the above-captioned filing was a matter of public interest, by Order dated March 26, 1974, suspended said tariff filing, ordered an investigation into this matter, declared same to be a general rate case, and set the matter for hearing.

By Order dated July 12, 1974, the Commission granted a petition for interim rate increase filed for and on behalf of Schwerman Trucking Company, Central Transport, Inc., and Maybelle Transport Company which requested that the herein involved suspended schedules be allowed to become effective and to permit the cancellation of emergency fuel surcharge Supplement No. 2 to the North Carolina Motor Carriers Association, Inc., Tariff No. 23-C, N.C.U.C. No. 10, or an interim basis pending final Order and determination in this docket.

Upon completion of the hearing and investigation by the Commission, this Division of the Commission concludes that a short order should issue forthwith granting the requested rate relief. This Division further concludes that good cause has been shown for withdrawal of the suspension of the tariffs herein and to allow the same to become effective on one day's notice in accordance with the filing made within.

IT IS, THEREFORE, ORDERED

1. That the Order requiring suspension of the tariff schedules hereinabove described be, and hereby is, withdrawn.

2. That the North Carolina Motor Carriers Association, Inc., Agent, be, and the same is hereby, allowed to file an appropriate supplement to its Local Motor Freight Tariff No. 23-C, N.C.U.C. No. 10, placing into effect increases in rates and charges and cancelling the emergency fuel

surcharge Supplement No. 2, thereto, which filing may be made effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Motor Common Carriers - Petition for Relief from an Outstanding Order of the Commission in Docket No. T-825, Sub 168; Suspension and Investigation of Proposed General Increase in Rates and Charges, Scheduled to Become Effective May 20, 1974. | ) | ORDER GRANTING RATE INCREASE |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 23 and 24, 1974, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Presiding; and Commissioners Wells, Roney, Deane and Clark.

APPEARANCES:

For the Applicants:

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For the Protestants:

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33 West Davie Street
Raleigh, North Carolina 27602

For:
North Carolina Traffic League, Inc.
Drug and Toilet Preparation Traffic Conference, Inc.
The National Small Shipments Traffic Conference, Inc.
North Carolina Textile Manufacturers Association, Inc.

Daniel J. Sweeney, Esq.
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For:
North Carolina Traffic League, Inc.
Drug and Toilet Preparation Traffic Conference, Inc.
The National Small Shipments Traffic Conference, Inc.
North Carolina Textile Manufacturers Association, Inc.

For the Protestants:

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Attorney at Law
20 Marietta Street, N. W.
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For:
North Carolina Textile Manufacturers Association, Inc.

For the Commission Staff:

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BY THE COMMISSION: On April 11, 1974, the general commodities motor carriers, through their agents, the North Carolina Motor Carriers Association, Inc., Motor Carriers Traffic Association, Inc., and Southern Motor Carriers Rate Conference, filed with the Commission a petition for relief, proposing an increase in rates and charges, including minimum charges, applicable to North Carolina intrastate shipment of general commodities. These proposed tariff schedules were to become effective on May 20, 1974, and were designated as follows:

Motor Carriers Traffic Association, Inc., Agent:
Motor Freight Tariff No. 3-G, N.C.U.C. No. 40,
Supplements Nos. 46 and 47, thereto, in full,

North Carolina Motor Carriers Association, Inc., Agent:
Motor Freight Tariff No. 10-E, N.C.U.C. No. 91,
Supplement No. 64, thereto, in full,

Southern Motor Carriers Rate Conference, Agent:
Motor Freight Tariff No. 137-I, N.C.U.C. No. 38,
Supplement No. 34, thereto, in full.

The proposed increases were as follows:

| FOR SHIPMENTS WEIGHING | PERCENT INCREASE |
|---|---|
| LTL or AQ rates applying on shipments weighing less than 2,000 lbs. | 15% |
| LTL or AQ rates applying on shipments weighing 2,000 lbs., or more but less than 5,000 lbs. | 10% |
| LTL or AQ rates applying on shipments weighing 5,000 lbs. or more | 5% |
| Volume or Truckload rates | 3% (See Note A) |

NOTE A--Minimum increase 1 cent per cwt.

ACCESSORIAL CHARGES AND ACCESSORIAL RATES on North Carolina Interstate Traffic:

INCREASE all accessorial charges and accessorial rates by 15%

REVISE the Flat Minimum Charge of 550 cents presently published to be as follows:

| RATE BASIS NOS. | MINIMUM CHARGE (In Cents) |
|---|---|
| 1 to 100 | 650 |
| 101 to 200 | 700 |
| 201 to 300 | 750 |
| 301 and over | 800 |

On April 29, 1974, the Commission issued an Order which suspended the aforesaid tariff schedules, declared the proceeding to be a general rate case under G. S. 62-137, instituted an investigation into the lawfulness of the tariff schedules, and set the matter for hearing beginning October 23, 1974.

On May 3, 1974, the Traffic Department, representing the North Carolina Textile Manufacturers Association, Inc. and The American Textile Manufacturers Institute, Inc., filed protests and petition for suspension of the proposed tariffs.

On May 13, 1974, the respondent general commodities motor carriers filed Petition for Immediate Interim Relief. Thereafter, on May 24, 1974, the Commission issued its Supplemental Order Granting Interim Increases as follows:

(1) Increased the flat minimum charge per shipment by $1.00;

(2) Increased the rates on LTL or AQ shipments (all weight brackets) by 5%;

(3) Increased the rates on volume or truckload shipments by 3%, minimum increase of one cent (1¢) per hundredweight; and

(4) Increased the accessorial rates by 5%.

Such increases were authorized pending hearing, final order and disposition in this docket.

On August 1, 1974, the respondent motor carriers of general commodities filed a petition with the Commission for further interim relief. Responses in opposition to this petition were filed by the North Carolina Textile Manufacturers Association, Inc. and the North Carolina Traffic League, Inc., the National Small Shipments Traffic Conference and the Drug and Toilet Preparation Traffic Conference, Textiles - Incorporated, and Deering Milliken, Inc. On September 4, 1974, the Commission issued its Second Supplemental Order in this docket denying the petition for further interim relief.

The Commission by Order dated September 4, 1974, allowed Protests and Petitions for Leave to Intervene filed by the following: North Carolina Traffic League, Inc., Drug and Toilet Preparation Traffic Conference, Inc., The National Small Shipments Traffic Conference, Inc., and North Carolina Textile Manufacturers Association, Inc.

The matter came on for hearing on Wednesday, October 23, 1974, at the Commission Hearing Room in Raleigh. The respondent motor carriers presented the testimony and exhibits of the following witnesses: Robert A. Hopkins, Secretary of the Rate Committee of the North Carolina Intrastate Regular Route General Commodity Carriers; Robert L. Steed, Secretary of the Southern Motor Carriers Rate Conference, Inc.; Joel W. Reed, a member of the cost and statistical department of the Southern Motor Carriers Rate Conference, Inc.; John V. Luckadoo, Director of Traffic of Thurston Motor Lines, Inc.; A. J. Fortune, Overnite Transportation Company; E. W. Roughton, Comptroller of Pilot Freight Carriers, Inc.; Vallon L. Burris, President of Burris Express, Inc.; Carl M. Leslie, Vice-President - Traffic and Claims, Burris Express, Inc.; Loy J. Foster, Traffic Manager of Fredrickson Motor Express Corporation; W. D. Snavely, Vice President and Traffic Manager of Standard Trucking Company; and R. E. Fitzgerald, Vice President - Traffic of Estes Express Lines.

The protestants presented the testimony and exhibits of the following witnesses: Marion L. Hall, transportation cost consultant and a partner in G. W. Fauth & Associates; Pierce L. Herring, Jr.; Dan Hedgepath, Traffic Manager of Deering Milliken, Inc.

The Commission Staff presented the testimony and exhibits of Mr. James Turner, Staff Accountant, and Mr. James L. Rose, Rate Specialist.

Based upon the record in this proceeding and the testimony and exhibits introduced at the hearing, the Commission makes the following

## FINDINGS OF FACT

(1) The motor carriers of general commodities, through their agents, the North Carolina Motor Carriers Association, Inc., the Motor Carriers Traffic Association, Inc. and the Southern Motor Carriers Rate Conference, have petitioned the Commission for the following increases in rates and charges on North Carolina intrastate shipments of general commodities:

| FOR SHIPMENTS WEIGHING | PERCENT INCREASE |
|---|---|
| LTL or AQ rates applying on shipments weighing less than 2,000 lbs. | 15% |
| LTL or AQ rates applying on shipments weighing 2,000 lbs., or more but less than 5,000 lbs. | 10% |
| LTL or AQ rates applying on shipments weighing 5,000 lbs. or more | 5% |
| Volume or Truckload rates | 3% (See NOTE A) |

NOTE A--Minimum increase 1 cent per cwt.

ACCESSORIAL CHARGES AND ACCESSORIAL RATES on North Carolina Intrastate Traffic:

INCREASE all accessorial charges and accessorial rates by 15%

REVISE the Flat Minimum Charge of 550 cents presently published to be as follows:

| RATE BASIS NOS. | MINIMUM CHARGE (In Cents) |
|---|---|
| 1 to 100 | 650 |
| 101 to 200 | 700 |
| 201 to 300 | 750 |
| 301 and over | 800 |

(2) The sixteen (16) motor common carriers participating in this docket transport more than 87.5% of the intrastate general commodities traffic in North Carolina. These carriers include the following eight (8) carriers, who are hereinafter referred to as the participating carriers or the cost study carriers:

Burris Express, Inc.
Estes Express Lines
Fredrickson Motor Express
Old Dominion Freight Lines
Overnite Transportation Company
Pilot Freight Carriers
Standard Trucking Company
Thurston Motor Lines

(3) During the first six (6) months of 1974, the North Carolina intrastate operating ratio of the participating carriers in this docket was in excess of 100%. An operating ratio in excess of 100% means that operating expenses exceed operating revenues.

(4) The participating carriers have been faced with increased costs in almost every sphere of their operations in North Carolina intrastate traffic.

(5) An operating ratio in excess of 100% on the intrastate traffic of the participating carriers is unfair and unjust to these carriers.

(6) The participating carriers, through their agents, are continuously engaged in a traffic study whereby the intrastate revenues and operating costs of these carriers are determined and compared.

(7) The cost-revenue comparisons of the participating carriers are made possible through the use of the continuing traffic study, together with data from the Annual Reports of each of the carriers, which reports are on file with the Commission. Such data is used by the participating carriers to develop service costs. Operating expenses as reflected in the carriers' annual reports are allocated and assigned by a computer program to four (4) basic service areas: line-haul, pick-up and delivery, platform handling, billing and collecting. These allocations and assignments are based on the SMCRC computerization of the cost-allocation formula; this formula was developed by the Interstate Commerce Commission in Highway Form B.

(8) The computer system employed by the participating carriers in this proceeding contains approximately forty (40) separate programs, written in fortran language, for application on IBM 370-115 equipment. Each of the forty (40) programs covers on the average ten (10) pages in printed form, or about 400 pages of computer printouts. The system first prepares, as input to the actual costing program, Highway Form B expense apportionment. Next, the computer system utilizes the performance data from the Highway Form A and from the traffic study to develop units of service and the application of carried costs. Using the equipment described above, and beginning with the results of Highway Form B assignment of expenses, the computer system of the participating carriers uses about 30 minutes of computer time for each 1,000 records costed or approximately 9 hours for computing the 1973 continuing traffic study data of the 8 study carriers.

(9) In the instant proceeding, the Commission Staff was unable to independently verify the cost allocations and computations presented by the respondents' witness Steed in support of the proposed tariff increases. The Staff did not have the opportunity to examine the SMCRC actual computer cost program to independently verify to the Staff's own satisfaction that the program did in fact adequately and correctly allocate carrier operating expenses to the North Carolina intrastate traffic or that the service unit costs were the most realistic available.

CONCLUSIONS

The motor carriers of general commodities traffic in North Carolina intrastate commerce are seeking increases in their rates and charges. The evidence and exhibits introduced by the respondent motor carriers show that they have been faced with increased costs of operations since the carriers' last rate case in November 1973. During the first six months of 1974, the intrastate operating ratio for the participating carriers was in excess of 100%. The Commission finds and concludes that this operating ratio is unfair and unjust to the participating carriers. Consequently, the Commission finds and concludes that the rates and charges set forth in the aforesaid tariff schedules are just and reasonable; that these tariffs are not a means of creating discrimination, preference or prejudice; that the tariffs are otherwise lawful; that the Order of Suspension and Investigation, as amended, should be withdrawn and cancelled; and that the aforesaid tariffs be allowed to become effective after appropriate publication upon one (1) day's notice.

The evidence of the Commission's Staff points out the difficulties that the Staff experienced in verifying and analyzing the data presented by the participating carriers in support of the proposed increases. Mr. Turner testified that the Staff was unable to independently verify the cost allocations and computations presented by Mr. Steed. In response to the question, "...in what manner can the Staff adequately verify cost allocations to North Carolina intrastate traffic as presented by the SMCRC in justification of tariff rate increase proposals?", Mr. Turner stated:

> "To the best of my knowledge, until such time as we are furnished an actual copy of the computer cost program utilized by the SMCRC and allowed the time and means by which to independently analyze the program and test its cost allocations and computations, the Commission Staff will not be in a position to verify the reasonableness of the carrier operating expenses being applied to North Carolina intrastate general commodity traffic by the SMCRC computer operations."

Although Mr. Steed testified in rebuttal that the Staff could perform manual calculations following the same steps the computer takes, Mr. Steed's testimony, both direct and on cross-examination, disclosed that certain service unit expenses are generated and determined within the computer program itself.

The Commission is of the opinion that, in future rate proceedings, the Commission Staff should have available to it all data necessary to carry out timely and independent verifications of cost allocations and computations presented by the participating carriers. The ability of the Commission to perform its statutory duty in setting just and reasonable rates is based squarely upon the ability of the

Commission Staff to make independent verification of the data presented by the carriers in support of their rate increases.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Commission's Order of Suspension and Investigation in this proceeding be, and the same hereby is, vacated and set aside, and that the proposed tariff schedules are hereby approved and allowed to become effective after appropriate publication, upon one (1) day's notice.

(2) That the interim rate relief authorized in decretal paragraph 2 of the Commission's Order of May 24, 1974, be cancelled by the filing of the appropriate tariff schedules authorized in ordering paragraph (1) of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 185

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Motor Common Carriers - Suspension and Investigation of Proposed Reduction in Certain Rates and Charges Applicable on Shipments of Residual Fuel Oil, via United Tank Lines, Inc., Scheduled to Become Effective July 6, 1974 | ) ) ) ) ) | RECOMMENDED ORDER ALLOWING MOTION TO DISMISS AND DENYING RATE REDUCTION |

HEARD IN: The Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, October 9, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Respondent:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Box 1406
Raleigh, North Carolina 27602
Appearing for: United Tank Lines, Inc.

For the Protestants:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain
P. O. Box 2246
Raleigh, North Carolina 27602
Appearing for: O'Boyle Tank Lines, Inc.
Kenan Transport Company
Eagle Transport Corp.
A. C. Widenhouse, Inc.
Eastern Oil Transport, Inc.
Quality Oil Transport

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: This matter arose upon the filing with this Commission by the North Carolina Motor Carriers Association, Inc., Agent for and on behalf of United Tank Lines, Incorporated, of a tariff schedule proposing a reduction in certain rates and charges applicable on North Carolina intrastate shipments of residual oil between Wilmington and Roaring River, North Carolina, and Wilmington and Winston-Salem, North Carolina, via United Tank Lines, Incorporated scheduled to become effective July 6, 1974, and designated as follows:

North Carolina Motor Carriers Association, Inc., Agent, Local Motor Freight Tariff No. 5-M, N.C.U.C. No. 95 Supplement No. 19, thereto, Section 4 (in part) thereof.

Timely protests were filed in this matter by J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, Raleigh, North Carolina, for and on behalf of O'Boyle Tank Lines, Incorporated, Washington, D. C.; Kenan Transport Company, Durham, North Carolina; Eagle Transport Corporation, Rocky Mount, North Carolina; A. C. Widenhouse, Inc., Concord, North Carolina; Eastern Oil Transport, Inc., Wilmington, North Carolina; and Quality Oil Transport, Winston-Salem, North Carolina. By Order dated July 3, 1974, the Commission, among other things, suspended the proposed rate reduction, ordered an investigation into the lawfulness of the tariff schedule, allowed the protest of the aforementioned Protestants and set this matter for hearing in the Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, October 9, 1974, at 10:00 a.m. At the time of hearing, all parties were present and represented by counsel.

Applicants offered the testimony of Mr. W. N. Mitchell, Vice President of United Tank Lines, Incorporated, who offered testimony and exhibits regarding ownership of United Tank Lines, Incorporated, the economic feasibility of said movements with reduced rates and regarding projections as to the effect of the traffic to the two areas in question under the operations of United Tank Lines, Incorporated. Upon cross examination, Mr. Mitchell testified that he had not prepared the exhibits attached to his prefiled testimony, that he was not familiar with the components which had made up the categories within his exhibits and that he had not brought his working papers with which he had derived his projected expenses and revenues.

The Applicant further offered the testimony of Don Roarty, Traffic Manager of Abitibi Corporation, who testified regarding the needs of his company for reduced rates and such service as United Tank Lines, Incorporated, would offer.

Mr. James A. Simpson, Regional Traffic Operations Specialist, testified on behalf of the Applicant and Intervenor, Exxon Corporation, stating that he thought the reduced rates were necessary and that certain corporations might have to go to private carriage if said rate reductions were not allowed.

At the close of Respondent's evidence, Attorney for the Protestants tendered a Motion to Dismiss on the grounds that Applicant had not carried a statutory burden of proof to show by cost justification that the proposed rates were just and reasonable.

Based on testimony given and evidence adduced, the Hearing Commissioner makes the following

## FINDINGS OF FACT

1. That United Tank Lines, Inc., holds authority as an intrastate carrier in North Carolina indicated in Certificate No. C-253 and is subject to regulation by this Commission and is properly before the Commission with respect to the proposed decreases in its rates and charges.

2. That Respondent proposes to file tariff schedule reducing certain rates and charges applicable on North Carolina intrastate shipments of residual fuel oil between Wilmington and Roaring River, North Carolina, and Wilmington and Winston-Salem, North Carolina, via United Tank Lines, Incorporated.

3. That proper formula and methods were not utilized in order to make separations of expenses and revenues to be allocated to said North Carolina intrastate shipments.

4. That the Respondent presented no competent evidence regarding his operating ratios for said operations.

5. That the Respondent presented no competent evidence as to the expected revenues to be derived from said operations under the proposed tariff filings.

6. That the Respondent gave no evidence regarding the justness and reasonableness of the proposed rates and what effect these proposed rates would have on the movement of the aforementioned commodities for the general public.

7. That the Respondent offered no evidence regarding the effect of said rates upon the movement of traffic by the comparable carriers.

8. That the Respondent did not offer competent evidence regarding the feasibility of these operations under the proposed rates to generate sufficient revenues to enable United Tank Lines, Incorporated, to provide such service.

9. Respondent has failed to carry the burden of proof as required by G. S. 62-75 to show that the proposed rates are just and reasonable.

Based on the Findings of Fact, this Commissioner makes the following

CONCLUSIONS

G. S. 62-75 states:

"In all proceedings instituted by the Commission for the purpose of investigating any rate, service, classification, rule, regulation or practice, the burden of proof shall be upon the public utility whose rate, service, classification, rule, regulation or practice is under investigation to show that the same is just and reasonable. . . . "

G. S. 62-146(g) states:

"(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

"(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of property in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical, and efficient management to provide such service."

This Commissioner concludes that Applicant in the above captioned case has failed to show by substantial, material, and competent evidence that the proposed rates are just and reasonable. This Commissioner cites that the Respondent herein failed to show proper operating ratios or any method for allocating expenses to the operations herein proposed.

This Commissioner further concludes that the Respondent has failed to carry the burden of proof to show that said reduction in rates is in the public interest or the effect of said rates if they are allowed would be upon movement of traffic by the carriers for which said rates are prescribed. United Tank Lines did not provide any competent evidence regarding the cost to its company for providing the services proposed to be rendered at said reduced rates nor to the amount of revenues to be derived therefrom.

The Commissioner finally concludes that the Respondent herein failed to carry the statutory burden of proof as required by G. S. 62-75 to show that the proposed rates are just and reasonable.

IT IS, THEREFORE, ORDERED

1. That Motion to Dismiss application of United Tank Lines, Incorporated, for reduction of certain rates and charges applicable on North Carolina intrastate shipments of residual fuel oil between Wilmington and Roaring River, North Carolina, and Wilmington and Winston-Salem, North Carolina, by United Tank Lines, Incorporated, be, and the same hereby is, allowed.

2. That the proposed reduction in certain rates and charges applicable on North Carolina intrastate shipments on residual fuel oil between Wilmington and Roaring River, North Carolina, and Wilmington and Winston-Salem, North Carolina, via United Tank Lines, Incorporated, scheduled to become effective July 6, 1974, and designated as follows:

North Carolina Motor Carriers Association,

Inc., Agent, Local Motor Freight Tariff No. 5-M, N.C.U.C. No. 95 Supplement No. 19, thereto, Section 4 (in part) thereof,

be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NOS. R-66, Sub 65 & R-66, Sub 67

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of<br>Rail Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges, Scheduled to Become Effective October 31, 1973<br><br>and<br><br>Rail Common Carriers - Investigation of Proposed Increase in Rates and Charges Scheduled to Become Effective February 28, 1974 | ) | ORDER GRANTING RATE INCREASE |

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Thursday, February 21, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane

APPEARANCES:

For the Respondents:

John N. Simms
Norfolk Southern Railway Company
P. O. Box 2210
Raleigh, North Carolina 27602
For: Railroad Respondents generally, and Norfolk Southern Railway Company

Odes L. Stroupe
Joyner & Howison
Attorneys at Law
P. O. Box 109
Raleigh, North Carolina
For: Southern Railway Company

James L. Howe, III
Southern Railway Company
P. O. Box 1808
Washington, D. C. 20013

Albert B. Russ, Jr.
Seaboard Coast Line Railroad Company
3600 West Broad Street
Richmond, Virginia
For: Railroad Respondents in general, and Seaboard Coast Line Railroad Company, in particular

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

No Protestants.

BY THE COMMISSION: This matter arose upon the filing with this Commission by Southern Freight Tariff Bureau, Atlanta, Georgia, for and on behalf of rail carriers of North Carolina, tariff schedules proposing an increase in rates and charges applicable to intrastate rail shipments designated as SFTB Tariff of Increased Rates and Charges X-295-A, Supplement No. S-9, thereto in full, scheduled to become effective October 31, 1973, and SFTB Tariff of Surcharges Account Increases in Fuel Costs X-301, Supplement No. S-4, thereto in full, scheduled to become effective February 28, 1974. The Commission, being of the opinion that the proposed increases in rates and charges was a matter affecting the public interest and that the involved tariffs should be suspended and investigated and the matter assigned for hearing, by Order dated October 19, 1973, and February 5, 1974, among other things suspended the tariff schedule, instituted an investigation, declared the same to be a general rate case and consolidated the two dockets for hearing. Public hearing was had in the Hearing Room of the North Carolina Utilities Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, February 21, 1974, at 10:00 a.m.

At this time, Respondents offered testimony of Mr. R. D. Briggs, Manager of Commerce, Marketing and Planning Division, Southern Railway System, Washington, D. C. Mr. Briggs testified that the nation's rail carriers are faced with a need to adjust their prices in order to meet rising costs. Mr. Briggs pointed out that the railroads had to spend money for capital investments to provide the plant and equipment needed for transportation and this is why the carriers are seeking a rate increase. Mr. Briggs offered exhibits to corroborate his testimony.

Mr. E. W. Hatch, Assistant Vice-President - Rates, Norfolk Southern Railway Company, testified that twenty-two percent of the gross revenue of Norfolk Southern is derived from North Carolina intrastate traffic. He further stated that the increases sought for intrastate traffic in North Carolina are the same as authorized by the Interstate Commerce Commission for interstate traffic in its Order of

August 7, 1973, and that he thinks that the increases sought in this proceeding would divert little if any traffic to any other modes of transportation.

Mr. George M. Gallimore, Assistant General Freight Agent in the Commerce Section of the Freight Traffic Department, Seaboard Coast Line Railroad Company, testified that his Company's request for an increase in rates was predicated upon increases in the costs of operation, intrastate as well as interstate, which his Company is unable to reasonably afford and to which intrastate as well as interstate shippers should contribute. He stated that the rate increase sought was predicated upon the needs of their overall system.

Mr. Hartley W. Hird, Jr., Assistant Manager of the Research Department of Southern Freight Association, testified that the exhibits he presented show the adverse impact of the inflationary forces of the economy during 1972 and up to April 1, 1973, upon the North Carolina railroads. He stated that the cost escalations have affected the railroad's financial situation and ability to continue to provide modern facilities and services required for North Carolina and the nation's commerce unless additional revenues are immediately forthcoming. His exhibits showed and developed statistical and financial data relating to the revenue needs of the principal Class I railroads operating in North Carolina. Mr. Hird further stated that the energy crisis was affecting all of the railroads because the principal railroads operating within the State of North Carolina have actually experienced an increase in the cost of diesel fuel per gallon of fifty percent.

Mr. R. A. Robb, Commerce Statistician, Southern Railway System, offered testimony and exhibits tending to show that the railroads were conducting a deficit operation in intrastate traffic in North Carolina. Mr. Robb stated that in his opinion net investment in North Carolina was equivalent to and in no event greater than the fair value of said property as arrived at by utilizing the method developed by an accounting committee formed in 1956 composed of the representatives of the then four principal North Carolina Class I railroads which were used to determine the approximate intrastate results from North Carolina operations. With this testimony, Respondents closed their case.

Staff offered the testimony of J. Phillip Lee, Rate Specialist and Special Investigator in the Traffic-Transportation Division of the North Carolina Utilities Commission, who offered testimony and exhibits tending to show the operating revenues, expenses, operating ratios within the State of North Carolina for the years of 1970, 1971 and 1972, as reflected in the Annual Reports filed with the North Carolina Utilities Commission by the carriers involved in this rate proceeding. At this time, the

Commission closed the record. Filing of briefs was waived by all parties of record.

Upon consideration of the evidence adduced in this proceeding and the official record therein, the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedules under suspension in this proceeding are subject to regulation by this Commission and are in need of additional revenues which should be allowed to make an increase in their rates and charges.

2. That inflation in many phases of intrastate common carrier operation has adversely affected the operating ratios of the Respondents.

3. That the increase in rates and charges and the changes in certain rules herein proposed, as amended by Supplements Nos. S-9 and S-4, are just and reasonable.

4. When viewed in light of the fact that the increases in rates herein requested were negotiated by the carriers with their customers to the extent that no protest was presented, we find that the evidence when viewed as a whole does tend to approximate the rateable proportion of their movements in intrastate traffic which under the circumstances in this case are of sufficient probative force to make the findings herein as required by statute.

Based upon the record in this case and the above enumerated Findings of Fact, the Commission makes the following

CONCLUSIONS

1. G. S. 62-146(h) requires this Commission to give due consideration among other factors to the effect of rates by movement of traffic by the carrier or carriers for which rates are prescribed, to the need and the public interest of adequate and efficient transportation service by such carriers at a lower cost consistent with the functioning of such service and to the need of revenues sufficient to enable such carriers under honest, economical and efficient management to provide such services.

2. We conclude that the Respondents have shown need for the additional revenue that the proposed increases will produce; that the proposed increases are not excessive; and that the suspended tariff schedules should be allowed to become effective.

3. We do not conclude that the formula and method used in making the separations in this case reflect to a certainty accurate results and we advise and enjoin the

Respondents herein to continue their efforts for improvement in this area; however, we do conclude that the evidence relates volume and mile to operating expenses and these to the revenue to an extent sufficient when considered in the light of the circumstances in this case to demonstrate that intrastate operations does not produce sufficient revenue to provide a fair operating ratio for such operations.

4. We further conclude that the rail common carriers of North Carolina should undertake an active study program to develop and determine a more accurate and equitable method or methods of separation to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute and we further conclude that a failure to develop improved, more accurate and equitable separation methods will of necessity result in negative findings in the future and we advise and enjoin the carriers to develop and present several improved methods of separations in future cases upon which this Commission may make more enlightened findings and determinations.

5. We conclude that it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to utility so that the utility will have sufficient earnings to enable it to give reasonable service.

6. The Commission further concludes that the rail common carriers who are the Respondents herein have carried the burden of proof showing that the proposals herein are just and reasonable.

IT IS, THEREFORE, ORDERED

1. That the Orders of Suspension in this docket dated October 19, 1973, and February 5, 1974, and the same are hereby vacated and set aside for the purpose of allowing the tariffs schedules as amended to become effective.

2. That publication authorized hereby may be made on one day's notice to the Commission and to the public but in all other respects shall comply with the rules and regulations of the Commission governing the construction, filing and posting of tariff schedules.

3. That upon publication hereby authorized having been made the investigation in this matter

be discontinued and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 66

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Rail Common Carriers Suspension and Investigation of Proposed Increase in Minimum Charges per Carload Shipment, Scheduled to Become Effective December 31, 1973. | ) | ORDER DENYING RATE INCREASE |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, April 30, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners Hugh A. Wells, Ben E. Roney, Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Respondents:

John M. Simms
Southern Railway Company
Box 1808
Washington, D. C. 20013
For: Railroad Respondents, generally

Charles M. Rosenberger
Seaboard Coast Line Railroad Company
3600 W. Broad Street
Richmond, Virginia 23230
For: North Carolina Railroads and Seaboard Coast Line Railroad Company

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building

Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing with this Commission on November 16, 1973, by Uniform Freight Classification Committee, Agent, Chicago, Illinois, for and on behalf of rail carriers in North Carolina, of a tariff schedule proposing an increase in minimum charges per carload shipment from $51.53 to $77.28, subject to tariffs of increased rates and charges X-281-B, and all subsequent increases to the extent authorized on North Carolina intrastate rail shipments, scheduled to become effective December 31, 1973, and designated as Uniform Freight Classification 11, Supplement 16, Section 2 of Rule 13 thereto. The Commission being of the opinion that the proposed increase in charges is a matter affecting the public interest and that the same should be suspended and assigned for hearing, by Order dated December 19, 1973, among other things suspended the proposed increase, instituted an investigation into and concerning the lawfulness of the tariff schedules, directed that a copy of said Order be served upon J. D. Sherson, Chairman and Tariff Publishing Officer, Uniform Classification Committee, made those common carriers by rail in the State of North Carolina participating or proposing to participate in the involved tariffs, Respondents and assigned the same for hearing in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on April 30, 1974, at 10:00 a.m.

On March 1, 1974, motion was filed with the Commission by Charles M. Rosenberger requesting he be admitted to practice for the sole purpose of appearing for Seaboard Coast Line Railroad in this proceeding. In Order dated April 22, 1974, his motion was granted and his appearance allowed.

Applicants offered the testimony of Mr. R. D. Briggs, Manager, Commerce Marketing and Planning Division, Southern Railway System, Washington, D. C., who testified in regard to the need and impact of the proposed increase on the Southern Railway System and its customers. Mr. George M. Gallamore, Jr., Assistant General Freight Agent in the Commerce Section of the Freight Traffic Department, Seaboard Coast Line Railroad Company, testified that he did not think that the present carload minimum charges were compensatory and that proposed increases would make carload minimum shipments more compensatory.

Mr. Hartley W. Hird, Jr., Assistant Traffic Manager of the Research Department, adopted the prepared testimony of Mr. Francis M. Spuhler, Senior Cost Analyst of the Southern Freight Association, who presented statistical evidence and analysis of current costs as compared with revenues for minimum carload shipments. Mr. John C. Klick, Southern Railway Company Cost Analyst, also offered cost and revenue studies.

Mr. Kenneth C. Ward, Assistant to Comptroller, Seaboard Coast Line Railroad Company, developed studies regarding

various accounting costs and revenue data in regard to minimum carload shipments for Seaboard Coast Line Railroad Company.

The Staff tendered J. Philip Lee, Rate Specialist and Special Investigator in the Traffic-Transportation Division of the North Carolina Utilities Commission who offered testimony and exhibits tending to show what the proposed increases would be and their impact on certain minimum charge carload shipments as reflected by tariffs as filed with the North Carolina Utilities Commission by the carriers involved in this rate proceeding. With the completion of Mr. Lee's testimony, the Commission closed the record and filing of brief was waived by all parties of record.

Upon consideration of the evidence adduced in this proceeding and official record therein, the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedule under suspension in this proceeding are subject to regulation by this Commission and are properly before the Commission with respect to such rates and charges through the representation of the Southern Freight Tariff Bureau.

2. That proper formula and methods were not utilized in order to make separations of expenses and revenues to be allocated to North Carolina minimum carload shipments.

3. That the Respondents herein have not improved the quality of their evidence relating to operating expenses.

4. That the rail common carriers of North Carolina have apparently not undertaken a study program to develop and determine a more accurate and equitable method or methods of separation to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute.

5. That it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility.

6. That the Commission finds that the evidence presented by the rail common carriers in this proceeding is not of sufficient probative force to support or justify approval of any increase in rates and charges in this case.

7. That rail carriers in this proceeding have failed to carry the statutory burden of proof to show from material and substantial evidence that their present rates and charges on intrastate minimum carload shipments are not sufficient to permit them to continue to offer adequate and

efficient transportation service to the public under said tariff.

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

CONCLUSIONS

G. S. 62-133 provides that in any proceeding to determine the justness and reasonableness of any rates for common carrier, the rates shall be fixed and approved subject to the provisions of G. S. 62-133 and Rule R1-17 on the basis of the operating ratios as well as other requirements for such carriers, operating ratios being the ratio of the operating expenses to the operating revenues. Necessarily, the carriers are required in the presentation of their case under G. S. 62-134(c) and G. S. 62-75 to carry and sustain the burden of proof in showing the justness and reasonableness of proposed rates and charges by showing their intrastate operating ratios. Under G. S. 62-132 the existing rates and charges are deemed to be just and reasonable until the contrary is shown by the carriers by material and substantial evidence. In Docket No. R-66, Sub 65, and R-66, Sub 67, page 6, Conclusion No. 3, dated April 1, 1974, the Commission admonished the carriers in that proceeding to improve their presentation in their cases, stating:

"We do not conclude that the formula and method used in making the separation in this case reflect to a certainty accurate results, and we advise and enjoin the Respondents herein to continue their efforts for improvement in this area."

The Commission further advised the carriers of the following:

"4. We further conclude that the rail common carriers of North Carolina should undertake an active study program to develop and determine a more accurate and equitable method or methods of separation to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute, and we further conclude that a failure to develop improved, more accurate and equitable separation methods will of necessity result in negative findings in the future and we advise and enjoin the carriers to develop and present several improved methods of separation in future cases upon which this Commission may make more enlightened findings and determination."

In short, the Commission has heretofore admonished the carriers to improve the presentation of their cases with the recognition that they have the statutory burden of proving the justness and reasonableness of any increase in rates and charges. The presentation of evidence in this case falls short of improved presentation which the Commission regards

is required by law before increases in rates and charges can be authorized. To simply allege that the proposed increases in this proceeding is a small increase and that no shippers have protested heretofore is insufficient to constitute a basis for approval of the increases in the rates and charges. The carriers have not shown herein that their proposed increases are in fact just and reasonable, that there is a need for such increases, such need has not been demonstrated on this record. If a revenue need exists it should be met in the interest of an adequate and efficient transportation service to the public; however, without proper evidence upon which this Commission can justify increased rates, it must deem that prior rates are just and reasonable. Accordingly, we have fully considered all of this record and conclude that such evidence is insufficient and unconvincing to demonstrate a need with respect to carriers participating in Uniform Freight Classification 11, Supplement 16, Section 2 of Rule 13, and we further conclude in that regard that carriers have failed to sustain and carry their statutory burden of proof to show any need for increases under the aforementioned tariff.

IT IS, THEREFORE, ORDERED:

1. That the increases proposed by the Respondents, rail common carriers, be, and the same hereby are, denied for the reason that the carriers have failed to sustain the burden of proof under G. S. 62-134(c) and G. S. 62-75 to show that the proposed rates and charges are just and reasonable as required by law.

2. That Respondent Rail Common Carriers be, and the same hereby are, required to issue appropriate new tariff schedules cancelling the tariff filings under suspension in this proceeding.

3. That the Order of Suspension and Investigation issued in this docket be, and the same is hereby, vacated and set aside.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rail Common Carriers - Suspension and )
Investigation of Proposed Increase in ) ORDER ALLOWING
Rates and Charges, Scheduled to Become ) RATE INCREASE
Effective April 9, 1974 )

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, June 19, 1974, at 10:30 a.m.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Ben E. Roney and George T. Clark, Jr.

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr.
Joyner & Howison
Attorneys at Law
P. O. Box 109
Raleigh, North Carolina 27602
Appearing for: Southern Railway Company and Seaboard Coast Line Railroad Company

James L. Howe, III
Southern Railway Company
P. O. Box 1808
Washington, D. C. 20013
Appearing for: North Carolina Railroads and Southern Railway Company

Charles H. Rosenberger
Seaboard Coast Line Railroad Company
3600 W. Broad Street
Richmond, Virginia
Appearing for: North Carolina Railroads and Seaboard Coast Line Railroad Company

For the Intervenor:

Jerry J. Rutledge
North Carolina Department of Justice
One West Morgan Street
Raleigh, North Carolina 27602
Appearing for: Using and Consuming Public

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing with this Commission by Southern Freight Tariff Bureau (SFTB), Suite 220, 151 Ellis Street, N. E., Atlanta, Georgia 30303, for and on behalf of rail carriers in North Carolina, of a tariff schedule proposing an increase (approximately 4%) in rates and charges applicable on North Carolina intrastate rail shipments as scheduled to become effective April 9, 1974, and designated as follows:

SFTB Tariff of Increased Rates and Charges
X-303-A, Supplement No. S-2, thereto, in full.

The Commission feeling this to be a matter affecting the public interest, by Order dated April 8, 1974, suspended the proposed increased rates, declared this matter to be a general rate case under G. S. 62-137, ordered the Staff to institute an investigation into and concerning the lawfulness of the tariff schedules filed and set this matter for hearing in the Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, June 19, 1974, at 9:30 a.m. On May 8, 1974, Notice of Intervention was filed by Robert Morgan, Attorney General of the State of North Carolina. By Order dated June 3, 1974, said Intervention was allowed.

At the time of hearing Motion was made by Charles M. Rosenberger, Counsel for Seaboard Coast Line Railroad, and James L. Howe, III, Counsel for Southern Railway Company, that they be admitted to practice before the North Carolina Utilities Commission for the sole purpose of appearing for their respective railroad companies in the above-captioned matter. These motions were presented to the Commission by Odes L. Stroupe of the firm of Joyner & Howison, Raleigh, North Carolina, who is a resident of North Carolina and duly admitted to practice in the general courts of justice in North Carolina. Said motions were allowed.

The Applicants at this time offered testimony of Mr. R. D. Briggs, Manager of Commerce, Marketing and Planning Division, Southern Railway System, Washington, D. C. 20013,

who testified that the railroads need money to purchase, maintain, and operate the systems so as to serve the public. He further stated that railroads are no different from any other economic enterprise and as their costs go up they must either raise their prices or in the alternative face a profit erosion that may ultimately lead to the failure of the railroad. Mr. Briggs offered testimony and exhibits to show that operating expenses including raw materials, fuel and wages have continued to rise for the Southern Railway System without a similar corresponding rise in revenues.

Mr. R. A. Robb, Commerce Statistician in the Accounting Department, Office of the Comptroller, Southern Railway System, was presented and offered testimony that Southern Railway System was losing money on North Carolina intrastate operations. He further stated that his methods of separation are concededly not productive of a result of precise mathematical exactitude but would nevertheless give the Commission the best approximation of what the pure North Carolina intrastate operating results of the railroads would be. In regard to his separations he stated that each year the freight and passenger revenues are separated into interstate and intrastate. After separating revenues, the next step is to make a separation between interstate and intrastate North Carolina operating expenses as reported in Annual Report form R-1 to the North Carolina Utilities Commission by utilizing the Luckett formula which has been utilized by the railroads before this Commission in numerous other proceedings. The total operating expenses for the State are reported to this Commission separated between freight and passengers. Mr. Robb offered further testimony and exhibits detailing these separations.

Francis M. Spuhler, Senior Cost Analyst, Research Department, Southern Freight Association, Washington, D. C., offered accounting testimony and evidence to support the request of increased freight rates and charges on intrastate North Carolina freight traffic. He stated that the adverse impact of the inflationary forces on the economy during 1973 and into January 1974 have once again forced the North Carolina railroads to seek prompt revenue help in order to cope with severe escalations of their costs. He stated that these cost escalations could affect the financial conditions of the railroads and their ability to continue to provide modern facilities and services required for North Carolina's and the nation's commerce if additional revenue is not immediately forthcoming. He offered testimony and exhibits reflecting a listing of all Class I and Class II railroads, switching and terminal companies operating within the State and the total miles of line operated by these railroads and the proportion and percentage of such mileage operated in this State, statistical and financial data relating to the needs of the principal Class I railroads operating in North Carolina and further exhibits which tended to show the railroads rate of return on their net investment used and useful for serving the public.

C. B. Corey, General Freight Agent - Commerce, Seaboard Coast Line Railroad Company, testified that Seaboard Coast Line Railroad needed immediate revenues in order to continue to provide the quality of service that it is now providing to the residents and citizens of North Carolina. Mr. Corey further testified that he did not think that the increased rates and charges caused a diversion of traffic to the extent that the proposed increases would be self-defeating. Mr. Corey offered further testimony and exhibits to corroborate his position.

North Carolina Utilities Commission Staff offered the testimony of J. Philip Lee, Rate Specialist and Special Investigator in the Traffic Division of the North Carolina Utilities Commission. He offered testimony and exhibits which listed the rail carriers operating in the State of North Carolina and showed the operating revenues, expenses and operating ratios within the State of North Carolina for the years of 1970, 1971, 1972 and 1973 as reflected in the Annual Reports filed with this Commission by the carriers named.

Based on the testimony given, the exhibits presented and the evidence adduced the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedule under suspension in this proceeding are subject to regulation by this Commission and are properly before the Commission with respect to such rates and charges through the representation of the Southern Freight Tariff Bureau.

2. That it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility.

3. That the rail common carriers in North Carolina have apparently undertaken a study program to develop and determine more accurate and equitable methods of separations to improve the probative force and effect of the evidence concerning derivation of intrastate operating revenues and expenses as required by statute; however, this Commission admonishes them to continue this affirmative program in order to better improve the quality and probative force and effect of their evidence.

4. That the approximate, ratable proportion of the railroad property used and useful devoted to intrastate traffic is $45,346,000.

5. That present rates and charges are not adequate to insure the railroads of a proper rate of return on their North Carolina investment.

6. That the proposed increases in rates and charges will compensate the railroads for their increased expenses and allow them a better rate of return on their North Carolina investment.

7. That intrastate rates and charges in effect by the railroad companies in North Carolina in June 1974 were not sufficient to produce revenue adequate to provide a fair, reasonable and just rate of return on property committed to intrastate use used and useful in producing revenue.

8. That the increase in intrastate rates and charges for the railroad as set out in their application dated March 7, 1974, in this matter is necessary at this time to afford the railroads a fair return on their property used and useful in connection with their intrastate operations in North Carolina.

9. That the rail carriers in this proceeding have carried the statutory burden of proof to show from material and substantial evidence that their present rates and charges on intrastate freight rates was not sufficient to permit them to continue to offer adequate and efficient transportation service to the public under said tariff.

10. That inflation in many phases of intrastate common carrier operation has adversely affected the operating ratios of the Respondents.

11. That the common carriers participating in the tariff schedules under suspension in this proceeding are subject to regulation of this Commission and are in need of additional revenues which should be allowed to make an increase in their rates and charges.

## CONCLUSIONS

1. G. S. 62-146(h) requires that this Commission give due consideration to, among other factors, the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need and the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical and efficient management to provide such service.

2. We conclude that Respondents have shown need for the additional revenues that the proposed increases will produce, that the proposed increases are not excessive, and that the suspended tariff schedules should be allowed to become effective.

3. We do not conclude that the formula and method used in making the separations in this case reflect to a certainty accurate results and we advise and enjoin the Respondents herein to continue their efforts for improvement

in this area; however, we do conclude that the evidence relates volume and mile to operating expense and these to the revenues to an extent sufficient when considered in the light of the circumstances in this case to demonstrate that intrastate operations do not produce sufficient revenues to provide a fair operating ratio for such operations.

4. We further conclude that the rail common carriers of North Carolina should continue to undertake an active study program which they have stated before this Commission that they have begun; to develop and determine a more accurate and equitable method or methods of separations in regard to North Carolina intrastate revenues, expenses and investments to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute.

We further conclude that a failure to develop more improved and accurate and equitable separation methods will of necessity result in negative findings in the future and we advise and enjoin the carriers to develop and present several improved methods of separation in future cases upon which this Commission may make more enlightened findings and determination.

5. We conclude that it is the duty of this Commission to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility so that the utility might have sufficient earnings to enable it to give reasonable service.

6. The Commission further concludes that the rail common carriers who are the Respondents herein have carried the burden of proof showing that the proposals herein are just and reasonable.

IT IS, THEREFORE, ORDERED

1. That the Order of Suspension in this docket dated April 8, 1974, be, and the same is hereby, vacated and set aside for the purpose of allowing the tariff schedules as amended to become effective.

2. That publications authorized hereby may be made on one day's notice to the Commission and to the public but in all other respects shall comply with the rules and regulations of the Commission governing construction, filing and posting of tariff schedules.

3. That upon publication hereby authorized having been made, the investigation in this matter be discontinued and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of August, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. H-1, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application of the Housing Authority of the City of Lumberton for a Certificate of Public Convenience and Necessity | ) ) ) ) ) | RECOMMENDED ORDER GRANTING CERTIFICATE |

HEARD IN: The Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, at 9:00 a.m. on November 21, 1974.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

Fred A. Rogers, III
Johnson, Hedgepeth, Biggs & Campbell
304 East 5th Street
Lumberton, North Carolina

For Commission Staff:

Lee W. Movius
Associate Commission Attorney
Ruffin Building
One West Morgan Street
Raleigh, North Carolina

WELLS, HEARING COMMISSIONER: This matter is before the Commission upon application of the Housing Authority of the City of Lumberton, North Carolina, for a Certificate of Public Convenience and Necessity for the establishment, construction, operation and maintenance of 100 dwelling units of low rent public housing for senior citizens.

By Order dated November 4, 1974, the Commission set the application for public hearing on November 21, 1974, and ordered that notice of the hearing be published in a newspaper having general circulation in the area. No protests to the application were filed with the Commission and no one appeared in opposition to the application.

At the hearing, Applicant introduced into evidence its various exhibits and the affidavit of publication of the notice of the hearing. In addition, Applicant offered the testimony of Mr. Gerald Bonner Hill, Secretary of Applicant Housing Authority.

Based upon the evidence adduced at the hearing, the Hearing Commissioner makes the following:

FINDINGS OF FACT

1. That the Housing Authority of the City of Lumberton, North Carolina, is a duly created and existing body corporate pursuant to the Housing Authority Law as set forth in Chapter 157 of the General Statutes of North Carolina.

2. The Housing Authority caused its application to be properly filed with the Commission on November 1, 1974, in which it applied for a Certificate of Public Convenience and Necessity for the establishment of 100 dwelling units of low rent public housing for senior citizens in Lumberton, North Carolina. By Order dated November 4, 1974, the Commission set the time, date and place of hearing on the matter and required that notice be published in a newspaper having general circulation in the Lumberton, North Carolina, area not later than ten (10) days prior to November 18, 1974, the date for filing of protests. Said notice was published in The Robesonian, a newspaper having general circulation in the area, on November 6, 1974.

3. The City Council of Lumberton, by resolution adopted August 8, 1966, determined that there exists in the city a need for low rent housing and approved Applicant Housing Authority's application to the Public Housing Administration for a preliminary loan not to exceed $72,500 for surveys and planning of approximately 600 units of low rent housing. Subsequently, said application was approved, preliminary funds disbursed, and all but 100 units constructed.

4. There exists a need for low rent public housing for senior citizens in the area of the City of Lumberton. The private sector of the residential construction industry in and around the city is not meeting such need, and given the present slump in residential construction, there is little likelihood that such situation will be rectified without public assistance.

5. The Housing Authority has taken all steps required by law to enable it to duly make this application and to put itself in a position to establish and develop 100 units of low-rent public housing for senior citizens.

Based upon the foregoing Findings of Fact, the Hearing Commissioner reaches the following

CONCLUSIONS

The Housing Authority of the City of Lumberton, North Carolina, has met the requirements of applicable law with respect to acquiring a Certificate of Public Convenience and Necessity for the construction, maintenance and operation of 100 units of low-rent public housing for senior citizens and has demonstrated a need for said additional housing in the community.

IT IS, THEREFORE, ORDERED:

That the Housing Authority of the City of Lumberton, North Carolina, be, and hereby is, granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 100 units of low-rent public housing for senior citizens and that this Order shall itself constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This 4th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-177, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of Application by Brookwood Water Corporation, 6302 Raeford Road, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Kelly Hill Subdivision, Cumberland County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, May 21, 1974, at 10:00 A. M.

BEFORE: Commissioners Ben E. Roney (Presiding), Tenney I. Deane, Jr., and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland, and Raper
Attorneys at Law
P. O. Box 1688
Fayetteville, North Carolina 28302

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

RONEY, DEANE, AND CLARK, HEARING COMMISSIONERS: On April 10, 1974, the Applicant, Brookwood Water Corporation, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Kelly Hill Subdivision, Cumberland County, North Carolina, and for approval of rates.

By Order issued on April 26, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. The Applicant's Affidavit of Publication indicated that proper notice was not published in The Fayetteville Observer, Fayetteville, North Carolina, in that the rate schedule proposed and the method for filing protests were not stated. However, there are presently no water customers

on the water system. Commissioner Roney ruled that the notice as given was sufficient.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Walter Moorman appeared at the hearing as a witness for the Applicant and presented testimony in support of the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Brookwood Water Corporation, is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant presently operates water systems in approximately ten (10) other subdivision areas in Cumberland County and holds franchises from the Commission to serve those areas.

3. The Applicant proposes to furnish water utility service in Kelly Hill Subdivision, Cumberland County, North Carolina, and has filed a Schedule of Rates for said service.

4. Kelly Hill Subdivision is a residential subdivision, the first phase of which consists of approximately 4 streets and approximately 28 lots. The subdivision is located off of U. S. Highway 401 on County Road 1711, north of Fayetteville, North Carolina.

5. The Applicant proposes to initially install water mains capable of serving approximately 28 customers in the subdivision. The Applicant proposes to meter the water service. At full development the system could serve more than 100 customers.

6. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the well.

7. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

9. The water system plans are approved by the State Board of Health.

|0. The proposed rates are the same rates as those approved by the Commission for the Applicant's other franchised utility service areas.

||. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

|2. The Applicant lists the total cost of installing the water utility plant for |2| customers as $5|,339.50, based on an unverified estimate contained in the application.

|3. The Applicant has its own personnel available to provide maintenance and repair service to the water system in the subdivision.

Based on the foregoing Findings of Fact, the Hearing Commissioners reach the following:

CONCLUSIONS

There will be a demand and need for water utility service in Kelly Hill Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Kelly Hill Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

|. That the Applicant, Brookwood Water Corporation, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Kelly Hill Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-|38.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual

Report to the Commission can be readily identified from the books and records and can be utilized by the Applicant in the preparation of said Annual Report.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-177, SUB 12
SCHEDULE OF RATES

Brookwood Water Corporation
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Kelly Hill Subdivision
Cumberland County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month - $4.50 minimum
All over 3,000 gallons per month - $ .55 per 1,000 gallons

FLAT RATES: (Mobile Homes and unmetered apartments)

$3.50 per month

CONNECTION CHARGES:

$350.00 payable by developer

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: on billing date.

BILLS PAST DUE: twenty (20) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None.

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Issued in accordance with authority granted by the North Carolina Utilities Commission is Docket No. W-177, SUB 12 on June 17, 1974.

DOCKET NO. W-177, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of Application by Brookwood Water Corporation, 6302 Raeford Road, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Brettonwood Subdivision, Cumberland County, North Carolina, and for Approval of Rates | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Monday, August 5, 1974, at 2:00 P.M.

BEFORE: Hearing Commissioner Tenney I. Deane

APPEARANCES:

For the Applicant:

L. Stacey Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
Box 1688
Fayetteville, North Carolina

For the Commission Staff:

John R. Molm
Associate Commission Attorney

North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

DEANE, HEARING COMMISSIONER: On June 13, 1974, the Applicant, Brookwood Water Corporation, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Brettonwood Subdivision, Cumberland County, North Carolina, and for approval of rates.

By Order issued on June 27, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Brettonwood Subdivision by the Applicant, and was published in the Fayetteville Observer, Fayetteville, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice.

The public hearing was held at the time and place specified in the Commission's Order. Mr. James Harper, President of the Applicant, and Mr. Walter Moorman, the engineer for the Applicant, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Brookwood Water Corporation, is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Brettonwood Subdivision, Cumberland County, North Carolina, and has filed a Schedule of Rates for said service.

3. The Applicant provides water service to approximately fifteen (15) other subdivisions in Cumberland County.

4. Brettonwood Subdivision is a residential subdivision consisting of approximately 10 streets and approximately 120 lots. The subdivision is located on U. S. Highway 401 north of Fayetteville, North Carolina.

5. The Applicant proposes to initially install water mains capable of serving approximately 32 customers in the

subdivision. The Applicant proposes to meter the water service.

6. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

7. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

9. The water system plans are approved by the State Board of Health.

10. The proposed rates are the same rates as those approved by the Commission for the Applicant's other franchised utility service areas.

11. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

12. The Applicant lists investment in water utility plant and for the first 32 lots as approximately $22,000, based on an unverified balance sheet contained in the application.

13. The Applicant has its own personnel available for providing maintenance and repair service to the water system in the subdivision.

14. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Brookwood Water Corporation.

## CONCLUSIONS

There will be a demand and need for water utility service in Brettonwood Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Brettonwood Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average

operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangements for providing maintenance and repair service to the water system in Brettonwood is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Brookwood Water Corporation, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Brettonwood Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of August, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-177, SUB 13
SCHEDULE OF RATES

BROOKWOOD WATER CORPORATION

SUBDIVISION OR SERVICE AREAS

Brettonwood Subdivision, Cumberland County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month - $4.50 minimum
All over 3,000 gallons per month - $ .55 per 1,000 gallons

FLAT RATES:

(Mobile homes and unmetered apartments - $3.50 per month)

CONNECTION CHARGES: $350.00 payable by developer

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f) - $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) - $2.00

BILLS DUE: On Billing Date

BILLS PAST DUE: Twenty (20) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-177, Sub 13, on August 20, 1974.

DOCKET NO. W-481

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of Application by Harmony Heights Company, P. O. Drawer L, Raeford, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Harmony Heights Subdivision, Hoke County, North Carolina for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, December 3, 1974, at 9:30 A. M.

BEFORE: Hearing Examiner, John R. Molm

APPEARANCES:

Mr. Tom Cameron, Owner of Harmony Heights Company appeared in his own behalf.

For the Commission Staff:

Lee Movius
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

MOLM, HEARING EXAMINER: On October 14, 1974, the Applicant, Harmony Heights Company, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Harmony Heights Subdivision, Hoke County, North Carolina, and for approval of rates.

By Order issued on November 5, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Harmony Heights Subdivision by the Applicant, and was published in The News-Journal, Raeford, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Tom Cameron, owner of the Applicant, appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mrs. Marlene Russi, a customer of the water

system appeared as a witness and presented testimony concerning the quality of the water service being provided by the Applicant. Seven (7) other customers were present at the hearing and adopted Mrs. Russi's testimony.

Based on the information contained in the application and in the Commission's files and in the record of this proceeding, the Hearing Examiner now makes the following:

FINDINGS OF FACT

1. The Applicant, Harmony Heights Company, is primarily involved in the development and sale of trailer lots. Mr. Tom Cameron of Raeford, North Carolina is the sole owner of the Company.

2. The Applicant furnishes water utility service in Harmony Heights Subdivision, Hoke County, North Carolina, and has filed a Schedule of Rates for said service.

3. Harmony Heights Subdivision is a mobile home subdivision, and the first section of which consists of approximately 7 streets and approximately 80 lots. The subdivision is located on State Road 1304 approximately 7 miles northeast of Raeford, North Carolina.

4. The Applicant presently serves from 70 to 80 customers in the subdivision and plans to expand the system to serve approximately 140 customers in the future.

5. The Applicant plans to meter the water service at a future date, and to charge a flat rate until meters are installed for all customers.

6. The Applicant owns the water system and the sites for the wells.

7. There is an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

9. The water system plans are approved by the State Board of Health.

10. The water customers have not been satisfied with the response they have received from the Applicant's service manager when he has been contacted for repair service.

11. The Applicant previously has combined a charge for street lights with the water bill.

12. The Applicant has entered into a verbal agreement with a local plumbing contractor whereby the contractor will provide maintenance and repair service to the water systems in the subdivision.

13. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements.

Based on the foregoing findings, the Hearing Examiner now reaches the following:

## CONCLUSIONS

There is a demand and need for water utility service in Harmony Heights Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Harmony Heights Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are concluded to be just and reasonable for the services described herein.

The water charges and the street light charges should be shown separately on the monthly billing statements.

The Applicant should inform his service manager of the customer's dissatisfaction with his response to service calls and take steps to make improvements in that regard.

The Applicant's arrangement with a local plumbing contractor for providing maintenance and repair service to the water system in Harmony Heights is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Harmony Heights Company, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Harmony Heights Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant's monthly billing statement shall itemize the charges for water service and street lights if both charges are to be shown on the same bill.

5. That the Applicant shall take whatever steps possible to improve its handling of service calls from the customers.

6. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

7. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-481
SCHEDULE OF RATES

HARMONY HEIGHTS COMPANY
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Harmony Heights, Hoke County

WATER RATE SCHEDULE

METERED RATES:

| | |
|---|---|
| Up to first 3,000 gallons per month | $4.50 minimum |
| All over 3,000 gallons per month | - $1.00 per 1,000 gallons |

FLAT RATES:

Minimum rates under metered rates until such time as meters are installed for all customers.

CONNECTION CHARGES: $125

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: on billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in advance.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-481, on December 16, 1974.

DOCKET NO. W-274, Sub 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Heater Utilities, Inc., P. O. Box 549, Cary, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Chari Heights Subdivision, Wake County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, August 16, 1974, at 2:00 P.M.

BEFORE: Hearing Examiner Robert P. Page

APPEARANCES:

For the Applicant:

Henry H. Sink, Jr.
Parker, Sink and Powers, Attorneys at Law
P. O. Box 1471
Raleigh, North Carolina 27602

For the Commission Staff:

Wilson B. Partin
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

PAGE, HEARING EXAMINER: On July 5, 1974, the Applicant, Heater Utilities, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Chari Heights Subdivision, Wake County, North Carolina, and for approval of rates.

By Order issued on July 25, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was published in The News and Observer, Raleigh, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. R. B. Heater, President of the Applicant, appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Hearing Examiner now makes the following:

FINDINGS OF FACT

1. The Applicant, Heater Utilities, Inc., is a corporation duly organized under the laws of the State of South Carolina, being registered to conduct business in North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Chari Heights Subdivision, Wake County, North Carolina, and has filed a Schedule of Rates for said service.

3. Chari Heights Subdivision is a residential subdivision consisting of one street and 22 lots. The subdivision is located off of U. S. Highway 401 on State Road 1404, approximately 5 miles south of Raleigh.

4. The Applicant proposes to serve 21 customers in the subdivision, and proposes a metered rate for water service

5. The Applicant provides water service to approximately twenty (20) other subdivisions in North Carolina and approximately forty (40) subdivisions in South Carolina.

6. The Applicant has entered into agreements securing ownership or control of the water system and of the site for the well.

7. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

9. The water system plans are approved by the State Board of Health.

10. The rates proposed by the Applicant in this matter are the same as those rates proposed in a rate increase application filed by the Applicant in Docket No. W-274, Sub 14 for all its North Carolina service areas. A decision has not yet been reached by the Commission in that Docket.

11. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots, to cover the entire cost of the system, and such will not be paid directly by the water customers.

12. The Applicant has its own personnel available for providing maintenance and repair service to the water system in the subdivision.

13. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Heater Utilities, Inc.

Based on the foregoing Findings of Fact, the Hearing Examiner now reaches the following:

## CONCLUSIONS

There will be a demand and need for water utility service in Chari Heights Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Chari Heights Subdivision should be those contained in the Schedule of Rates attached hereto, which

rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement for providing maintenance and repair service to the water system in Chari Heights is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Heater Utilities, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Chari Heights Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved as an interim rate schedule to be used by the Applicant until a final decision is reached in Docket No. W-274, Sub 14 at which time the Schedule of Rates in this Docket shall contain those rates granted by the Commission in the rate case docket.

4. That the interim Schedule of Rates attached hereto as Appendix "A" is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

5. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report.

6. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-274, Sub 15
SCHEDULE OF RATES

Heater Utilities, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Chari Heights, Wake County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - .60 per 1,000 gallons

CONNECTION CHARGES:

$350 outside platted subdivision for 3/4" X 5/8" tap. Taps larger than 3/4" X 5/8" shall be charged at cost +20%

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: NONE

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 15 on September 16, 1974.

DOCKET NO. W-218, Sub 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of Application by Hydraulics, Ltd., P. O. Box 11327, Greensboro, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Richwood Acres Subdivision, Rockingham County, North Carolina, and for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, August 20, 1974.

BEFORE: Hearing Examiner Jerry B. Fruitt

APPEARANCES:

For the Applicant:

Douglass P. Dettor
Hines and Dettor
Attorneys and Counsellors at Law
P. O. Box 1920
Greensboro, North Carolina 27402

For the Commission Staff:

Wilson B. Partin
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

FRUITT, HEARING EXAMINER: On June 18, 1974, the Applicant, Hydraulics, Ltd., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Richwood Acres Subdivision, Rockingham County, North Carolina, and for approval of rates.

By Order issued on July 16, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Richwood Acres Subdivision by the Applicant, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert C. Troy

appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the record of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Hydraulics, Ltd., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Richwood Acres Subdivision, Rockingham County, North Carolina, and has filed a Schedule of Rates for said service.

3. Richwood Acres Subdivision is a residential subdivision consisting of approximately 4 streets and approximately 56 lots. The subdivision is located adjacent to S. R. 1124 which connects with U. S. 220.

4. The Applicant proposes to initially install water mains capable of serving approximately 40 customers in the subdivision.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The quality of the untreated water does not meet the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics, as it contains excessive amounts of iron, but treatment will be provided which will control the objectionable characteristics of those minerals, if a new well does not provide better water.

8. The water system plans are approved by the State Board of Health.

9. The annual revenues, based on the proposed metered rate and on 30 customers, would be approximately $2,340.00 for water service, based on a monthly consumption of 6000 gallons per customer.

10. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers unless that customer acts as his own contractor.

11. The Applicant lists its net investment in water utility plant as $18,200.00, based on an unverified balance sheet contained in the application.

12. The Applicant has entered into a verbal agreement with a local plumbing contractor, Bainbridge and Dance Well Drilling Contractors, Inc., whereby the contractor will provide maintenance and repair service to the water system in the subdivision.

13. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Hydraulics, Ltd.

## CONCLUSIONS

There will be a demand and need for water utility service in Richwood Acres Subdivision which can best be met by the Applicant. The initial rates approved by the Commission for water utility service in Richwood Acres Subdivision should be those contained in the Schedule of Rates attached hereto and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement with a local plumbing contractor for providing maintenance and repair service to the water system in Richwood Acres is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Hydraulics, Ltd., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Richwood Acres Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual

Report to the Commission can be readily identified from the books and record and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

6. That the Applicant shall correct the iron problem present in the water in this subdivision within four (4) months from the date of this Order, and inform the Commission Staff that said problem has been corrected.

7. That the Applicant shall submit the Affidavit of Publication within fifteen (15) days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This 4th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-218, Sub 10
SCHEDULE OF RATES

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HYDRAULICS, LTD.

SUBDIVISION OR SERVICE AREAS

RICHWOOD ACRES
ROCKINGHAM COUNTY

WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Water: Up to first 4,000 gallons per month
- $5.00 minimum
All over 4,000 gallons per month
- $ .75 per 1,000 gallons

CONNECTION CHARGES:

$ 85.00 per connection in Section #1
$385.00 per connection in Section #2

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On Billing Date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-218, Sub 10, on September 4, 1974.

DOCKET NO. W-218, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Hydraulics, Ltd., P. O. Box 11327, Greensboro, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Monticello Estates Subdivision, Guilford County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, December 3, 1974, at 9:30 A.M.

BEFORE: Hearing Examiner, John R. Molm

APPEARANCES:

For the Applicant:

Douglas P. Dettor
Dettor, Egerton and Fowler
Attorneys at Law
222 Commerce Place
Greensboro, North Carolina 27402

For the Commission Staff:

Lee Movius
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

MOLM, HEARING EXAMINER: On October 17, 1974, the Applicant, Hydraulics, Ltd., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Monticello Estates Subdivision, Guilford County, North Carolina, and for approval of rates.

By Order issued on November 5, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Monticello Estates Subdivision by the Applicant, and was published in The Greensboro Daily News, Greensboro, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert C. Troy, President of the Applicant, appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. J. R. Bailey appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's rate schedule. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Hearing Examiner now makes the following:

## FINDINGS OF FACT

1. The Applicant, Hydraulics, Ltd., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities as defined in G. S. 62-3.

2. The Applicant provides water service in approximately ten (10) other franchised areas in North Carolina.

3. The Applicant proposes to furnish water utility service in Monticello Estates Subdivision, Guilford County, North Carolina, and has filed a Schedule of Rates for said service.

4. Monticello Estates Subdivision is a residential subdivision consisting of approximately eight (8) streets and approximately one hundred thirty (130) lots. The subdivision is located off of State Highway 150 on State Road 2730 approximately ten (10) miles Northeast of Greensboro.

5. The Applicant presently has mains installed capable of serving approximately fifty (50) customers in the subdivision with plans to eventually serve approximately one hundred thirty (130) customers.

6. The applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

7. There is an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The quality of the untreated water does not meet the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics, as it contains an excessive amount of manganese, but proper treatment should control the objectionable characteristics of this mineral.

9. The water system plans are approved by the State Board of Health.

10. The proposed rates are higher than those approved by the Commission for the Applicant's other franchised utility service areas.

11. The Applicant has entered into agreements whereby contributions-in-aid of construction covering essentially the full cost of the water system in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

12. The Applicant will have its own personnel available for providing maintenance and repair service to the water systems in the subdivision.

13. The Applicant will be listed in the phone book for the proposed service area.

Based on the foregoing findings, the Hearing Examiner now reaches the following:

## CONCLUSIONS

There is a demand and need for water utility service in Monticello Estates Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Monticello Estates Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are the same as those rates found to be reasonable for certain of the Applicant's other service areas, and which are concluded to be just and reasonable for the services described herein. The Applicant should file an application for a general rate increase in all of its service areas if it feels that the present rates are inadequate. In response to such an application, the Commission staff would make a complete examination of the Applicant's books and records to determine the fairness of the proposed rate increase.

The Applicant's arrangement for providing maintenance and repair service to the water system in Monticello Estates Subdivision is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Hydraulics, Ltd., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Monticello Estates Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements

which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-218, SUB 12
SCHEDULE OF RATES

Hydraulics, Ltd.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Monticello Estates, Guilford County

WATER RATE SCHEDULE

METERED RATES:

Up to first 4,000 gallons per month - $5.00 minimum
All over 4,000 gallons per month - $ .75 per 1,000 gallons

CONNECTION CHARGES: None

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) 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 fifteen (15) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-218, Sub 12, on December 16, 1974.

DOCKET NO. W-451

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Jemaca Enterprises, Inc., T/A Lone Pine Water Company, P. O. Drawer 3109, Kinston, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Lone Pine Subdivision, Edgecombe County, North Carolina, and for Approval of Rates | ) | ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, May 21, 1974, at 11:10 A.M.

BEFORE: Commissioners Ben E. Roney, Presiding, Tenney I. Deane, and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Richard F. Landis, II
Wallace, Langley, Barwick & Llewellyn
Attorneys at Law
P. O. Box 546
Kinston, North Carolina 28501

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On April 18, 1974, the Applicant, Jemaca Enterprises, Inc., P. O. Drawer 3109, Kinston, North Carolina 28501, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Lone Pine Subdivision, Edgecombe County, North Carolina, and for approval of rates.

By Order dated April 25, 1974, the Commission scheduled the application for public hearing, and required that public notice of the hearing be given by the Applicant. There are presently no customers in Lone Pine Subdivision to receive the service proposed by the Applicant. Notice to the public was published in the Daily Southerner, Tarboro, North Carolina, on April 29 and May 6, 1974, advising that anyone desiring to intervene or to protest the application was required to file the intervention or protest with the Commission by the date specified in the notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order setting hearing. Mr. J. Carl Hartsfield, Jr., was offered as a witness for the Applicant in support of the application. No one appeared to protest the application. As a portion of its presentation, the Applicant moved that it be allowed to amend its proposed rates, to reduce the minimum charge from the proposed figure of $6.00 for the first 3,000 gallons as a minimum down to $5.00 for the first 3,000 gallons as a minimum charge. The remainder of the rates applied for were left unchanged. The Applicant's motion was allowed.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, Jemaca Enterprises, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Lone Pine Subdivision, Edgecombe County, North Carolina, and has filed a schedule of rates (as amended by motion at the hearing) for said service.

3. The Applicant proposes to initially install eight-inch water mains capable of serving approximately forty customers in Lone Pine Subdivision. The Applicant proposes to meter the water service and charge metered rates for such service.

4. The Applicant has recorded deeds, easements, and agreements securing ownership and control of the water system, the distribution mains and the sites for the wells.

5. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility company, municipality, or membership association. There is a reasonable prospect for growth and demand for the proposed utility services in the subdivision.

6. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

7. The water system plans are approved by the State Board of Health.

8. The Applicant has entered into agreements whereby $12,000 of contributions in aid of construction in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

9. The Applicant lists its net investment in water utility plant as $27,000 based on an unverified investment exhibit contained in the application.

10. The Applicant has specified that the names, addresses, and telephone numbers of the persons or companies responsible for providing maintenance and repair services to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the telephone book for the proposed service area as Lone Pine Water Company, and the customers will be able to call the company at its home office in Kinston, North Carolina, without having to pay a long-distance toll charge.

Based on the foregoing Findings of Fact, the Commission reaches the following

## CONCLUSIONS

There will be a demand and need for water utility service in Lone Pine Subdivision which can best be met by Applicant.

The initial rates approved by the Commission for water utility service in Lone Pine Subdivision should be those contained in the schedule of rates attached hereto, which rates are not in excess of those found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangements for maintenance, repair and emergency service are acceptable. Delegation by the Applicant of the maintenance, repair and emergency responsibilities will not relieve the Applicant of its obligations under the Public Utilities Act to render efficient and economic water utility service to its customers.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Jemaca Enterprises, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Lone Pine Subdivision, as described herein and more particularly

as described in the application made a part hereof by reference.

2. That this Order shall in itself constitute the Certificate of Public Convenience and Necessity.

3. That the schedule of rates attached hereto as Appendix "A" is hereby approved and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant is hereby directed not to amend or add to the water system presently approved by the Division of Health Services, unless given written approval for such alteration or addition by the Division of Health Services.

5. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed annual report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said annual report. A copy of the annual report forms will be furnished to the Applicant with the mailing of this Order.

6. That in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-45|
SCHEDULE OF RATES

Jemaca Enterprises, Inc.
T/A Lone Pine Water Company
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Lone Pine Subdivision
Edgecombe County
North Carolina

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $0.80 per |,000 gallons

CONNECTION CHARGES

$300.00 per lot payable by developer

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE On billing date

BILLS PAST DUE Fifteen (|5) days past billing date

BILLING FREQUENCY Monthly for service in arrears

FINANCE CHARGE One (|) percent on all bills unpaid twenty-five (25) days after billing date

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-45|, on May 30, |974.

DOCKET NO. W-385

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Mountain Retreat Association, Montreat, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in the Town of Montreat, Buncombe County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 31, 1974

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioner Tenney I. Deane, Jr.

APPEARANCES:

For the Applicant:

Gary A. Sluder
Shuford, Frue, and Sluder
Attorneys at Law
223 Haywood Building
Asheville, North Carolina 28801

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
Post Office Box 991
Raleigh, North Carolina 27602

WOOTEN, COMMISSIONER: On June 18, 1973, the Applicant, Mountain Retreat Association, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water and sewer utility service in the Town of Montreat, Buncombe County, North Carolina, and for approval of rates.

By Order issued on July 16, 1973, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Montreat by the Applicant, and was published in The Black Mountain News, Black Mountain, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice.

The public hearing was continued on two occasions before being heard at the above captioned time. Mr. William Russell appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. J. Roderic Bailey appeared as a witness for the Commission Staff and presented testimony concerning his evaluation of the Applicant's water and sewer utility operations. Mr. Kenneth Foreman, Jr., appeared as witness for the Applicant's customers, and presented testimony concerning the rate structure proposed by the Applicant.

Based on the information contained in the application and in the records of this proceeding, the Commissioner now makes the following:

## FINDINGS OF FACT

1. Mountain Retreat Association is a corporation chartered under the laws of the State of North Carolina as a religious and educational institution. Until 1967 the corporation had municipal powers. In 1967, the State Legislature revoked the municipal powers of the corporation and transferred them to the newly formed Town of Montreat.

2. The Applicant furnishes water and sewer utility service in the Town of Montreat, Buncombe County, North Carolina, and has filed a schedule of rates for said service.

3. Montreat is an assembly ground established by the Southern Presbyterian Church, containing approximately 400 residences, 15 inns and lodges, and a junior college with an enrollment of approximately 350 students. The town is located approximately 10 miles east of Asheville and 2 miles north of the Town of Black Mountain on State Road No. 9.

4. There is an established market for water and sewer utility service in Montreat, and such services are not now proposed for the town by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the utility services in the area.

5. The rate schedule proposed by the Applicant would yield approximately $40,000 in yearly revenues from its customers.

6. The Commission Staff representative recommended that a rate formula be adopted for computing the water and sewer charge for lodges and inns serving large numbers of people. The rates proposed by the Applicant for such customers appeared to be arbitrary.

7. The Commission Staff representative made other recommendations concerning the rate schedule in an effort to more equitably distribute the required revenue among all the

customers. The total revenue yielded by the rate schedule recommended by the staff would be approximately $40,000.

8. The Applicant's operating expense figures are low in comparison with the average operating expenses of other regulated public water and sewer utilities, indicating that the Applicant had possibly not kept proper record of all its expenses.

9. The value of the Applicant's utility plant is approximately $300,000 based on the Applicant's records and upon an examination of those records by members of the Commission Accounting Staff. This figure does not include the value of approximately 1,100 acres of land which serve as watershed area for the water system.

10. The Applicant is in the process of making improvements and replacements on the water and sewer system. Much of the system is over 50 years old.

11. The Applicant's water supply comes from reservoirs fed by surface runoff from an 1,100-acre watershed area.

12. The Applicant has no sewage treatment facilities of its own. The Applicant's sewer lines are connected to the Buncombe County Sewer System lines and the sewage is treated by the County sewage plant. The Applicant pays the County approximately $2,600 per year for this service.

13. The Applicant has its own personnel available for making repairs and providing maintenance for the system. The Applicant stated that the names, addresses, and telephone numbers of persons responsible for providing maintenance and repair service are listed on the billing statements.

Based on the foregoing Findings of Fact, the Commissioner reaches the following:

## CONCLUSIONS

1. There is a demand and need for water and sewer utility service in the Town of Montreat.

2. The initial rates approved by the Commission for water and sewer utility service in the Town of Montreat should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water and sewer utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

3. The Applicant's arrangements for providing maintenance and repair service to the water and sewer system in Montreat are acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Mountain Retreat Association, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water and sewer utility service in the Town of Montreat as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of March, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Docket No. W-385
SCHEDULE OF RATES

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Mountain Retreat Association
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Town of Montreat, Buncombe County

RATES FOR WATER AND SEWER SERVICE

FLAT RATES:

| | | |
|---|---|---|
| A. | Lodges, inns, rooming houses, and dormitories with estimated monthly consumption less than 1,000 gallons per bed (Example: Lodge with 20 beds used 4 months per year = $120/yr.) | $1.50 per bed per month of use |
| B. | Buildings with public restrooms only with estimated monthly consumption less than 4,000 gallons (Example: Office building used 9 months per year = $78.75/yr.) | $8.75 per month of use |
| C. | Apartments with baths and kitchens with estimated consumption less than 2,000 gallons per month | $3.00 per apartment per month of use |
| D. | Year round * residences with estimated yearly consumption less than 50,000 gallons | $105.00 per year |
| E. | Seasonal * residences with estimated yearly consumption less than 15,000 gallons | $ 67.00 per year |

*Year round - occupying cottage more than 4 months per year
*Seasonal - occupying cottage 4 months out of year or less

METERED RATES:

Up to first 50,000 gallons per year. . .$105.00 minimum
All over 50,000 gallons per year . . . .$ 1.00 per thousand gallons

METER INSTALLATION FEE: $50.00

CONNECTION CHARGES: $65.00 water
$35.00 sewer

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Thirty (30) days after billing date.

SERVICE CHARGE FOR LATE PAYMENT: None.

NOTES:

1. Metered rates may be charged in lieu of flat rate at request and upon payment of meter installation fee by customer.

2. Metered rates at $1.00 per 1,000 gallons apply after annual consumption exceeds 50,000 gallons. Metered rate at $1.00 per 1,000 gallons may be payable monthly when it is in effect.

3. If meters are installed at option of company, without customer request, then customer does not pay meter installation fee.

4. Meters may be installed at option of company to each individual customer where consumption exceeds 50,000 gallons per year without metering all other customers.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-385 on March 6, 1974.

DOCKET NO. W-437

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of Application by Owen Hill Utilities Corporation, P. O. Box 111, Dublin, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Cape Owen Manor Subdivision, Bladen County, North Carolina, and for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, May 14, 1974, at 10:00 A.M.

BEFORE: Hearing Examiner, E. Gregory Stott.

APPEARANCES:

For the Applicant:

William E. Anderson
Weaver, Noland, and Anderson
Attorneys at Law
P. O. Box 2226
Raleigh, North Carolina 27602

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

STOTT, HEARING EXAMINER: On March 4, 1974, the Applicant, Owen Hill Utilities Corporation, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Cape Owen Manor Subdivision, Bladen County, North Carolina, and for approval of rates.

By Order issued on March 26, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Cape Owen Manor Subdivision by the Applicant, and was published in The Southeastern Times, Clarkton, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. David McNeill appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Owen Hill Utilities Corporation, is a corporation duly organized under the laws of the State of

North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Cape Owen Manor Subdivision, Bladen County, North Carolina, and has filed a Schedule of Rates for said service.

3. Cape Owen Manor Subdivision is a residential subdivision, the first phase of which consists of approximately 5 streets and approximately 50 lots. The subdivision could ultimately contain as many as 370 customers. The subdivision is located on County Road No. 1336, approximately 3 miles northeast of the Town of Dublin, North Carolina.

4. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

5. There will be an established market for water utility service in the subdivision, and such service is not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

6. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

7. The water system plans are approved by the State Board of Health.

8. The Applicant amended its application by stipulation to reduce its proposed rates to $5.00 minimum for the first 3,000 gallons of water per month and $1.00 for each 1,000 gallons used in excess of 3,000 gallons.

9. The Applicant has entered into agreements whereby contributions-in-aid of construction in the form of connection charges in the subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

10. The Applicant lists its net investment thus far in water utility plant as approximately $28,000.00, based on an unverified balance sheet contained in the application.

11. Mr. McNeill, an officer of the Applicant, will live in Cape Owen Manor and will be responsible for handling service problems.

12. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to

the water system will be listed on the monthly billing statements.

## CONCLUSIONS

There will be a demand and need for water utility service in Cape Owen Manor Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Cape Owen Manor Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement for providing maintenance and repair service to the water system in Cape Owen Manor is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Owen Hill Utilities Corporation, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Cape Owen Manor Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-437

SCHEDULE OF RATES

Owen Hill Utilities Corporation
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Cape Owen Manor Subdivision
Bladen County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $1.00 per 1,000 gallons

CONNECTION CHARGES:

$250.00 - Payable by building contractor.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-437 on May 29, 1974.

DOCKET NO. W-262, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Piedmont Construction and Water Company, Inc., P. O. Box 6, Stony Point, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Meadowbrook Subdivision, Iredell County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 10, 1974, at 10:00 a.m.

BEFORE: Hearing Commissioner Marvin R. Wooten

APPEARANCES:

For the Applicant:

William E. Crosswhite
Attorney at Law
East Broad Street
Statesville, North Carolina 28677

For the Commission Staff:

E. Gregory Stott
Assistant Commission Attorney
Post Office Box 991
Raleigh, North Carolina 27602

MARVIN R. WOOTEN, HEARING COMMISSIONER: On October 31, 1973, the Applicant, Piedmont Construction and Water Co., Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Meadowbrook Subdivision, Iredell County, North Carolina, and for approval of rates.

By Order issued on November 21, 1973, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Meadowbrook Subdivision by the Applicant, and was published in The Statesville Record and Landmark, Statesville, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the

date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. B. B. McCormick, President of the Applicant, appeared at the hearing as a witness for the Applicant and presented testimony in support of the application.

Based on the information contained in the application and in the records of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, Piedmont Construction and Water Co., Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant furnishes water utility service in Meadowbrook Subdivision, Iredell County, North Carolina, and has filed a Schedule of Rates for said service.

3. Meadowbrook Subdivision is a residential subdivision consisting of approximately 6 streets and approximately 90 lots. The subdivision is located on County Road #1148, approximately 3 miles south of Mooresville, North Carolina, in Iredell County.

4. At the time of its application, the Applicant served approximately 25 customers and when the subdivision nears its capacity could serve approximately 90 customers.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There is an established market for water utility service in the subdivision, and such service is not proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility service in the subdivision.

7. The quality of the untreated water from Well No. 1 meets the Public Health Drinking Water Standards. A chemical analysis of the water from the second well was not submitted.

8. The water system plans are approved by the State Board of Health.

9. The Applicant franchises to provide water utility service in approximately 30 other subdivisions in Western North Carolina.

10. The proposed rates are the same rates as those approved by the Commission for the Applicant's other franchised utility service areas.

11. The Applicant's service personnel will provide maintenance and repair service to the water system on a 7 day per week, 24 hour per day basis.

12. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

## CONCLUSIONS

There is a demand and need for water utility service in Meadowbrook Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Meadowbrook Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement for providing maintenance and repair service to the water system in Meadowbrook is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Piedmont Construction and Water Co., Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Meadowbrook Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant is hereby required to submit to the Commission a copy of the State Board of Health's chemical analysis of the water from Well No. 2 within a period of sixty (60) days from the date of this Order.

5. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

6. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of January, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-262, SUB 13

SCHEDULE OF RATES

PIEDMONT CONSTRUCTION AND WATER CO., INC.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Meadowbrook Subdivision, Iredell County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $1.00 per 1,000 gallons

CONNECTION CHARGES: $300 per lot.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Twenty-five (25) days after billing date.

BILLING: Monthly, for service in arrears.

SERVICE CHARGE FOR LATE PAYMENT: One percent (1%) on unpaid balance for all bills still overdue twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-262, Sub 13 on January 31, 1974.

DOCKET NO. W-262, Sub 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Piedmont Construction<br>and Water Co., Inc., P. O. Box 6,<br>Stony Point, North Carolina, for<br>Approval of Tariff Amendment. | ) | ORDER GRANTING<br>APPROVAL OF<br>TARIFF AMENDMENT |

BY THE COMMISSION: On April 16, 1974, the Applicant, Piedmont Construction and Water Cc., Inc., filed a tariff amendment with the North Carolina Utilities Commission specifying new tap-on fees for new service extensions. The explanation accompanying the tariff amendment indicates that the increased cost of making new "tap-ons" is mainly due to spiraling cost of materials and labor.

Based on the information contained in the explanation of the tariff amendment and in the Commission's files, the Commission concludes that the tariff amendment should be allowed.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the tariff amendment attached hereto as Appendix "A" is hereby approved, and that said tariff amendment is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

2. That any tap-on fees exceeding $400.00 be filed with the Commission for review prior to their being placed into effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of May, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-262, SUB 14
SCHEDULE OF RATES

PIEDMONT CONSTRUCTION AND WATER CO., INC.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

All Systems

CONNECTION CHARGES

Tap Fees:

(A) $400.00 per lot for all lots in existing service areas which have not previously been tapped or for which no tap fee has previously been paid.

(B) For service extentions into new service areas, tap fees will be negotiated with developers.

(C) All tap fees exceeding $400.00 shall be payable by developers only.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-262, Sub 14 on May 3, 1974.

DOCKET NO. W-262, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application by Piedmont Construction & Water Company, Inc., P. O. Box 6, Stony Point, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Hickory Hills Subdivision, Alexander County, North Carolina, and for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, November 8, 1974, at 9:30 A.M.

BEFORE: Hearing Examiner John R. Molm

APPEARANCES:

For the Applicant:

William E. Crosswhite
Attorney at Law
212-A E. Broad Street
Statesville, North Carolina

For the Commission Staff:

Lee Movius
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

MOLM, HEARING EXAMINER: On September 16, 1974, the Applicant, Piedmont Construction & Water Company, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Hickory Hills Subdivision, Alexander County, North Carolina, and for approval of rates.

By Order issued on October 1, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. By Order issued on October 9, 1974, the hearing was rescheduled to November 8, 1974. Public Notice was not furnished to each customer in Hickory Hills Subdivision by the Applicant, since there are no customers, but notice was published in The Taylorsville Times, Taylorsville, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. B. B. McCormick appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. Richard W. Seekamp appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's plans for the water utility operations. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Piedmont Construction & Water Company, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Hickory Hills Subdivision, Alexander County, North Carolina, and has filed a Schedule of Rates for said service.

3. Hickory Hills Subdivision is a residential subdivision consisting of approximately 7 streets and approximately 144 lots. The subdivision is located at the end of State Road #1148 on Lake Hickory.

4. The Applicant proposes to meter the water service at the time the customer requests service.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The water system plans are approved by the State Board of Health.

8. The annual revenues, based on the staff's proposed metered rate and on 25 customers, would be approximately $2100 for water service based on an average monthly consumption of 5000 gallons.

9. The staff's proposed rates are the same rates as those approved by the Commission for the Applicant's other franchised utility service areas.

10. The Applicant lists the cost of the water utility plant as $22,500, based on an unverified balance sheet contained in the application.

11. The Applicant is capable in itself to provide maintenance and repair service to the water system in the subdivision.

12. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Piedmont Construction & Water Company.

## CONCLUSIONS

There will be a demand and need for water utility service in Hickory Hills Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Hickory Hills Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Piedmont Construction & Water Co., Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Hickory Hills Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of December, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-262, SUB 15
SCHEDULE OF RATES

Piedmont Construction and Water Company, Inc.
Name of Company and Owners

SUBDIVISION OR SERVICE AREAS

Hickory Hills
Alexander County

WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Water: Up to first 3,000 gallons per month
- $5.00 minimum
All over 3,000 gallons per month
- $1.00 per 1,000 gallons

CONNECTION CHARGES: $450.00

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Twenty-five (25) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-262, Sub 15,

on December 4, 1974.

DOCKET NO. W-242, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Pine Valley Water Company, Inc., P. O. Box 424, Wrightsville Beach, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Pine Valley Subdivision, New Hanover County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, May 14, 1974, at 11:00 a.m.

BEFORE: Hearing Examiner E. Gregory Stott

APPEARANCES:

For the Applicant:

Elton Tucker and J. H. Ferguson
Ferguson and Jenkins
Attorneys at Law
210 Princess Street
Wilmington, North Carolina

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

STOTT, HEARING EXAMINER: On March 8, 1974, the Applicant, Pine Valley Water Company, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide sewer utility service in Pine Valley Subdivision, New Hanover County, North Carolina, and for approval of rates.

By Order issued on April 3, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was published by the Applicant in the Star-News Newspaper, Wilmington, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. G. W. Dobo, President of the Applicant, and Mr. Frank Thoburn, an accountant, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. Mr. J. R. Bailey appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's proposed rate structure. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Pine Valley Water Company, Inc., is a corporation duly organized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish sewer utility service in Pine Valley Subdivision, New Hanover County, North Carolina, and has filed a Schedule of Rates for said service.

3. The subdivision is located on U. S. Highway 132, approximately 2 miles southeast of Wilmington, North Carolina.

4. The Applicant presently provides water service to more than 300 residences in Pine Valley Subdivision and has been granted a franchise by the Commission to provide this service. There are no sewer customers at the present time.

5. The Applicant proposes to eventually provide water service to approximately 900 residences and 318 apartment units. Sewer service is to be provided to all of the apartments and to 400 of the residences.

6. The Applicant has entered into agreements securing ownership or control of the sewer system and the site for the treatment facilities.

7. There will be an established market for sewer utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

8. The sewerage system plans are approved by the State Department of Water and Air Resources.

9. The Applicant proposes a sewer rate of 200% of the present water rates. The Applicant proposes to charge a $1,100 sewer connection charge per residence and proposes to

raise the water connection charge from the $250, being charged presently, to $700 per residence. The Applicant has proposed that apartment tenants pay connection charges in the form of monthly surcharges of $3.50 and $3.80 for water and sewer respectively, to be paid for a period of ten (|0) years.

|0. The Applicant projects that the cost of installing the utility plant will be $|,088,952 by the time of completion, approximately ten (|0) years from now. Of this total, $552,652 is for the sewer system and $536,300 is for the water system. These figures are based on current construction costs.

||. Based on Exhibit "F" of the accounting report in the application, $|,063,837 will have been collected in tap fees by the year |983 when it is expected that full development will be reached in Pine Valley.

|2. By the year |983, the Applicant projects that the proposed rates will be generating $|96,788 in yearly revenues with operating expenses amounting to $84,58| per year excluding income taxes and interest expenses.

|3. The Applicant contends that both construction costs and operating expenses will increase by approximately 5% per year during this ten (|0) year development period due to inflation.

|4. That with the proposed connection charges and rates in effect, the utility would have its utility plant completely paid for, be operating at approximately a 50% operating ratio, and have a cash balance of almost $380,000 by the year |983 based on the projections in the application.

|5. Mr. G. W. Dobo, President of the Applicant, will be in charge of the operation and maintenance of the sewer system. Mr. Dobo operates many regulated water utilities in North Carolina.

Based on the foregoing Findings of Fact, the Hearing Examiner now reaches the following:

## CONCLUSIONS

There will be a demand and need for sewer utility service in Pine Valley Subdivision which can best be met by the Applicant.

The proposed connection charges will almost entirely reimburse the Applicant for its investment in the utility system. Based on the estimates contained in the application, the rates proposed would eventually yield an excessive amount of revenue for a utility plant so heavily contributed.

If the sewer charge is made equal to the water charge, the yearly revenues by the year 1983 will be $145,000. The estimated expenses, including an average yearly interest expense figure of $22,345, will be $106,926. The operating ratio with the sewer rate at 100% of the water rate would thus be approximately 74% before income taxes.

The initial rates approved by the Commission for sewer utility service in Pine Valley Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are concluded to be just and reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Pine Valley Water Company, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide sewer utility service in Pine Valley Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Appendix "A"

DOCKET NO. W-242, SUB 2

SCHEDULE OF RATES

Pine Valley Water Company
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Pine Valley Subdivision
New Hanover County

WATER AND SEWER RATE SCHEDULE

METERED RATES:

Water: Up to first 3,000 gallons per month
- $3.50 minimum
Next 5,000 gallons per month
- $ .60 per 1,000 gallons
All over 8,000 gallons per month
- $ .40 per 1,000 gallons

Sewer: 100% of water rate.

CONNECTION CHARGES:

Residential: Water - $ 700.00
Sewer - $1,100.00

Apartments: In lieu of a lump sum tap fee, the following monthly surcharge will be assessed to each apartment unit for a period of ten (10) years:

Water - $3.50 per month
Sewer - $3.80 per month

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00
If sewer service cut off by utility for good cause (NCUC Rule 10-16f): $15.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT: None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-242, Sub 2 on July 2, 1974.

DOCKET NO. W-478

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Powder Horn Utilities, Inc., Powder Horn Mountain, Triplett, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Trout Lake, Deer Run, and Horseshoe Ridge Subdivisions, Watauga County, North Carolina, and for Approval of Rates | ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Office of the Commission Chairman, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, October 22, 1974, at 10:00 A.M.

BEFORE: Hearing Examiner, Jerry B. Fruitt

APPEARANCES:

For the Applicant:

J. Gary Vannoy
Vannoy, Moore, and Colvard
Attorneys at Law
9th Street
North Wilkesboro, North Carolina

For the Commission Staff:

Lee W. Movius
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

FRUITT, HEARING EXAMINER: On September 5, 1974, the Applicant, Powder Horn Utilities, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Trout Lake, Deer Run, and Horseshoe Ridge Subdivisions, Watauga County, North Carolina, and for approval of rates.

By Order issued on September 13, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant.

Public Notice was furnished to each customer in the Trout Lake, Deer Run, and Horseshoe Ridge Subdivisions by the Applicant, and was published in The Watauga Democrat, Boone, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert I. Horne, President of the Applicant, appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. J. R. Bailey appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's plans for the water utility operations. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, Powder Horn Utilities, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Trout Lake, Deer Run, and Horseshoe Ridge Subdivisions, Watauga County, North Carolina, and has filed a Schedule of Rates for said service.

3. The three recreational subdivisions are contiguous to each other and together consist of approximately 15 streets and approximately 200 lots. This subdivision is located approximately 14 miles southeast of Boone on State Road 1508.

4. The Applicant now serves approximately 35 customers in the subdivision but has mains installed to serve 200 customers. The Applicant proposes to charge a flat rate of $3.00 per month for water service.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There is an established market for water utility service in the subdivisions, and such service is not now proposed for the subdivisions by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for this utility service in the subdivision.

7. The quality of the untreated water from Well No. 1 does not meet the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics, as it contains an excessive amount of iron.

8. The water system plans are approved by the State Board of Health.

9. The Applicant has its own personnel available for providing maintenance and repair service to the water system.

## CONCLUSIONS

There is a demand and need for water utility service in Powder Horn Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Powder Horn Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are concluded to be just and reasonable for the services described herein.

The Applicant should be required to have an additional chemical analysis performed on the water from Well No. 1 and install the appropriate treatment equipment if this additional analysis confirms the presence of excessive iron concentrations.

The Applicant's arrangement for providing maintenance and repair service to the water system in Powder Horn Subdivision is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Powder Horn Utilities, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Powder Horn Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant is hereby required to submit an additional chemical analysis of the water from Well No. 1 to the Commission not later than thirty (30) days from the date of this Order. Should this additional analysis confirm the presence of an excessive iron concentration, the Applicant

shall be required to install treatment facilities which will control the undesirable effects of this element.

5. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this order.

6. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of November, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-478

SCHEDULE OF RATES

Powder Horn Utilities, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Trout Lake, Watauga County
Deer Run, Watauga County
Horseshoe Ridge, Watauga County

FLAT RATES: $3.00 per month

CONNECTION CHARGES: $200.00

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Thirty (30) days after billing date.

BILLING FREQUENCY: Shall be yearly for service in arrears provided this arrangement is agreeable to the customers.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due thirty (30) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-478 on November 12, 1974.

DOCKET NO. W-427

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Quail Hollow Water System, Inc., Route 8, Box 321-A, Shelby, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Quail Hollow Subdivision, Cleveland County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Auditorium on the Second Floor of the Catawba County Administration Building, Newton, North Carolina, on Thursday, March 28, 1974, at 2:00 p.m.

BEFORE: Commission Chairman, Marvin R. Wooten.

APPEARANCES:

For the Applicant:

Robert W. Yelton
Yelton and Lamb, P. A.
Attorneys at Law
211 South Washington Street
Shelby, North Carolina 28150

For the Commission Staff:

Jerry B. Fruitt
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WOOTEN, COMMISSIONER: On January 18, 1974, the Applicant, Quail Hollow Water System, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Quail Hollow Subdivision, Cleveland County, North Carolina, and for approval of rates.

By Order issued on February 12, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Quail Hollow Subdivision by the Applicant, and was published in the Shelby Daily Star, Shelby, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Junior Setzer, President of the Applicant, appeared at the hearing as a witness and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Quail Hollow Water System, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Quail Hollow Subdivision, Cleveland County, North Carolina, and has filed a Schedule of Rates for said service.

3. Quail Hollow Subdivision is a residential subdivision consisting of approximately 4 streets and approximately 50 lots. The subdivision is located on County Road 1341 approximately 6 miles northwest of Shelby, North Carolina.

4. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

5. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

6. The quality of the untreated water does not meet the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics, as it contains an excessive amount of iron, but treatment has been provided which should control the objectionable characteristics of the iron.

7. The water system plans are approved by the State Board of Health.

8. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots and will not be paid directly by the water customers.

9. The Applicant has been entirely reimbursed by the developer of the subdivision for the cost of installing the water system.

10. Mr. Setzer, President of the Applicant, is also in the well and pump business and will have his own personnel available for providing maintenance and repair service to the water system in the subdivision.

11. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Quail Hollow Water System, Inc.

## CONCLUSIONS

There will be a demand and need for water utility service in Quail Hollow Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Quail Hollow Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement for providing maintenance and repair service to the water system in Quail Hollow is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Quail Hollow Water System, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Quail Hollow Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall continue to treat its water so long as the iron content of the water is excessive.

5. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

6. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-427

SCHEDULE OF RATES

Quail Hollow Water Company, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Quail Hollow, Cleveland County

METERED RATES FOR WATER SERVICE:

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - 1.00 per 1,000 gallons

CONNECTION CHARGES: None.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-427 on May 7, 1974.

DOCKET NO. W-444

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of Application by Brady W. Ratchford, P. O. Box 555, Dallas, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Rocky Knoll Subdivision, Gaston County, North Carolina, and for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Courtroom "F" of the Gaston County Courthouse, Gastonia, North Carolina, on May 9, 1974.

BEFORE: Hearing Examiner, Robert F. Page.

APPEARANCES:

For the Applicant:

Brady W. Ratchford, Jr.
P. O. Box 555
Dallas, North Carolina 28034

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

PAGE, HEARING EXAMINER: On April 1, 1974, the Applicant, Brady W. Ratchford, Jr., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Rocky Knoll Subdivision, Gaston County, North Carolina, and for approval of rates.

By Order issued on April 8, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Rocky Knoll Subdivision by the Applicant, and was published in the Gastonia Gazette, Gastonia, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Brady Ratchford appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Hearing Examiner now makes the following:

FINDINGS OF FACT

1. Brady W. Ratchford is the sole owner and operator of the water system presently serving 27 customers in Rocky Knoll Subdivision, Gaston County, North Carolina.

2. The Applicant proposes to furnish water utility service in Rocky Knoll Subdivision, Gaston County, North Carolina, and has filed an application for a Certificate of Public Convenience and Necessity and a Schedule of Rates for said service.

3. Rocky Knoll Subdivision is a residential subdivision consisting of approximately 4 streets and approximately 52 lots. The subdivision is located at the intersection of North Carolina Highways No. 275 and No. 277.

4. The Applicant has initially installed 3-inch and 2-inch mains capable of serving the approximately 27 customers in the subdivision.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There is presently and there will be in the future an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

8. The water system plans are approved by the State Board of Health.

9. The annual revenues, based on the proposed metered rate and on 27 customers, would be approximately $2,278 for water service.

10. The proposed rates are similar to those previously approved by the Commission for water systems of like size and construction.

11. There are no tap fees or contributions-in-aid of construction proposed to be paid by the customers of the water system.

12. The Applicant lists his net investment in water utility plant as $10,000.00, based on an unverified balance sheet contained in the application.

13. The Applicant has entered into a verbal agreement with local contractors, Lewis Well Company and Nelson Edison, whereby the contractors will provide maintenance and repair service to the water system in the subdivision.

14. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Brady W. Ratchford, Jr., Real Estate.

CONCLUSIONS

There is and there will be a demand and need for water utility service in Rocky Knoll Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Rocky Knoll Subdivision should be those contained in the Schedule of Rates attached hereto as Appendix "A", which rates are not in excess of those rates found to be just and reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's present arrangements with local contractors for providing maintenance and repair service to the water system in Rocky Knoll are acceptable.

The Applicant is reminded that the delegation of maintenance service to any party by the Applicant will not relieve the Applicant of his responsibility under the Public Utility Laws of this State to provide adequate and efficient service to his customers.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Brady W. Ratchford, Jr., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Rocky Knoll Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall

immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-444

SCHEDULE OF RATES

Brady W. Ratchford, Jr.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Rocky Knoll
Gaston County

WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Water: Up to first 3,000 gallons per month
- $4.00 minimum
All over 3,000 gallons per month
- $1.00 per 1,000 gallons

CONNECTION CHARGES: None.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Thirty (30) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-444 on June 4, 1974.

DOCKET NO. W-439

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application by River Bend Plantation, Inc.,<br>P. O. Box 125, New Bern, North Carolina,<br>for a Certificate of Public Convenience<br>and Necessity to Provide Water Utility<br>Service in River Bend Plantation Subdivisions, Craven County, North Carolina, and<br>for Approval of Rates. | ) RECOMMENDED<br>) ORDER GRANTING<br>) FRANCHISE AND<br>) APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, May 14, 1974.

BEFORE: Hearing Examiner, E. Gregory Stott.

APPEARANCES:

For the Applicant:

David L. Ward, Jr.
Ward, Tucker, Ward & Smith, P. A.
Attorneys at Law
310 Broad Street
Post Office Drawer 867
New Bern, North Carolina 28560

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

STOTT, HEARING EXAMINER: On March 11, 1974, the Applicant, River Bend Plantation, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in River Bend Plantation Subdivision, Craven County, North Carolina, and for approval of rates.

By Order issued on March 27, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in River Bend Plantation Subdivision by the Applicant, and was published in The Sun-Journal, New Bern, North Carolina, advising that anyone desiring to intervene or to protest the application

was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. J. Frank Efird and Mr. John Noble appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the record of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, River Bend Plantation, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in River Bend Plantation Subdivision, Craven County, North Carolina, and has filed a Schedule of Rates for said service.

3. River Bend Plantation Subdivision is a residential subdivision consisting of approximately 10 streets and approximately 335 lots. The Subdivision is located adjacent to Shoreline Drive.

4. The Applicant proposes to initially install 6-inch and 2-inch mains capable of serving approximately 100 customers in the subdivision.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

8. The water system plans are approved by the State Board of Health.

9. The annual revenues, based on the proposed metered rate and on 150 customers, would be approximately $14,400

for water service assuming an average monthly consumption of 6,000 gallons per month per customer.

10. The Applicant lists its net investment in water utility plant as $80,000, based on an unverified balance sheet contained in the application. The Applicant amended this figure to $100,000 at the hearing.

11. The Applicant has entered into a verbal agreement with the construction contractor whereby the contractor will provide maintenance and repair service to the water system in the subdivision.

12. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as River Bend Plantation, Inc.

## CONCLUSIONS

There will be a demand and need for water utility service in River Bend Plantation Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in River Bend Plantation Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement with the construction contractor for providing maintenance and repair service to the water system in River Bend Plantation is acceptable.

However, the Applicant is reminded that the delegation of maintenance service to any party by the Applicant will not relieve the Applicant of its responsibility under the public utility laws of this State to provide adequate and efficient service to its customers.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, River Bend Plantation, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in River Bend Plantation Subdivision, as described herein and more particularly as described in the application made a part hereto by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-439

SCHEDULE OF RATES

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River Bend Plantation, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

River Bend Plantation
Craven County

WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Water:
Up to first 3,000 gallons per month-$5.00 minimum
Next 12,000 gallons per month - 1.00 per 1,000 gallons
All over 15,000 gallons per month - .80 per 1,000 gallons

CONNECTION CHARGES:

$125.00 per 3/4 connection on unpaved streets. Payable to River Bend Plantation, Inc.
$150.00 per 3/4 connection on unpaved streets. Payable to River Bend Plantation, Inc.

SECURITY DEPOSIT:

$20.00 (NCUC Rule R7-18)

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: on billing date.

BILLS PAST DUE: Thirty (30) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-439 on May 28, 1974.

DOCKET NO. W-461

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Riverhills, Inc., P. O. Box 443 Greenville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in River Hills Subdivision, Pitt County, North Carolina, and for Approval of Rates. | ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday August 13, 1974.

BEFORE: Hearing Examiner John R. Molm

APPEARANCES:

For the Applicant:

Fred T. Mattox
Attorney at Law
P. O. Box 686
Greenville, North Carolina 27834

For the Commission Staff:

Robert P. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

HOLM, HEARING EXAMINER: On June 11, 1974, the Applicant, Riverhills, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide sewer utility service in River Hills Subdivision, Pitt County, North Carolina, and for approval of rates.

By Order issued on July 15, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in River Hills Subdivision by the Applicant, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. W. E. Dansey, Jr. appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the record of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Riverhills, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish sewer utility service in River Hills Subdivision, Pitt County, North Carolina, and has filed a Schedule of Rates for said service.

3. River Hills Subdivision is a residential subdivision consisting of approximately 7 streets and approximately 160

lots. The subdivision is located adjacent to Highway U. S. 264, approximately 1.5 miles east of Greenville.

4. The Applicant proposes to initially install gravity mains capable of serving approximately 200 customers in the subdivision.

5. The Applicant has entered into agreements securing ownership or control of the sewer system.

6. There will be an established market for sewer utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The sewerage system plans are approved by the State Department of Water and Air Resources.

8. The annual revenues, based on the proposed flat rate and on 200 customers proposed in the application, would be approximately $27,000 for sewer service.

9. The Applicant lists its net investment in sewer utility plant as $120,000.00, based on an unverified balance sheet contained in the application.

10. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the sewer system will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Riverhills, Inc.

11. Water is provided to the residents of River Hills Subdivision by the Eastern Pines Water Corporation, a water utility exempt from regulation by this Commission under Docket No. W-186, Sub 18.

12. The City of Greenville has facilities to treat the sewage. The Commission has information that the City Utilities Department intends to charge Riverhills for treating the sewage. Based on Greenville's average of 750 c.f. of sewage per customer and Riverhills' projection of 200 customers, the monthly sewage to be treated should be approximately 150,000 c.f. Based on Greenville's out-of-town rate, Riverhills will be charged $610.60 per month or $7,327.20 annually for sewage treatment. Dilution of the sewage produces additional sewage to be treated in order to prevent it from going septic in the force main. This treatment does not increase the expenses because the water for dilution will not be needed after approximately 53 customers are served by the system.

13. The depreciation rates of this system exceeds the rates allowed by this Commission for other water utilities.

The depreciation rates should be reduced to 2 1/2%, or $3,000 annually.

14. Adding the sewage treatment expenses, the depreciation expenses, and the Applicant's other expenses, the total expenses (excluding taxes) amount to $13,687. A property tax rate of $.85 per $100 value amounts to a property tax of $1,020. Total expenses (including tax) amount to $14,707.20.

The Applicant's requested $11.25 per month flat rate, results in a total revenue of $27,000 from which 6% ($1,620) gross receipts taxes must be subtracted, leaving a balance of $25,380. Expenses are subtracted which leaves an income of $10,673. Subtracting 6% ($640.38) State income tax leaves $10,032.62 from which 22% ($2,207.18) Federal income tax must be deducted.

The result of these deductions leaves a net income of $7,825.44. This figure gives the Applicant an 8% return on an investment of $98,000 excluding the contributions-in-aid of construction of $22,000.

## CONCLUSIONS

There will be a demand and need for sewer utility service in River Hills Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for sewer utility service in River Hills Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public sewer utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement with a local plumbing contractor for providing maintenance and repair service to the sewer system in River Hills is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Riverhills, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide sewer utility service in River Hills Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-461

SCHEDULE OF RATES

Riverhills, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

River Hills
Pitt County

SEWER RATE SCHEDULE

FLAT RATES: (Residential Service)

$11.25 per month.

CONNECTION CHARGES:

4-inch connection - $110 per tap
6-inch connection - $150 per tap
8-inch connection - $275 per tap

BILLS DUE: on billing date.

BILLS PAST DUE: Thirty (30) 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 thirty (30) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-461 on September 12, 1974.

DOCKET NO. W-453

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of Application by Rock Barn Club of Golf, Inc., Route 4, Box 42, Conover, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Rock Barn Club of Golf Subdivision, Catawba County, North Carolina, and for Approval of Rates. | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, June 20, 1974.

BEFORE: Hearing Examiner, Jerry B. Fruitt.

APPEARANCES:

For the Applicant:

George D. Hovey
Hovey and Carter
Attorneys at Law
P. O. Box 2405
Hickory, North Carolina 28601

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

FRUITT, HEARING EXAMINER: On April 22, 1974, the Applicant, Rock Barn Club of Golf, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Rock Barn Club of Golf Subdivision, Catawba County, North Carolina, and for approval of rates.

By Order issued on May 3, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Rock Barn Club of Golf Subdivision by the Applicant, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Billie A. Younce, President of Rock Barn Club of Golf, Inc., appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. Richard W. Seekamp appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's plans for the water utility operations. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, Rock Barn Club of Golf, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of a public utility, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Rock Barn Club of Golf Subdivision, Catawba County, North Carolina, and has filed a Schedule of Rates for said service.

3. Rock Barn Club of Golf Subdivision is a residential subdivision consisting of approximately 75 lots. The subdivision is located adjacent to Rock Barn Road, approximately 3 miles from Conover.

4. The Applicant proposes to initially install water mains capable of serving approximately 20 customers in the subdivision. The Applicant proposes to meter the water service at a future date, and to charge a flat rate until meters are installed for all customers.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The quality of the untreated water meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

8. The water system plans are approved by the State Board of Health.

9. The annual revenues, based on the proposed metered rate and on 15 customers, would be approximately $1,440.00 for water service, based on an average monthly consumption of 6,000 gallons per month.

10. The Applicant lists its net investment in water utility plant as $46,202.84, based on an unverified balance sheet contained in the application.

11. The Applicant has entered into a verbal agreement with a local contractor, Minyard and Huffman Plumbing Company, Inc., whereby the contractor will provide maintenance and repair service to the water system in the subdivision.

12. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements.

## CONCLUSIONS

There will be a demand and need for water utility service in Rock Barn Club of Golf Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Rock Barn Club of Golf Subdivision should be those contained in the Schedule of Rates attached hereto, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement with a local plumbing contractor for providing maintenance and repair service to the water system in Rock Barn Club of Golf is acceptable. However, the Applicant is reminded that the delegation of maintenance service to any party by the Applicant will not relieve the Applicant of his responsibility under the Public

Utility Laws of this State to provide adequate and efficient service to his customers.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Rock Barn Club of Golf, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Rock Barn Club of Golf Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

6. That the Applicant shall mail with sufficient postage or hand deliver to all its present customers the attached Notice to the Public attached as Appendix "B" within ten (10) days from the date of this Order, and shall submit to the Commission the attached Certificate of Service within fifteen (15) days from the date of the Order.

7. That the Applicant shall install meters and begin charging the approved metered rates within six months from the date of this Order unless the Commission informs the Applicant to do otherwise within thirty (30) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-453

SCHEDULE OF RATES

Rock Barn Club of Golf, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Rock Barn Club of Golf

Catawba County

WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Water:
Up to first 3,000 gallons per month-$5.00 minimum
All over 3,000 gallons per month -$1.00 per 1,000 gallons

FLAT RATES: (Residential Service)

Minimum rates under metered rates until such time as meters are installed for all customers.

CONNECTION CHARGES:

$250.00 per connection
$300.00 per connection for those customers connected to the system after June 20, 1974.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: on billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-453 on July 16, 1974.

APPENDIX "B"

NOTICE TO THE PUBLIC
DOCKET NO. W-453

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is hereby given that Rock Barn Club of Golf, Inc., Route 4, Box 42, Conover, North Carolina, has applied to the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to furnish water utility service in Rock Barn Club of Golf Subdivision, Catawba County, North Carolina, and for approval of rates.

The Commission held a public hearing on the application in the Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on Thursday, June 20, 1974.

At the hearing the Applicant was instructed to install meters in accordance with Commission Rule R7-22, and the following rates were approved subject to late filed protest.

Up to first 3,000 gallons per month-$5.00 minimum
All over 3,000 gallons per month -$1.00 per 1,000 gallons

Persons desiring to protest the above metered rates should send written statements to the Commission within fifteen (15) days of receipt of this notice. If no protests are received, the Commission will permit these rates to become effective on the date of the Order issued in this matter. Statements shall be addressed to the North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all our customers in Rock Barn Club of Golf Subdivision the attached Notice to the Public issued by Order of the North Carolina Utilities Commission in Docket No. W-453, and said Notice was mailed or hand delivered by the date specified in the Order.

This _____ day of _____, 1974.

ROCK BARN CLUB OF GOLF, INC.

BY:_____
Signature

DOCKET NO. W-428

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Rollingwood Water System, Inc., Route 8, Box 321-A, Shelby, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Rollingwood Subdivision, Cleveland County, North Carolina, and for Approval of Rates. | ) ) ) ) ) ) | RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Auditorium on the Second Floor of the Catawba County Administration Building, Newton, North Carolina, on March 28, 1974.

BEFORE: Commission Chairman, Marvin R. Wooten.

APPEARANCES:

For the Applicant:

Robert W. Yelton
Yelton and Lamb, P. A.
Attorneys at Law
211 South Washington Street
Shelby, North Carolina 28150

For the Commission Staff:

Jerry B. Fruitt
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WOOTEN, CHAIRMAN: On January 18, 1974, the Applicant, Rollingwood Water System, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of

Public Convenience and Necessity to provide water utility service in Rollingwood Subdivision, Cleveland County, North Carolina, and for approval of rates.

By Order issued on February 6, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Rollingwood Subdivision by the Applicant, and was published in the Shelby Daily Star, Shelby, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Junior Setzer, President of the Applicant, appeared at the hearing as a witness and presented testimony in support of the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, Rollingwood Water System, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Rollingwood Subdivision, Cleveland County, North Carolina, and has filed a Schedule of Rates for said service.

3. Rollingwood Subdivision is a residential subdivision consisting of approximately 9 streets and approximately 127 lots. The subdivision is located off of State Highway 150 approximately 1/2 mile northeast of Shelby, North Carolina.

4. The Applicant has entered into agreements securing ownership or control of the water system and of the site for the wells.

5. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

6. The quality of the untreated water from the system meets the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

7. The water system plans are approved by the State Board of Health.

8. The Applicant entered into agreements whereby contributions-in-aid of construction in the subdivision have been paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

9. The Applicant has been entirely reimbursed by the developer of the subdivision for the cost of installing the water system.

10. Mr. Setzer, President of the Applicant, is also in the pump and well business and will have his own personnel available for providing maintenance and repair service to the water systems in the subdivision.

11. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Rollingwood Water System, Inc.

## CONCLUSIONS

There will be a demand and need for water utility service in Rollingwood Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Rollingwood Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement for providing maintenance and repair service to the water system in Rollingwood is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Rollingwood Water System, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Rollingwood Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of

Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report of the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-428

SCHEDULE OF RATES

Rollingwood Water Company, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Rollingwood Subdivision
Cleveland County

METERED RATES FOR WATER SERVICE: (Residential Service)

Up to first 3,000 gallons per month-$5.00 minimum
All over 3,000 gallons per month -$1.00 per 1,000 gallons

CONNECTION CHARGES: None.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00

If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-428 on May 7, 1974.

DOCKET NO. W-353

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Rushing Agency, Inc., 410 Roosevelt Boulevard, Monroe, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in College Grove Subdivision, Union County, North Carolina, and for Approval of Rates | ) | ADDITIONAL INTERIM ORDER |

BY THE COMMISSION: On its own Motion, the Commission takes notice that the legal effect of a Recommended Interim Order issued in this docket dated February 20, 1973, granting temporary operating authority for an interim period of one year to be in effect from the date of that Order, has terminated as of February 20, 1974. It has been brought to the Commission's attention that negotiations between Piney Grove Sanitary District (formerly Piney Grove Water Association) and Rushing Agency, Inc., for the purchase and sale of the water and sewer utility service in College Grove Subdivision, Union County, concluded unsuccessfully because the Sanitary District was unable to secure financing. The Piney Grove Sanitary District will be meeting with the Union County Commission in the near future to determine whether it would be feasible for the County to provide water service to College Grove Subdivision and whether alternative sewer service could be provided. In view of this situation, the parties agree that the temporary operating authority should continue pending further negotiations with Union County.

The Commission is of the opinion that the status of the parties established in the Recommended Interim Order dated February 20, 1973, should continue indefinitely pending negotiations between the parties and Union County, and pending further Order of this Commission.

Based upon the record herein, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant constructed and is currently operating public utility water and sewerage facilities in College Grove, or Piney Grove, Subdivision in Union County, North Carolina.

2. That water is currently being provided, but the long-term operation of the water supply facilities must ultimately be governed by the requirements of the North Carolina State Board of Health; compliance with those requirements will require significant additions to and alterations in the current physical plant.

CONCLUSIONS

Consistent with the foregoing Findings of Fact, it appears that an Order should be issued establishing terms and conditions under which Rushing Agency, Inc., will continue to provide water and sewerage service, pending further action and developments.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That a monthly rate of $13.50 for water and sewerage service to be charged by Rushing Agency, Inc., be, and hereby is, established by this Commission as the just and reasonable rate for an additional interim period of six months, pending negotiations between the parties and Union County, and pending further Order of this Commission.

2. That the Applicant be, and hereby is, granted temporary operating authority for the duration of said additional interim period of six months.

3. That the Applicant shall, during this additional interim period, provide water and sewer service of the sort currently being provided; that is, it shall provide safe, adequate and efficient service, but it is not at this time ordered by this Commission to undertake during said additional interim period the improvement program necessary to satisfy certain requirements of the State Board of Health regarding the 100-foot radius around the well sites; as a part of its safe, adequate and efficient service, the Applicant shall conduct the ordinary monthly bacteriological tests and obtain reports, and will supply a copy of those reports to the Intervenor.

4. That no non-utility water hook-ups by way of garden hoses or piping shall be made from one residence to another.

5. That the schedule of rates attached hereto as "Appendix A" be, and hereby is, approved; said schedule of rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

6. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and the services shall be provided in strict accordance with the various health and utility laws, rules and regulations governing the operations of public utility water and sewerage systems, with particular reference to billing, disconnects and reconnects; the Commission Rule R12-9 shall govern billing practices, and the past due date shall be no less than fifteen (15) days after the billing date, as is provided in "Appendix A".

ISSUED BY ORDER OF THE COMMISSION.

This 15th day of July, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

SCHEDULE OF RATES

RUSHING AGENCY, INC.

SUBDIVISION OR SERVICE AREAS

College Grove Subdivision (also known as Piney Grove Subdivision)

RATE SCHEDULE

FLAT RATE (Water and Sewerage Service Combined) $13.50 per month

CONNECTION CHARGES None for initial tap

RECONNECTION CHARGES

| | |
|---|---|
| If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] | $4.00 |
| If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] | $2.00 |
| If sewerage service cut off by utility for good cause [N.C.U.C. Rule R10-16(f)] | $15.00 |

BILLS PAST DUE

Fifteen days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-353.

DOCKET NO. W-365, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Joint Application by Page-Boling-Jessup Corp., 1000 Schaub Drive, Raleigh, North Carolina, and by Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina, for Authority to Transfer the Water Utility Franchise in Greenbriar Estates Subdivision, Wake County, North Carolina, and for Approval of Rates. | ) | RECOMMENDED ORDER GRANTING FRANCHISE, APPROVING RATES, AND ALLOWING TRANSFER |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on November 2, 1973, at 10:00 A. M.

BEFORE: Hearing Commissioner Marvin R. Wooten.

APPEARANCES:

For the Applicants:

Herbert M. Hoover
Hedrick, Hoover & Jackson
Attorneys at Law
3311 North Boulevard
Raleigh, North Carolina 27604

Robert T. Hedrick
Hedrick, Hoover & Jackson
Attorneys at Law
3311 North Boulevard
Raleigh, North Carolina 27604

For the Commission staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
P. O. Box 991
Raleigh, North Carolina 27602

E. Gregory Stott
Associate Commission Attorney
P. O. Box 991
Raleigh, North Carolina 27602

For the Greenbriar Residents Committee for Water Service:

William E. Anderson
Attorney at Law
P. O. Box 2234
Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: The Application in the above captioned matter was filed with the North Carolina Utilities Commission on June 27, 1973. A public hearing was scheduled, and public notice was mailed or hand delivered to each customer and was published in The News and Observer, Raleigh, North Carolina.

Protests and interventions were filed in response to the public notice, and the public hearing was rescheduled at a later date in order to afford the intervenors an opportunity to review the application.

The public hearing was held at the scheduled time and place, and testimony was offered by several witnesses, to wit: T. J. Thompson, President of Page-Boling-Jessup and manager of the water system since 1958; T. L. Bailey, President of Bailey's Utilities, Inc.; David F. Creasy, Chief of the Commission staff's Water and Sewer Section; and E. P. Stevenson, a resident of Greenbriar Estates and a customer of the water utility. J. M. May and R. P. Bryan, also residents of Greenbriar Estates, were tendered as in agreement with testimony by E. P. Stevenson.

The Hearing Commissioner takes judicial notice of its files concerning the subject water utility in Dockets Nos. W-136 and W-374. Based on the information contained in the Commission's files and in the record of this proceeding, the Hearing Commissioner makes the following:

FINDINGS OF FACT

1. The Applicant, Bailey's Utilities, Inc., is a North Carolina corporation engaged in the operation of public water utilities as defined in G. S. 62-3, and it is presently furnishing water utility service to more than 100 customers in 5 subdivision service areas in Wake, Johnston, and Lee Counties in North Carolina.

2. Bailey's Utilities proposes to purchase the water system in Greenbriar Estates Subdivision from the present franchise holders, Page-Boling-Jessup Corp. Bailey's Utilities also seeks a franchise to furnish water utility service in Greenbriar Estates, and has filed a Schedule of Rates for said service.

3. The rates proposed by Bailey's Utilities will increase the present rates by approximately 108%.

4. Greenbriar Estates Subdivision is a residential subdivision consisting of approximately 15 streets and approximately 325 lots. The subdivision is located off U. S. 401 south of Raleigh, North Carolina, in Wake County.

There are approximately 296 customers presently receiving water utility service in the subdivision.

5. Bailey's Utilities has entered into a contract agreement with Page-Boling-Jessup whereby Bailey's will acquire the present water system at a price which is subject to renegotiation if the proposed rates are not allowed.

6. Bailey's Utilities proposes to improve the pump houses and landscaping of the well sites if the transfer is approved. It maintains a 24-hour answering service, and has six (6) employees and necessary equipment to service its water systems.

7. Mr. T. J. Thompson of Page-Boling-Jessup is the only person in the corporation capable of taking care of the water system now, and he wants relief from the personal responsibility because of his age and other responsibilities. Mr. Thompson is a stockholder in Page-Boling-Jessup, and also in Greenbriar Realty. Page-Boling-Jessup chose to sell the water system rather than seek rate relief because of the time and difficulty involved in rate cases.

8. Customer complaints filed in response to the application indicate the present service is satisfactory, and that the customers are opposed to the resultant rate increase which would accompany transfer of the water system and therefore they oppose the transfer.

9. The annual revenues under the proposed rates will be approximately $27,900, based on average water consumption of 6,850 gallons per month per customer, according to the Commission staff engineer.

10. The annual operating expenses will be approximately $21,600 according to projections by Bailey's Utilities, including approximately $5,300 interest expense in addition to salaries for service and office personnel of $10,000. The annual operating expenses will be approximately $24,500 according to projections by Page-Boling-Jessup, including $5,200 management fee in addition to salaries for office and service personnel of $12,800. The Annual Report of Page-Boling-Jessup for 1972 shows annual operating expenses of approximately $11,200. The principal difference between the expenses contained in the 1972 Annual Report and those projected by the Applicants is the high salaries, interest expense and management fees. According to testimony by the Commission staff engineer, the water system operation is not large enough to justify a full time maintenance man, especially one who does not also perform the office and managerial duties, and one whose salary does not absorb a large portion of the projected cost of labor on maintenance of mains, pumps, etc.

11. The annual depreciation expense will be approximately 3% of an original cost base estimated conservatively at

$100,000, or approximately $3,000, according to the Commission staff engineer. The depreciation base of $100,000 is a conservative estimate based on the fact that the company's original cost records do not include the cost of mains or service connections, and the fact that appraisal of the system indicates that the original cost of the facilities should have been in excess of $100,000.

12. The original cost base of the plant, estimated to be at least $100,000, does not include working capital, tap fees, etc., according to testimony by the Commission staff engineer. It does represent the staff estimate of the depreciated original cost.

13. The replacement cost base of the plant, excluding working capital, tap fees, and depreciation reserve, is approximately $163,000 according to estimates furnished by Bailey's Utilities. The Commission staff engineer estimates that an appropriate depreciation reserve for the system would be approximately 20%, which would yield a depreciated replacement cost of approximately $131,000 based on the Applicant's replacement cost appraisal.

14. Bailey's Utilities proposes to purchase the system from Page-Boling-Jessup for approximately $135,000, to be paid over a 15-year period of 4% annual interest, with total annual payments in the amount of $12,000. The Applicants testified that the $135,000 purchase price was agreed upon as being the fair market value of the system. Bailey's Utilities does not propose to reflect on its books the difference between the plant cost shown on the books of Page-Boling-Jessup and the purchase price paid by Bailey's Utilities.

15. Mr. T. J. Thompson and Roger Page, Jr., applied for authority to purchase the water system from Page-Boling-Jessup in January of 1973 for a purchase price of approximately $30,000. The application was subsequently withdrawn. The purchase was planned for personal tax reasons.

16. A Commission staff audit performed in 1965 showed contributions-in-aid of construction of approximately $16,300. Information furnished by the Applicants showed total tap fees collected were approximately $6,300, with approximately $600 collected after the 1965 audit. Bailey's Utilities indicated that it does not propose to reflect on its books the tap fees collected by Page-Boling-Jessup, and that it proposed to charge a tap fee to Page-Boling-Jessup for extending the mains to approximately 30 additional lots in the subdivision.

## CONCLUSIONS

The Hearing Commissioner concludes that public convenience and necessity requires the water service presently furnished by Page-Boling-Jessup and proposed by Bailey's Utilities.

There has been no showing that the quality of service would be decreased if the system were transferred to Bailey's Utilities, or that the present rates would not be increased if Page-Boling-Jessup chose to apply for such increase rather than sell the system. Therefore, the Hearing Commissioner concludes that the proposed transfer should be allowed, subject to the conditions described hereafter.

The differences of opinion regarding the level of actual operating expenses to furnish the water service indicate that no reasonable certainty can be claimed by the Applicant until accurate records of operation are maintained for at least a 12-month period. The rates proposed by Bailey's Utilities appear to be excessive when compared to the figures contained in the books and in the annual reports of Page-Boling-Jessup, and the rates attached hereto as Appendix "A" are prescribed instead.

The rates prescribed herein will produce an annual revenue of approximately $26,600. The annual operating expenses, excluding depreciation and income taxes, will be approximately $11,200, absent a showing to the contrary by any party to this proceeding. The annual depreciation expense will be approximately $3,000. Income taxes will be estimated as approximately 25% of net operating income, or approximately $3,100. Therefore, the net income for return is approximately $9,300.

The market price of approximately $135,000 cannot be said to be the fair value of the system to the customers, in view of the previous offer to purchase by Thompson and Page for approximately $30,000. In addition, the customers appear to have contributed approximately $16,800 in tap fees to the water system. However, the figures contained in the books and annual reports do not reflect the total costs of the facilities, which appear to have been at least $100,000. Therefore, the fair value of the facilities is concluded to be approximately $100,000.

The net income for return of $9,300 will produce a 9.3% return on the fair value of the plant used and useful in service to the customers, and is hereby concluded to be a fair return in view of said fair value.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Bailey's Utilities, Inc., is hereby granted a Certificate of Public Convenience and Necessity to furnish water utility service in Greenbriar Estates Subdivision, as described herein and more particularly as described in the files of the Commission, upon final consummation of the transfer.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the transfer of the water utility system in Greenbriar Estates from Page-Boling-Jessup to Bailey's Utilities is hereby allowed.

5. That the Certificate of Convenience and Necessity held by Page-Boling-Jessup to furnish water service in Greenbriar Estates is hereby cancelled upon final consummation of the transfer.

6. That Bailey's Utilities, Inc., shall file with this Commission a report of actions taken and transactions consummated pursuant to the authority granted herein to transfer the water system, and that said report shall be filed within thirty (30) days after consummation of the transfer. The report shall include the journal entries recording the transfer, showing the effect of such transfer in accordance with the System of Accounts prescribed by the Commission.

7. That Bailey's Utilities, Inc., is hereby required to include in the transactions relating to transfer of the water system an entry on its books reflecting the $16,800 tap fees collected by Page-Boling-Jessup from the customers; and also an entry on its books reflecting the original cost of plant of $100,000; and also an entry on its books to reflect the addition to the plant account in the amount of the difference between the $100,000 original cost of plant and the $40,000 plant on the books of Page-Boling-Jessup; and also an entry on its books reflecting the difference between the original cost of plant and the purchase price by Bailey's Utilities; and also an entry on its books reflecting the depreciation reserve accumulated on the books of Page-Boling-Jessup.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of January, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-365, SUB 2

SCHEDULE OF RATES

BAILEY'S UTILITIES, INC.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Greenbriar Estates Subdivision

WATER RATE SCHEDULE

METERED RATES

Up to first 3,000 gallons per month-$5.00 minimum.
All over 3,000 gallons per month - .65 per |,000 gallons.

CONNECTION CHARGES

$|35.00 for each 3/4-inch house connection to main.
Actual cost plus 20% for house connection larger than 3/4-inch.
$|50.00 for each lot served by new main extensions, in addition to house connection charge.

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLING FREQUENCY: Monthly, for service in arrears.

BILLS DUE: On billing date.

BILLS PAST DUE: Sixteen (|6) days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: None.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-365, Sub 2 on January 3|, |974.

DOCKET NO. W-412

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Application by John H. Shook, 1400 16th Street, N. E., Hickory, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Shook Development on 20th Avenue, N. E., Hickory, Catawba County, North Carolina, and for Approval of Rates | ) RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES |

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, January 4, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten

APPEARANCES:

For the Commission Staff:

Jerry B. Fruitt
Associate Commission Attorney
P. O. Box 991
Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: By application filed with the North Carolina Utilities Commission on October 22, 1973, John H. Shook seeks a Certificate of Public Convenience and Necessity to provide water utility service in Shook Development, Catawba County, North Carolina, and approval of rates to be charged therein.

By Order issued November 5, 1973, the Commission scheduled the matter for public hearing, required that the Applicant submit additional information pertaining to the application, and required that Notice of the public hearing be given by the Applicant. The requisite public notice was given in the Hickory Daily Record and by personal service on customers by mail or hand delivery. No one petitioned to intervene in the matter or protested the application.

The public hearing was held at the time and place designated. No one appeared at the hearing to protest the application.

Based upon the information contained in the verified application in the files of the Commission in this docket and the evidence adduced at the public hearing, the Hearing Commissioner makes the following:

FINDINGS OF FACT

1. The Applicant, John H. Shook, is currently providing public utility water service to nineteen (19) residential customers in Shook Development.

2. Shook Development is located in Catawba County approximately one (1) mile from the City of Hickory.

3. No other public utility, municipality or membership association currently proposes to provide water service in the Applicant's service area.

4. The well sites and plans for the design of the proposed water system have been accepted by the State Board of Health.

5. The Applicant proposes to charge a flat rate of $4.00 per month to be billed quarterly in arrears.

Whereupon, the Hearing Examiner reaches the following:

CONCLUSIONS

There is a demand and need for public utility water service in the service area which can best be met by the Applicant.

That the proposed rates are just and reasonable and the facilities and source of supply which the Applicant operates should be adequate to supply the reasonable demand of the customers in the proposed service area.

The Hearing Commissioner concludes that the Applicant's present arrangements for repair service should be adequate to the needs of Applicant's customers, but that in the event any change in the repair arrangements should become necessary, Applicant should promptly make a new arrangement equally as satisfactory as the existing one, and that it is the continuing duty of the Applicant to keep his customers currently advised of the sources from which they should seek and to whom they should look for repair service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That John H. Shook is hereby granted a Certificate of Public Convenience and Necessity to provide water utility service in the Shook Development on 20th Avenue, N. E., Hickory, North Carolina.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the schedule of rates attached hereto as "Appendix A" be, and hereby is approved; said schedule of rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the books and records of the Applicant be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the staff may recommend.

5. That the Applicant print on the billing statements the names and phone numbers of those individuals with whom he has agreements for repair service at their next printing.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of January, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-412

SCHEDULE OF RATES

JOHN H. SHOOK
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Shook Development on 20th Avenue, N. E.
Catawba County, North Carolina

FLAT RATES (RESIDENTIAL SERVICE)

$4.00 per month

RECONNECTION CHARGES

| | |
|---|---|
| If water service cut off by utility for good cause (NCUC Rule R7-20f) | $4.00 |
| If water service discontinued at customer's request (NCUC Rule R7-20g) | $2.00 |

BILLS DUE on billing date.

BILLS PAST DUE thirty (30) days after billing date.

BILLING shall be quarterly, in arrears.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-412 on January 24, 1974.

DOCKET NO. W-463

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of<br>Application by Utility Systems, Ltd.,<br>P. O. Box 19504, Raleigh, North Carolina,<br>for a Certificate of Public Convenience<br>and Necessity to Provide Sewer Utility<br>Service in Barclay Downs Subdivision,<br>Wake County, North Carolina, and for<br>Approval of Rates. | ) | ORDER GRANTING FRANCHISE AND APPROVING RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, September 3, 1974.

BEFORE: Hearing Examiner Jerry B. Fruitt - Full Commission Participating by Reading the Record.

APPEARANCES:

For the Applicant:

William E. Anderson
Weaver, Noland and Anderson
Attorneys at Law
P. O. Box 2226
Raleigh, North Carolina 27601

H. D. Coley, Jr.
Attorney at Law
P. O. Box 1426
408 NCNB Building
Raleigh, North Carolina 27602

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On June 28, 1974, the Applicant, Utility Systems, Ltd., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide sewer utility service in Barclay Downs Subdivision, Wake County, North Carolina, and for approval of rates. The Applicant further filed an amended application on August 22, 1974.

By Order issued on July 17, 1974, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. A subsequent order was issued on August 23, 1974, rescheduling the hearing for September 3, 1974. Public Notice was furnished to each customer in Barclay Downs Subdivision by the Applicant, and was published in The News and Observer, Raleigh, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission prior to the August 20, 1974, hearing.

The public hearing scheduled for August 20, 1974, was convened on that date, but rescheduled to September 3, 1974, at the time and place specified in the Commission's Order of August 23, 1974. At the September 3, 1974, hearing, counsel for the Applicant and counsel for the North Carolina Utilities Commission staff stipulated that they had no objection to a Hearing Examiner hearing the case and the full Commission reviewing the transcript and record and making the final decision in this matter. This approach was agreeable to all parties of record as an attempt to expedite a decision in this matter. Mr. Thomas G. Coffey and Mr. Felix Allen appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. Mr. Roger L. Philbeck and Mr. Robert Keiber presented testimony in protest of the application. The Protestants testified that they believed that the Applicant's proposed rates were excessive. Mr. Keith Daughety, Mr. Steve Barcaw, Mr. Bobby Harriett, Mr. Adam Schad and Mr. Larry Jones were offered for cross-examination as supporting the testimony of Mr. Philbeck and Mr. Keiber.

Based on the information contained in the application and in the Commission's files and in the record of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. The Applicant, Utility Systems, Ltd., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G.S. 62-3.

2. The Applicant proposes to furnish sewer utility service in Barclay Downs Subdivision, Wake County, North Carolina, and has filed a Schedule of Rates for said service.

3. Barclay Downs Subdivision is a residential subdivision consisting of approximately 5 streets and approximately 125 lots.

4. The Applicant owns a sewer system capable of serving approximately |00 customers in the subdivision.

5. The Applicant has entered into agreements securing ownership or control of the sewer system and of the sites for the treatment plant.

6. There will be an established market for sewer utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

7. The sewerage system plans are approved by the State Department of Water and Air Resources, and Permit No. 2682 has been issued for the operation of said system.

8. The annual revenues, based on the proposed flat rate of $7.50 and on 92 customers (the total number of customers projected by the Applicant for July |, |975), would be approximately $8,280.00 for sewer service.

9. The Applicant projected total operating expenses for the year ending December 3|, |975, of $7,995.00.

|0. The Applicant lists the original investment in sewer utility plant as $|56,400.00 based on an unverified balance sheet contained in the application. The Applicant also stated that the entire utility plant was contributed to the Applicant.

||. The Applicant has entered into a verbal agreement with local contractors whereby the contractors will provide maintenance and repair service to the sewer system in the subdivision.

|2. The Applicant has specified that four telephone numbers of the companies or persons responsible for providing maintenance and repair service to the sewer systems will be listed on the monthly billing statements. The Applicant will be listed in the phone book for the proposed service area as Utility Systems, Ltd.

|3. That the Applicant presented only a one-month historical record of some of its operating expenses and its witness testified that some of these expenses were abnormally high due to certain conditions.

|4. That the Applicant did not present historical test period expense and revenue figures because these items were not available due to the newness of the system.

## CONCLUSIONS

There will be a demand and need for sewer utility service in Barclay Downs Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for sewer utility service in Barclay Downs Subdivision should be those contained in the Schedule of Rates attached hereto, and which are concluded to be just and reasonable for the services and expenses described herein.

The Applicant's arrangements with local contractors for providing maintenance and repair service to the sewer system in Barclay Downs is acceptable. However, the Applicant is reminded that the delegation of maintenance and repair service to any party by the Applicant does not relieve the Applicant of its responsibility under the Public Utilities Law of this State to provide adequate and efficient service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Utility Systems, Ltd., is hereby granted a Certificate of Public Convenience and Necessity in order to provide sewer utility service in Barclay Downs Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That the Applicant shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and record, and can be utilitized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

6. That the Applicant is hereby informed that after one (1) year of operating experience, under regulation by this Commission, it may apply to the Commission through the normal procedures for a rate adjustment. At the time of a general rate case, the burden of proof is on the Applicant

to prove its need for operating revenues by providing the Commission with statements of its actual operating expenses and its actual investment in the utility system.

7. That the Applicant's claim of an annual depreciation expense of $3,910.00 on its plant of which it has no actual investment is hereby disallowed as a legitimate operating expense.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of September, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-463

SCHEDULE OF RATES

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UTILITY SYSTEMS, LTD.

SUBDIVISION OR SERVICE AREAS

BARCLAY DOWNS
WAKE COUNTY

SEWER RATE SCHEDULE

FLAT RATES: (Residential Service)

Sewer: $6.50 per month

CONNECTION CHARGES: None

RECONNECTION CHARGES:

If sewer service cut off by utility for good cause (NCUC Rule 10-16f): $15.00

BILLS DUE: On Billing Date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all

bills still past due thirty (30) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-463, on September 13, 1974.

DOCKET NO. W-201, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>W. E. Caviness, t/a Touch and Flow Water System, 1108 Poplar Street, Jacksonville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in Colonial Heights and Royal Acres Subdivisions, Wake County, North Carolina, and in Scotsdale Subdivision, Cumberland County, North Carolina. | ORDER DENYING EXCEPTIONS AND AFFIRMING AND MODIFYING ORDER OF DECEMBER 21, 1973 |

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on March 20, 1974.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Ben E. Roney, Tenney I. Deane; (Commissioner Hugh A. Wells to Read Record and Participate in Decision).

APPEARANCES:

For the Applicant:

Vaughan S. Winborne, Esq.
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding arose out of an Application filed March 29, 1973, by W. E. Caviness, doing business as Touch and Flow Water Systems, for authority to increase rates for water and sewer utility service in Colonial Heights and Royal Acres Subdivisions, Wake County, North Carolina, and in Scotsdale Subdivision, Cumberland County, North Carolina. Public hearings in this matter were held on June 27, 1973, September 25, 1973, and December 13, 1973. On December 21, 1973, the Commission issued its Order denying the Application for rate increase. Thereafter, the Applicant Caviness, through his attorney, filed Exceptions to the Commission's Order of December 21, 1973, and requested oral argument thereon before the Full Commission. The Commission granted the Motion and heard oral argument on the Exceptions on March 20, 1974.

After consideration of the Record in this docket, including the Application and the evidence and exhibits adduced at the hearings, and the oral argument of counsel on the Exceptions, the Commission adopts the Findings of Fact set out in the Order of December 2|, |973, and makes herein the following

ADDITIONAL FINDINGS OF FACT

(6) In an Order dated July |8, |973, the Commission ordered Mr. Caviness to submit within thirty (30) days the following information to the Commission's Staff:

(a) The meter reading records of Touch and Flow Water Systems for the preceding |2 months;

(b) Statement of the Applicant's operating expenses for |972, together with supporting records such as invoices, cancelled checks, and bank statements;

(c) Mr. Caviness' North Carolina gross receipts tax records for |972; and

(d) A copy of the Applicant's |972 State and Federal income tax returns.

(7) The Applicant Caviness, in response to the aforesaid Order of July |8, |973, did submit the meter reading records of the Touch and Flow utility system. He did not submit the other items requested (he had been granted an extension of time to file his |972 Federal tax return).

(8) During the course of the hearing on September 25, |973, Mr. Caviness was unable to testify as to the operating expenses incurred during the test year for the three subdivisions involved in this proceeding. Nor did Mr. Caviness present any financial exhibits setting forth his operating expenses for the test year.

(9) During the test year period, Mr. Caviness had one bank account for both his personal affairs and his utility business. In this account he commingled rental and other non-utility income with income from the utility system.

(|0) Mr. Caviness did not furnish material and competent information on the valuation of his utility properties.

(||) A member of the Commission's Accounting Staff went to Jacksonville, North Carolina, in May |973 and attempted to make an audit of Mr. Caviness' records. The Staff Accountant was unable to develop a depreciation expense figure due to the lack of records. The only available depreciation expense ($5,6|7) was developed by Mr. Caviness' accountant from his |970 Federal tax return; this figure of $5,6|7 included depreciation on rental properties and other nonutility items.

(12) The Staff Accountant was unable to develop a rate of return from his audit. With respect to the revenues of Touch and Flow Water Systems, the Staff Accountant came up with three different figures for the test year. The Staff Accountant could not verify any of the expenses. As to the investment in Mr. Caviness' utility plant, Mr. Caviness listed the investment as $28,994 in his Application and as $49,000 in his Annual Report to the Commission. The only records made available to the Staff Accountant were Mr. Caviness' accounts receivable and his billing records. The Accountant was not furnished cancelled checks, bank statements, invoices, or other relevant financial documents on which to make an audit of Mr. Caviness' operating expenses. Although Mr. Caviness' accountant furnished the Staff Accountant with three sheets of work papers, the Staff Accountant was not furnished the supporting records behind these work papers. The Staff Accountant could not determine from these work papers whether or not the figures thereon pertained solely to Mr. Caviness' utility expenses.

(13) G. S. 62-133.1, entitled Small water and sewer utility rates, became effective on March 7, 1974. This statute, which simplifies the fixing of rates for small water and sewer utility companies, provides:

> "Small water and sewer utility rates.--(a) In fixing the rates for any water or sewer utility the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission, unless the utility requests that such rates be fixed under G. S. 62-133(b)..."

## CONCLUSIONS

Based upon the above Additional Findings of Fact and the Findings of Fact contained in the Commission's Order of December 21, 1973, the Commission is of the opinion, and so concludes, that the Exceptions filed herein should be denied and that the Commission's Order of December 21, 1973, together with the Additional Findings of Fact contained herein, should be adopted and affirmed as the Order of the Full Commission, except as modified herein below.

G. S. 62-134(c) provides:

> "At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable."

At the time Mr. Caviness filed this Application for a rate increase, the Commission, in fixing rates, was required by law to ascertain the following:

(1) The fair value of the utility property used and useful in providing the water and sewer service;

(2) The public utility's revenues under the present and proposed rates;

(3) The public utility's reasonable operating expenses, including depreciation; and

(4) The rate of return on the fair value of the public utility's property.

G. S. 62-133.

It is manifest from a consideration of the Application in this docket, and the evidence and exhibits presented at the hearings, that the Applicant has failed to meet the burden of proof imposed upon him by law. There is no competent and material evidence upon which the Commission can find the fair value of Mr. Caviness' utility properties. There is no competent and material evidence upon which the Commission can ascertain Mr. Caviness' utility revenues under his present and proposed rates; nor is there competent and material evidence upon which the Commission can ascertain the utility's operating expenses, including depreciation expense. Finally, there is no competent or material evidence upon which the Commission can fix a rate of return.

The Commission is required by statute to fix rates that will be fair both to the public utility and to the consumer. G. S. 62-133(a). In order to undertake this mandate, the Commission must proceed upon competent, material and relevant evidence presented by the Applicant in support of his Application. There is no such evidence in this proceeding. This lack of evidence stems from the failure of Mr. Caviness to maintain even a minimum of business records that a public utility should reasonably and prudently keep. Unsupported work sheets, bank statements on which personal and utility funds are indiscriminately commingled, and cancelled checks packed in boxes are wholly insufficient as evidence to enable this Commission to carry out its mandate.

In March 1974 the General Assembly greatly simplified the ratemaking procedure for small water utilities. G. S. 62-133.1 provides:

"Small water and sewer utility rates.--(a) In fixing the rates for any water or sewer utility, the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission, unless the utility requests that such rates be fixed under G. S. 62-133(b)..."

The Commission will modify its Order of December 21, 1973, in order to afford Touch and Flow Water Systems an opportunity to prove its Application under the newly-enacted operating ratio statute. Touch and Flow Water Systems may choose a test year more current than the test year utilized in its Application.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Exceptions of the Applicant to the Commission's Order of December 21, 1973, be, and the same hereby are, denied.

(2) That the Commission's Order of December 21, 1973, together with the Additional Findings of Fact and Conclusions contained in the instant Order be, and the same hereby is, adopted as the Order of the Commission in this docket; provided, however, that this Docket shall remain open for 120 days from the date of this Order in order that the Applicant be afforded an opportunity to submit material and competent evidence in support of his Application under G. S. 62-133.1; provided, further, that the Applicant may choose a test year more current than the test year used in his Application.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-177, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Brookwood Water Corporation, 6203 Raeford Road, Fayetteville, North Carolina, for Approval of Increased Rates for Water Utility Service in its Service Areas in Cumberland County, North Carolina | ) | RECOMMENDED ORDER |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 4, 1974.

BEFORE: Hearing Commissioners Marvin R. Wooten and Tenney I. Deane.

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
P. O. Box 1688
Fayetteville, North Carolina 28302

For the Commission Staff:

John R. Molm
Associate Commission Attorney
Ruffin Building
P. O. Box 991
Raleigh, North Carolina 27602

WOOTEN, DEANE, HEARING COMMISSIONERS: On September 21, 1973, Brookwood Water Corporation (hereinafter called "Applicant") filed an Application with the North Carolina Utilities Commission for authority to increase rates for water utility service.

By Order issued October 10, 1973, the Commission scheduled the Application for public hearing and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer served by the Applicant, and was published in The Fayetteville Observer, Fayetteville, North Carolina, advising that anyone desiring to intervene or to protest the Application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No protestants appeared at the hearing.

The public hearing was held at the time and place specified in the Public Notice. Witnesses for the Applicant were Mr. Phil W. Haigh, Jr., a Certified Public Accountant; Mr. Walter C. Moorman, Engineering Consultant, stockholder and Assistant Secretary for the Applicant; Mr. J. S. Harper,

President. Mr. Bobby C. Branch appeared as a witness for the Commission Staff.

Based upon information contained in the Application and in the records of this proceeding, the Hearing Commissioners make the following:

## FINDINGS OF FACT

1. The Applicant, Brookwood Water Corporation, operates a public water utility in certain areas of Cumberland County, North Carolina, and holds a Certificate of Public Convenience and Necessity to provide water service in that area.

2. The quality of service furnished by the Applicant is adequate.

3. The net investment in utility plant plus allowance for working capital for the year 1972 was $110,631, based upon the Commission Accountant's audit.

4. Net operating income for the year 1972 amounted to $9,157, based upon the Commission Accountant's audit; net income amounted to $3,118.

5. Applicant plans to construct a new water tank that would meet the requirements of both the North Carolina State Board of Health and the North Carolina Utilities Commission. Construction of a 500,000 gallon overhead water tank would satisfy these requirements. Estimated cost of such a tank is $120,000.

6. After construction of the new tank, net investment in utility plant plus allowance for working capital would amount to $228,263, based upon the Commission Accountant's audit.

7. The Applicant proposes to increase rates on water service an average of 38.2%, an increase of $1.23 on the average monthly bill.

8. Based upon the Commission Accountant's audit, revenues would increase from $97,685 to $132,423 as a result of the proposed rate increase.

9. The Applicant proposed to include premiums on officers' life insurance as an operating expense. The Commission Accountant eliminated this item as an operating expense, pointing out that pursuant to the Uniform System of Accounts for water utilities, life insurance premiums are not a legitimate expense for utility ratemaking purposes.

10. The Applicant proposed a depreciation rate of 5%, based upon a 20-year life. The Commission Accountant recommended a depreciation rate of 2% based upon a 50-year life.

11. After certain other adjustments to the Applicant's estimate of expense increase, the Commission Accountant testified that adjusting for both the proposed rate increase and the investment in a new tank, net operating income for return amounted to $39,082, and net income amounted to $23,443.

12. The Commission Accountant set the net investment in utility plant plus allowance for working capital at $227,182, based upon investment in a new tank and the proposed rate increase.

CONCLUSIONS

1. The proposed rates are just and reasonable.

2. Premiums on officers' life insurance are not a proper item of operating expense for utility ratemaking purposes.

3. Depreciation on the new water tank should be set at 2%, based upon a 50-year life.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Applicant's record of operating expenses reflect the above Conclusions.

2. That the Schedule of Rates attached hereto as Appendix A is hereby approved and is hereby deemed to be filed with the Commission pursuant to G.S. 62-138, to become effective on the first or next billing date.

ISSUED BY ORDER OF THE COMMISSION.

This 17th day of January, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-177, SUB 11

SCHEDULE OF RATES

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Name of Company or owners: BROOKWOOD WATER CORPORATION

Service areas: all systems

METERED RATES:

Minimum charge, including first 3,000 gallons per

month - $4.50
All over 3,000 gallons per month, per 1,000 gallons - $ .55

FLAT RATE: (MOBILE HOMES AND UNMETERED APARTMENTS)

$3.50 per month

TAP FEE: $350, payable by developer.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customers' request (NCUC Rule R7-20g): $2.00

BILLING FREQUENCY: Monthly, for service in arrears.

BILLS DUE: On billing date.

BILLS PAST DUE: Twenty (20) days after billing date.

SERVICE CHARGES FOR LATE PAYMENT: None.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-177, Sub 11 on January 29, 1974.

DOCKET NO. W-54, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Carolina Water Company, Post Office Box 176, Beaufort, North Carolina, for Approval of Increased Rates for Water Utility Service in the Town and Vicinity of Beaufort, North Carolina. ) ORDER

HEARD IN: Carteret County Courthouse, Beaufort, North Carolina, July 26, 1973; and Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, October 24, 1973.

BEFORE: Hugh A. Wells, Hearing Commissioner, and other Commissioners participating by reading the record.

APPEARANCES:

For the Applicants:

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina 27602

Henry S. Manning
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina 27602

For the Intervenor:

C. R. Wheatly, Jr., and C. R. Wheatly, III
Wheatly & Mason
Attorneys at Law
Front Street
Beaufort, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

John R. Molm
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

WELLS, COMMISSIONER: On March 30, 1973, Carolina Water Company, filed an application with the North Carolina Utilities Commission for approval of increased rates for water utility service in the town and vicinity of Beaufort, North Carolina.

The proposed rates are as follows:

METER RATES

Minimum Charges

| Meter Size | Monthly Minimum Charge |
|---|---|
| 5/8" and 3/4" | $ 5.00 |
| 1" | 12.00 |
| 1 1/2" | 25.00 |
| 2" | 40.00 |
| 4" | 125.00 |
| 6" | 350.00 |
| 8" | 625.00 |

Consumption Charges

| Gallons Per Month | Rate Per 1,000 Gallons |
|---|---|
| First 6,000 | $1.35 |
| Next 34,000 | .75 |
| Over 40,000 | .45 |

By Order of April 17, 1973, the Commission, inter alia, declared the application a general rate case pursuant to G. S. 62-133, suspended for 270 days the proposed new rates pursuant to G. S. 62-134, required the Applicant to give notice of its application, and set the matter for public hearing in the Carteret County Courthouse, Beaufort, North Carolina, on June 1, 1973.

Petition for Leave to Intervene was filed by the Town of Beaufort on May 9, 1973, and was allowed by the Commission Order of May 23, 1973.

By Order of May 23, 1973, the Commission continued the hearing to July 26, 1973.

The hearing commenced in this docket with testimony by two witnesses for Applicant and four witnesses for the North Carolina Utilities Commission Staff, in Beaufort on July 26, 1973. Upon opening of the hearing, at which only Commissioner Wells was present, all parties stipulated that the hearing could go forward in the absence of the other Commissioners, who might participate in the decision of the cause upon reading of the transcript of the record thereof.

On August 21, 1973, Applicant filed with the Commission a Motion for Authority to Increase Rates on an Interim Basis Pending Final Order of the Commission. Applicant requested the Commission to permit and authorize Applicant to place into effect the schedule of rates and charges theretofore filed with the Commission in its application dated March 23, 1973.

By Order of October 3, 1973, the Commission granted Applicant authority, pursuant to G. S. 62-134(b), to increase its rates on an interim basis, by no more than

twenty percent (20%) on any single rate classification, effective on bills rendered after October 5, 1973, subject to a refund provision.

The hearing resumed in Raleigh on October 24, 1973, at which time testimony was taken of witnesses for Applicant, the Town of Beaufort, and the Commission Staff.

WITNESSES & EXHIBITS

Applicant offered the testimony and exhibits of the following witnesses:

Henry G. Mulle, Senior Rate Economist for General Waterworks Management and Service Company, testifying with respect to the cost of capital and rate of return; Nicholas B. Kuhn, Vice President of Public Utilities for Day and Zimmerman Consultant Services, testifying with respect to fair value, original cost, replacement cost, and pro forma revenue and expense adjustments at existing and proposed rates; Harold A. Buch, Jr., Controller for the operating companies comprising the Central Region of General Waterworks Corporation, testifying with respect to water utility accounting.

The public witnesses were as follows: Colonel Gene W. Morrison, Gene D. Hill, Mrs. George R. Snooks, and Ms. Mary S. Pasteur. Their testimony was with respect to the need to eliminate minimum charges for senior citizens living on fixed incomes, the mineral content to the water, and scale produced on cooking utensils.

Commission Staff offered the testimony and exhibits of the following witnesses:

Danny B. Jones, Staff Accountant, testifying with respect to his examination of the books and records of Applicant; Roy L. Simpson, Water Plant Consultant, Department of Human Resources, State of North Carolina, testifying with respect to the recommendations of the State Board of Health regarding the Carolina Water Company system; Jesse Kent, Jr., Staff Accountant, Utilities Commission, testifying with respect to the accounting treatment of capital gain on the sales of Snow Hill and Morehead City water properties, the acquisition adjustments, and dividends declared since 1963; and David F. Creasy, Chief Engineer, Water and Sewer Section, Utilities Commission, testifying with respect to the Staff's proposed modified rate structure, general charges, and practices of Applicant.

The Town of Beaufort offered the testimony and exhibits of the following witness:

John R. Andrew, Project Engineer, Henry Von Oesen and Associates, Inc., testifying with respect to an appraisal of the water system of Applicant.

Applicant introduced Mulle Exhibit A consisting of schedules indicating its capital structure, cost of capital and rate of return of General Waterworks Corporation, Moody's Annual Bond Yield Averages for Public Utility bonds, cost of common equity for comparable companies, capital structure for Applicant, and its return on fair value common equity; Kuhn Exhibit B, consisting of schedules indicating fair value, original cost, replacement cost, and pro forma revenue and expense adjustments at existing and proposed rates; Buch Exhibit A, B, C, and D, consisting of schedules effecting accounting treatment of the acquisition adjustments and net additions to utility plant in service.

Commission Staff introduced Staff Exhibit No. 1 consisting of a report on the examination of the books and records of Applicant; Staff Exhibit No. 2, consisting of letters from the State Board of Health to Applicant with respect to the water system in Beaufort; Staff Exhibit No. 3, consisting of schedules indicating treatment of acquisition adjustments, capital gain on sales of water properties, and dividends declared; Staff Exhibit No. 4, consisting of schedules indicating Commission Staff's proposed modified rate structure.

Intervenor introduced Beaufort Exhibit No. 1, an appraisal of the water system operated by Carolina Water Company.

## EVIDENCE

I. Quality of Service.

Evidence with regard to the quality of service was presented in this proceeding by way of expert testimony and exhibits of the Intervenor and Mr. Simpson.

John R. Andrew, Intervenor's engineering consultant, testified that the total water system should have a static pressure of 60 pounds per square inch (p.s.i.), but that the existing system maintained only a working pressure of 50 to 55 p.s.i.

Mr. Andrew also testified that the Town of Beaufort, based upon the 1970 census, should have a minimum storage capacity of 170,000 gallons, and that the existing storage capacity was only 100,000 gallons. He stated that the North Carolina State Board of Health requires a minimum of one-half day's storage in the municipal system, their preference being a full day's storage. The total daily usage in the Town of Beaufort appears to be in the neighborhood of 220,000 gallons per day.

Mr. Andrew estimated repairs on the existing storage tank to cost $30,000, divided equally between exterior and interior repairs. He reported that standards of the American Water Works Association required that the riser pipe on elevated water tanks be enclosed.

Based upon a continuing record of cost to construct elevated water tanks, Mr. Andrew estimated that the existing tank could be reconstructed for $72,000. His estimate of cost for a new tank with a 200,000 gallon storage capacity was $100,725.

With respect to on-site examinations of the water system and his subsequent recommendations, Mr. Simpson recommended that Applicant include in its next year's budget, the purchase of a gas vacuum chlorinator, estimated to cost $1,000, and that Applicant had agreed in the recommendation.

Public witnesses testified with respect to the amounts of sediment accumulated in their hot water heaters. One witness estimated that his electric bill was increased because of the loss of efficiency caused by the accumulation of sediment.

The public witnesses also testified to and demonstrated as to scale accumulation on their cooking utensils. One witness stated that ordinary brushing and washing did not remove this scale.

II. Intercompany Transactions.

Applicant is a North Carolina corporation, a wholly owned subsidiary of General Waterworks Corporation.

Henry G. Mulle testified that until 1966 or 1967 General Waterworks Corporation had a procedure in effect to generate cash out of its subsidiary, Carolina Water Company. This procedure was known as the Central Depository Account System, whereby any subsidiary which had cash exceeding its operating expenses would transfer such cash to a trustee. The trustee would then invest the excess cash and pay a return to the subsidiary. The central depository system was abandoned in 1966 or 1967.

Mr. Mulle stated that in 1973 General Waterworks Corporation decided the balances from the Central Depository Account would be transferred to cash and that the subsidiary would have such cash available to pay off its liabilities, or as many liabilities as it could with such cash. The remaining cash would be available for the new budget or whatever capital expenditures or other expenditures the utility had. In that way, Mr. Mulle testified, General Waterworks Corporation would eliminate the balance from associated companies which represent cash accrued over the years. Since Applicant has no downstream loans, the entire amount of $53,799 will be available to it.

III. Fair Value.

An agreement between Carolina Power and Light Company and Carolina Water Company became effective June 30, 1954, transferring ownership of the water distribution systems serving the Towns of Morehead City, Beaufort, and Snow Hill,

North Carolina. Subsequently, Carolina Water Company sold the water systems located in the Towns of Morehead City and Snow Hill.

With regard to the water system existing in Beaufort, Mr. Buch stated that the gross original cost was $347,871, and that the net original cost less depreciation reserve was equal to $250,735.

In Schedule II, Kuhn Exhibit B, Mr. Kuhn computed original cost (Investment on Utility Plant Plus Allowance for Working Capital) to be $250,735. To the net original cost of $250,735, he added amounts for non-revenue producing additions, materials and supplies, and cash working capital. He computed original cost (investment on Utility Plant Plus Allowance for Working Capital) to be $273,959.

Staff Accountant Jones stated that due to Applicant's tax accruals and customer deposits, it had a negative working capital allowance. Schedules prepared by Mr. Jones indicate a net investment of $250,636, not including a negative allowance for working capital of $5,616.

The Uniform System of Accounts for water utilities defines an acquisition adjustment as the difference between (a) the cost to the acquiring utility of utility plant acquired as an operating unit or system by purchase, and (b) the original cost of such property, less the amounts credited by the acquiring utility at the time of acquisition to depreciation and contributions-in-aid of construction with respect to such property.

As indicated by testimony of Mr. Buch and Buch Exhibit A, with respect to the water system in Beaufort, Applicant paid less than the original cost of the water system to Carolina Power and Light Company. The acquisition adjustment portion applicable to the Beaufort property as of December 31, 1971, was $80,088, rounded off to the nearest dollar.

In Staff Exhibit 3, Schedule A, Mr. Kent indicated the effect this acquisition adjustment had upon the accounting treatment of total plant in service. Until 1972, both accumulated depreciation and acquisition adjustment were deducted from the original cost. Had the acquisition adjustment been deducted in 1972, the Investment in Utility Plant Plus Allowance for Working Capital cost would equal $175,938. Taking into account the computations of Mr. Jones, per Schedule I as Amended, the Investment in Utility Plant Plus Allowance for Working Capital would equal $164,932.

The testimony given and exhibits introduced give the Commission three different determinations of Investment on Utility Plant Plus Allowance for Working Capital. (1) Applicant computes the figure to be $273,959; (2) Staff computes it to be $245,020, and (3) Staff's figure less acquisition adjustment, $164,932.

In Docket No. W-54, Sub 19, by Order dated May 31, 1972, the Commission allowed Carolina Water Company to transfer the credit balance of $80,087.52 in its Utility Plant Acquisition Adjustment Account to its Earned Surplus Account effective January 1, 1972. In that Order the Commission reserved the right to treat differently "the components of said earned surplus account for ratemaking purposes."

Mr. Kuhn testified that replacement cost (being original cost trended upward, less depreciation and contributions-in-aid of construction, plus non-revenue producing additions, materials and supplies, and cash working capital) was $442,669.

Applying the staff adjustments to the working capital allowance on the same basis as was used for the original cost would result in a trended replacement cost less depreciation reserve and less contributions-in-aid of construction and plus non-revenue producing additions of $425,945, and a negative working capital allowance of $5,616, leaving net replacement cost base of $420,329.

Mr. Kuhn estimated the fair value of Applicant's utility property to be $365,000 as of December 31, 1972. He stated that his estimated fair value reflects the Commission's determination of fair value in a prior 1966 rate case in Docket No. W-54, Sub 14. He did state, however, that the prior rate case valuation included a water property which is no longer a part of Carolina Water Company.

Mr. Andrew appraised Applicant's existing water distribution system at $164,000.

Mr. Creasy testified that Mr. Andrew's estimate excluded the value of certain mains and water tank still in use but of such age as to have no ascertainable market value to a potential buyer, although they still had service value to Applicant's customers.

Mr. Mulle, Senior Rate Economist for General Waterworks Management and Service Company, testified with regard to a fair rate of return for Applicant. He stated that a fair rate of return for General Waterworks Corporation is 9.75%.

The rate structure proposed by Applicant would yield an operating revenue of $126,885 according to the Applicant, and $128,405 according to the Staff Accountant.

Staff witnesses estimated that annual operating expenses under the proposed rates will be approximately $55,803.

Annual depreciation expense will be approximately $5,963 (according to the Applicant) or approximately $6,600 (according to the Staff Accountant). The annual taxes other than income taxes will be approximately $13,811 according to the Applicant, and approximatley $13,643 according to the Staff Accountant.

The annual income taxes will be approximately 52.4% of net operating income before taxes according to the Applicant, and approximately 45.7% of net operating income before taxes according to the Staff Accountant.

The net annual income under Applicant's proposed rates would be $21,775 according to the Applicant, and $28,116 according to the Staff Accountant.

Mr. Creasy presented a modified rate structure which would yield gross annual revenues of approximately $126,400, including reconnection and connection charges at the old rate.

The modified rate structure presented by Creasy would reduce the proposed minimum charge for residential customers. Increased revenues would be added back, however, by extending the rate block range. For example, the first rate block would be extended from 0-6,000 gallons to 0-9,000 gallons, the second rate block would be extended from 6,000-40,000 gallons to 9,000-45,000 gallons.

The modified rate structure as proposed by Mr. Creasy is set forth as follows:

| | |
|---|---|
| Minimum Charge | $4.00 |
| First 9,000 gallons per month | 1.35 per 1,000 gallons |
| Next 36,000 gallons | .75 per 1,000 gallons |
| Over 45,000 gallons | .45 per 1,000 gallons |

Each customer would be charged at least $4.00 per month. Within this minimum, the customer could use up to approximately 3,000 gallons per month. Any amount of water used above this figure would result in the customer being charged at the rate of $1.35 per 1,000 gallons up to a maximum of 9,000 gallons.

Mr. Creasy added the caveat that the modified rate structure was intended only to show the effect of revising Applicant's rate schedule, and was not intended to suggest that the rates approved should necessarily be those proposed by Applicant or as modified by himself.

The rate structure proposed by the Applicant included a reconnection charge of $5.00. Mr. Creasy testified that such charge exceeds the reconnection charges prescribed in Commission Rule R7-20. Applicant proposed to specify that bills are due within 10 days after the date rendered. Mr. Creasy stated that such provision did not conform to the uniform billing practices prescribed by the Commission and that proposed customer deposit policy specifying amounts not to exceed three month's estimated bill does not conform to the Commission's Rule R12-4. Mr. Creasy also testified that the proposed terms of payment specifying that bills be rendered monthly or quarterly at the option of the company should include a proviso that bills be rendered to each customer on a consistent billing frequency.

## FINDINGS OF FACT

I. Quality of Service

1. The existing Beaufort water system has a storage capacity of 100,000 gallons of water. The North Carolina State Board of Health prefers a full day's storage. With a total daily usage of 220,000 gallons of water per day in Beaufort, a full day's storage would be approximately 200,000 gallons.

2. The existing water tank is in need of repair estimated to cost $30,000.

3. The mineral content exceeds the level at which adequate service can be rendered by the Carolina Water Company.

4. The North Carolina State Board of Health recommends that Carolina Water Company purchase a gas vacuum chlorinator at a cost of approximately $1,000.

II. Original Cost

5. The reasonable original cost depreciation of Carolina Water Company's water plant in service at the end of the test period is $250,636, which amount does not include contributions-in-aid of construction, but does include an allowance for working capital and for acquisition adjustment.

6. This acquisition adjustment effects a bargain purchase to Carolina Water Company and has an effect similar to that of contributions-in-aid of construction. Carolina Water Company having paid less than the book value of the system which it purchased, the acquisition adjustment is the proper accounting treatment of the "bargain" aspect of the purchase.

7. The reasonable original cost of Applicant's utility property, less the acquisition adjustment of $80,088, is $170,548 (not including a working capital allowance.)

III. Replacement Cost

8. The replacement cost of Applicant's utility property is $425,945 (not including a working capital allowance.)

IV. Fair Value

9. A witness for the Applicant testified that fair value of Applicant's utility property was $365,000, the amount at which the Commission set fair value for the Applicant's system during a 1965 rate case. The same witness testified, however, that Applicant no longer owned a part of the system as it existed in 1965, and that in 1967 Applicant sold the water system located in Snow Hill, North Carolina.

Considering that a portion of the 1965 $365,000 fair value figure was attributed to the Snow Hill water system, considering the additions to the Beaufort water system since 1965, considering the reasonable original cost of the property (less that portion which has been consumed by previous use and recovered by depreciation expense), and considering the replacement cost of said property, the Commission finds that the fair value of said plant is fairly derived by giving forty-one one hundredths weight to original cost and fifty-nine one hundredths weight to replacement cost. By this method, the Commission finds that the fair value of the said plant is $320,000, or $314,384 including the negative allowance for working capital.

V. Fair Rate of Return

10. The rate of return on the fair value of the Applicant's property that would produce a fair profit for its stockholders is approximately 6.46%, which rate of return will produce a net income of $20,300 on the fair value rate base of $314,384. The Applicant's total capitalization consists of 95.97% common equity and 4.03% interest-free capital according to the Staff Accountant, which would amount to $235,146 common equity on the Applicant's original cost rate base of $245,020 including the acquisition adjustment, and it would amount to $158,198 common equity on the Applicant's original cost rate base of $164,841 excluding the acquisition adjustment. The $20,300 net income will equal a return of approximately 8.63% on the common equity including acquisition adjustment, and it will equal a return of approximately 12.83% on the common equity excluding acquisition adjustment.

Applicant's annual operation and maintenance expenses will be approximately $59,000. This figure includes $1,700 future maintenance expenses for tanks and wells, which should be allowed as a result of the State Board of Health requirements for upgrading the facilities, and $1,500 for 1973 wage increases, which appear reasonable in the current inflationary climate. The annual depreciation expense will be approximately $6,600, and the annual taxes other than income taxes will be approximately $13,600.

Annual operating revenues of $116,760 will produce a net income before taxes of $37,560. After deduction of the $79,200 expenses for operation and maintenance, depreciation and taxes other than income tax, and income taxes of approximately $17,277, we find net income after taxes of approximately $20,283.

VI. Rate Structure

12. The Commission finds that the type of rate structure proposed by the Commission's Engineering Staff is fair in that part of the burden of paying the fixed costs would be shifted from those customers using less than the minimum monthly allowance of water to those customers using more

than the minimum monthly allowance of water. Furthermore, by increasing the range of first two blocks, the rate structure would distribute the costs in each rate block more fairly between customers having less than average monthly consumption and customers having greater than average monthly consumption.

13. The Commission finds the modified rate structure proposed by the Commission Staff Engineer produces net income in excess of that found to be reasonable and just. The Commission finds that the following rate structure is consistent with the rate structure concept proposed by the Commission Staff Engineer and produces net income which would yield a fair rate of return:

CAROLINA WATER COMPANY

Schedule of Metered Rates

For all metered service in the Town of Beaufort and vicinity.

Minimum Charges

| Meter Size | Monthly Minimum Charge |
|---|---|
| 5/8" and 3/4" | $ 3.60 |
| 1" | 12.50 |
| 1 1/2" | 25.00 |
| 2" | 40.00 |
| 4" | 125.00 |
| 6" | 350.00 |
| 8" | 625.00 |

Consumption Charges

| Gallons Per Month | Rate Per 1,000 Gallons |
|---|---|
| First 9,000 | $1.25 |
| Next 36,000 | .75 |
| Over 45,000 | .45 |

The schedule of rates described above will yield revenues on metered rates of approximately $110,500. The rates will produce total annual revenues of approximately $116,760 after addition of $4,860 for fire protection and $1,400 for connection and reconnection charges.

Rates for Public Fire Hydrant Service

Application

For public fire hydrant service to the Town of Beaufort.

| Rate | Annual Rate |
|---|---|
| For each fire hydrant | $60.00 |

14. The Commission finds the Applicant's proposed rates for public fire hydrant service reasonable and just. The Commission advises the Applicant that these approved rates may not be sufficient, in that the costs allocated to public fire protection service may be as much as three times the actual charges for such service. The Commission would welcome a new proposed rate for public fire hydrant service.

VII. Billing Procedure

15. The Commission finds that the provision in the Applicant's proposed rates specifying bills due within 10 days after date rendered does not conform to the uniform billing practices prescribed by the Commission, and such a provision specifying bills due on billing date would conform to said billing practices prescribed in Rule R12-9.

16. The Commission finds that the proposed reconnection charge of $5.00 exceeds the reconnection charges prescribed in the Commission's Rule R7-20, and such charges should be increased only on a uniform basis for all companies unless the expenses for making such reconnections constitute a significant portion of the total company expenses. There is no evidence that such is the case in this proceeding.

17. The Commission finds that the proposed customer deposit policy specifying amounts not to exceed three months' estimated bill does not conform to the Commission's Rule R12-4, and such a policy specifying amounts not to exceed two months' estimated bill would conform to said Rule R12-4.

18. The Commission finds that the proposed terms of payment specifying that bills will be rendered monthly or quarterly at the option of the company should include a proviso that bills will be rendered to each customer on a consistent billing frequency, either monthly or quarterly, and that the billing will be for service in arrears.

## CONCLUSIONS

### Quality of Service

The Commission concludes that the Quality of service presently being rendered by Applicant is not adequate. The quality of service will not be adequate until the Applicant, Carolina Water Company, purchases and puts into operation the following:

(1) a water tank that would enable the water system in Beaufort to meet minimum requirements set forth by the North Carolina State Board of Health with respect to storage capacity;

(2) treatment facilities adequate to soften the water in the Beaufort system to a mineral content not exceeding 120 parts per million;

(3) a gas vacuum chlorinator, as recommended by the North Carolina State Board of Health.

Fair Value

The Commission concludes fair value is $3|4,384 (including a negative allowance for working capital).

Fair Rate of Return

The Commission concludes that a fair rate of return is 6.46%. This rate will produce a net income of $20,300 for Applicant, yielding a rate of return on common eguity (including acquisition adjustment) of approximately 8.65%, and a rate of return on common eguity (less acquisition adjustment) of approximately |2.83%.

To the extent the rates proposed by Applicant produce gross operating revenues which exceed $||6,760 per annum, the Commission concludes that the rates are unreasonable and unjust.

Rate Structure

The Commission concludes that the rate structure set forth in the Findings above should be implemented to yield the net income the Commission concludes to be reasonable and just.

Billing Procedure

The Commission concludes that the Applicant, in order to comply with Commission Rules and Regulations, should adhere to the Findings set forth above concerning its billing procedures.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

|. That Carolina Water Company construct a water tank that will provide a 200,000 gallon storage capacity within one year from the date of this Order.

2. That Carolina Water Company install treatment facilities adequate to soften the water in the Beaufort system to a mineral content not exceeding |20 parts per million, such equipment to be acquired and installed within one year from the date of this Order.

3. That Carolina Water Company install a gas vacuum chlorinator as recommended by the North Carolina State Board of Health.

4. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-|38, and that said Schedule of Rates is hereby authorized to become effective for water service furnished after the date of this Order upon one (|) days

notice to the customers, provided said Schedule of Rates does not become effective on bills which are applicable to water service furnished prior to the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of February, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

CAROLINA WATER COMPANY

Schedule of Meter Rates

Application

For all metered service in the Town of Beaufort and vicinity.

Minimum Charges

| Meter Size | Monthly Minimum Charge |
|---|---|
| 5/8" and 3/4" | $ 3.60 |
| 1" | 12.50 |
| 1 1/2" | 25.00 |
| 2" | 40.00 |
| 4" | 125.00 |
| 6" | 350.00 |
| 8" | 625.00 |

Consumption Charges

| Gallons Per Month | Rate Per 1,000 Gallons |
|---|---|
| First 9,000 | $ 1.25 |
| Next 36,000 | .75 |
| Over 45,000 | .45 |

## CAROLINA WATER COMPANY

### Rates for Public Fire Hydrant Service

Application

For public fire hydrant service to the Town of Beaufort.

Rate

| | Annual Rate |
|---|---|
| For each fire hydrant | $60.00 |

Conditions

The company reserves the right to meter water consumption when such consumption is for other than fire fighting purposes. Water thus consumed will be billed in accordance with the schedule of meter rates.

The company will supply only such water to any hydrant at such pressures as may be available from time to time in the operation of the system.

## CAROLINA WATER COMPANY

### Rates for Service to Private Fire Fighting Facilities

Application

For all private fire fighting services in the Town of Beaufort and vicinity.

Rates

| | Annual Rate |
|---|---|
| Private fire fighting connections: | |
| For each 2" service line | $ 90.00 |
| For each 4" service line | 240.00 |
| For each 6" service line | 360.00 |
| For each 8" service line | 480.00 |

Conditions

The company reserves the right to meter water consumption when such consumption is for other than fire fighting purposes. Water thus consumed will be billed in accordance with the schedule of meter rates.

The company will supply only such water at any service connection at such pressures as may be available from time to time in the operation of the system.

CAROLINA WATER COMPANY

General

Minimum Charge

The minimum charge shall be billed only when the amount resulting from applying the meter rates to the quantity of water consumed is less than the minimum charge.

Additional Charges

Each connection: $5.00
Each reconnection:
If water service cut off by utility for good cause (NCUC RULE R7-20f) $4.00
If water service discontinued at customers' request (NCUC RULE R7-20g) $2.00

Terms of Payment

Bills are due on billing date.
Bills are past due fifteen (15) days after billing date.
Each customer will be billed on a consistent billing frequency, either monthly or quarterly at the option of the company, for service in arrears.

Customer Deposits

The company, at its option, may require from any customer or applicant a deposit to secure the payment of bills, such deposit not to exceed an amount equal to an estimated bill for two months' service, in accordance with NCUC Rules.

Discontinuance of Service by the Company

Discontinuance of service, and prior notice thereof, shall be in accordance with the Official Rules and Regulations Governing Water Utilities in North Carolina.

DOCKET NO. W-274, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Heater Utilities, Inc.,<br>P. O. Box 549, Cary, North Carolina,<br>for Approval of Increased Rates for<br>Water Utility Service in its Service<br>Area in North Carolina | ) | ORDER<br>SETTING<br>RATES |

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, July 2, 1974, at 9:30 a.m.

BEFORE: Commissioners George T. Clark, Jr., presiding, Ben E. Roney and Tenney I. Deane, Jr.

APPEARANCES:

For the Applicant:

Henry H. Sink
Parker, Sink & Powers
Attorneys at Law
P. O. Box 1471
Raleigh, North Carolina 27602

For the Intervenors:

William E. Anderson
Weaver, Noland & Anderson
Attorneys at Law
P. O. Box 2226
Raleigh, North Carolina 27602
Appearing for: Medfield-Kingsbrook Homeowners' Association and Hidden Valley Civic Action Group Water Committee

For the Commission Staff:

Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission in the above captioned matter on October 24, 1973, the Applicant, Heater Utilities, Inc. (hereinafter at times referred to as the Applicant or the Company), seeks authority to increase its rates and charges for water utility service in its service areas in North Carolina. An amended application was filed by Applicant on November 30, 1973, seeking to include certain newly licensed service areas in North Carolina in the application for increased rates.

By Orders issued on November 21, 1973, and on December 10, 1973, the matter was scheduled for public hearing, the proceeding was declared to be a general rate case, the proposed rates were suspended pursuant to G. S. 62-134, the Applicant was allowed to amend the application, and the Commission Staff was directed to examine the books and records of the Applicant.

Public notice was given as specified in the Commission's Orders, requiring that protests or interventions be filed with the Commission prior to the hearing. Interventions were filed by the Medfield-Kingsbrook Homeowner's Association and by the Hidden Valley Civic Action Group

Water Committee through Attorney William E. Anderson, and by Attorney John E. Aldridge, Jr., for himself, and by Development Associates, Inc., through Attorney H. Arthur Sandman. Letters of protest to the Commission were received from customers of the Applicant in various subdivisions. These letters generally questioned the need for and objected to the magnitude of the proposed rate increase.

By Orders issued on January 30, 1974, and on February 6, 1974, and on March 6, 1974, the Interventions were allowed. A motion for continuance was filed on March 14, 1974, by Attorney Anderson citing failure of the Applicant to make timely or complete filings pursuant to the Commission's Rules, and by Order issued on March 18, 1974, the hearing was continued. Upon the filing of additional exhibits and prefiled testimony by the Applicant, on May 1, 1974, the Commission rescheduled the matter for public hearing by Order issued May 21, 1974. Public notice of the rescheduled hearing was given as specified in the Commission's Order, and the matter came on for hearing at the time and place specified in the Commission's Order.

At the call of the matter for hearing, the Applicant, pursuant to the discretionary authority contained in the recently enacted G. S. 62-133.1(a) [Chapter 956, 1973 Session (2nd Session 1974)] ratified on March 7, 1974, elected to have the matter heard and the rates set using the traditional rate base method of G. S. 62-133(b) rather than the optional operating ratio method provided by G. S. 62-133(a).

Mr. R. B. Heater, President of Heater Utilities, Inc., and Mr. Raymond H. Johnson, a certified public accountant, testified at the hearing as witnesses for the Applicant. Mr. Jesse Kent, Staff Accountant, and Mr. David F. Creasy, Chief of the Commission's Water & Sewer Section, testified as witnesses for the Commission Staff. Mr. Bruce Foster, a customer of the Applicant's Ossippee system, testified as a witness for himself.

Based on the prefiled testimony and exhibits, the matters and things testified to at the hearing, and the entire record in this cause, the Commission now makes the following:

## FINDINGS OF FACT

1. That Heater Utilities, Inc., is a South Carolina corporation, domesticated in North Carolina, and it holds a franchise to furnish water utility service in twenty (20) service areas in North Carolina.

2. That the Company, in its original application filed on October 24, 1973, included eleven (11) of the twenty (20) service areas and subsequently included an additional nine (9) service areas in an amended application filed on November 30, 1973. An application for a Certificate of

Public Convenience and Necessity to service the nine (9) additional service areas was pending at the time the original application for rate increase was filed. The certificate was granted by Commission Order dated November 7, 1973, in Docket No. W-274, Subs 12 and 13. An application for a certificate in a twenty-first service area in North Carolina has recently been granted by the Commission in Docket No. W-274, Sub 15.

3. That the Applicant has not increased its rates for water service since its original rates were set when it began doing business in North Carolina in 1970.

4. That the Applicant's overall quality of service is reasonable and adequate, although the evidence did reflect some instances of complaints as to needed improvements in the speed of restoring lost service and complaints as to the quality of water and the condition of the system in the Ossippee Community.

5. That rates should be fixed on the basis of the operating results for seven (7) dominant systems which were in operation during the entire test year and that the thirteen (13) other systems, which were operated at far less than capacity, should be excluded for purposes of fixing rates in this case. The seven (7) dominant systems used are as follows:

| System | County | No. of Customers |
|---|---|---|
| Whispering Pines | Orange | 53 |
| Ossippee | Alamance | 92 |
| Green Pines | Wake | 55 |
| Camelot | Wake | 202 |
| Ravenwood | Wayne | 33 |
| Hidden Valley | Wake | 139 |
| Medfield | Wake | 223 |
| Total Customers | | 797 |

6. That the reasonable original cost of the Applicant's utility plant serving the seven (7) systems used in this proceeding for the purpose of fixing rates is $579,045 and the depreciation reserve is $38,370 resulting in a net depreciated original cost of utility plant of $540,675.

7. That no reliable evidence exists in the record as to the reasonable replacement cost of the utility plant serving the seven (7) systems and, therefore, the Commission must determine the fair value of the Applicant's utility plant serving the seven (7) systems based upon the net depreciated original cost of the systems, as adjusted to account for other factors set forth below.

8. That the fair value of the seven (7) systems is $124,472 consisting of the net depreciated original cost of the plant of $540,675 plus a reasonable allowance for

working capital of $1,552 less contributions in aid of construction of $147,755, which is composed of recorded contributions of $175,591 and additional contributions of $242,164 classified as an "acquisition adjustment" by the Applicant.

9. That the annualized gross revenues for the test year are $63,510 under present rates and $156,942 under rates proposed by the Applicant.

10. That the annualized level of operating expenses after accounting and pro forma and end-of-period adjustments is $64,946 which includes an amount of $7,063 for actual investment currently consumed through actual depreciation. The proper annualization factor necessary to annualize revenues and expenses to end-of-period levels is 1.2434.

11. That the proper rate of return which Applicant should have the opportunity to earn on the fair value of its property used and useful in rendering utility service in North Carolina is 11%.

12. That the gross revenues required to produce the 11% rate of return are $82,732.

13. That the proper rate structure required to produce the level of gross revenues approved ($82,732) is as follows:

$5.00 - First 2,000 gallons (minimum charge and flat rate) or first 267.4 cubic feet

$ .95 - Each 1,000 gallons over first 2,000 gallons (metered systems only) or each 133.7 cubic feet over 267.4 cubic feet

## CONCLUSIONS

The Commission will now analyze and discuss the relevant evidence advanced by all parties concerning the contested Findings of Fact Nos. 5 through 13, and thereafter make its conclusions based on this evidence and set forth the reasons and bases therefor.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The Applicant in its exhibits filed with its application, as amended, presented operating results for all twenty (20) systems. Thirteen (13) of the twenty (20) systems are new systems in the initial stages of development, where the costs of plant and operations are abnormally high when compared to the number of customers served and the actual revenues derived from operations. Analysis of total company utility operations and of the rate application is simplified by separating these thirteen (13) new systems from the rest of the utility operation. Any attempt to annualize and normalize the data for the thirteen (13) new systems in

order to consider the utility operation in its entirety would require accounting techniques that, of necessity, entail speculation and guesswork without adequate historical data on which to base reasonably accurate projections of revenues and expenses. In calculating rate base, expenses and revenues, Staff Witness Kent used the seven (7) dominant systems which operated for the entire test year.

The function of the Commission is to fix rates that will be fair both to the public utility and to the consumer (G. S. 62-133). Such fairness in this case can be achieved by adopting the approach and methodology used by the Commission Staff in analyzing the instant application. In calculating rate base, expenses and revenues, the Staff used the seven (7) systems which were reasonably well established for the entire test year. One of the seven (7) systems was operated by someone other than the Applicant for a portion of the test year, but it was in operation for the entire year. Removing the thirteen (13) systems from consideration for purposes of this rate case will not significantly affect the analysis of the utility operations as a whole, because the thirteen (13) new systems account for only 3% of the billings and 2% of the revenues during the test year. In addition, a substantial portion of the plant of these systems was contributed to Applicant, requiring no initial investment on the part of the Applicant.

The staff audit indicates that annual expenses, including depreciation on total property, would be $76,723 after applying an annualizing adjustment. The Applicant's rate analysis includes $23,760 projected operating expenses in addition to $72,134 actual annual expenses including depreciation during the test year as being necessary to serve a total of 1,335 customers in the future. Most of the projected expenses have not been incurred.

The annual expense per customer for the test year - seven (7) systems - based on 797 end of test year customers and $76,723 annual expenses as adjusted and annualized to end of test period (see Staff Engineering Exhibit No. 1) is $96.26 per customer according to the Staff. The annual expense per customer for the test year based on 1,335 future customers and $95,894 future expenses according to the Applicant is $71.83 per customer. Therefore, if just and reasonable rates are established for the seven (7) systems using the test year data annualized to the end of the test year, such rates will produce revenues adequate to cover future expenses projected by the Applicant for operating the additional systems.

The Commission, therefore, adopts the approach and methodology of Staff Witness Kent in this case, and will use the operating results of the seven (7) named systems to test the Company's need for rate relief.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Both the Applicant (Exhibit No. 1, page 4) and Staff Witness Kent (Kent Exhibit No. 1, Schedule 5, Column 3) agree that the September 30, 1973, end of test year original cost of all twenty (20) systems as reflected on Applicant's books was $645,638. The Applicant offered no testimony contesting the $579,045 cost of the seven (7) systems used by Staff Witness Kent in his exhibits, and such staff exhibits were prepared from information furnished by the Company as a portion of its overall application. The depreciation reserve of $38,370 presented by Staff Witness Kent in his Exhibit No. 1, Schedule 2, is based on the same evidence, reduced by depreciation reserve of $10,180 applicable to contributed property. The Commission, therefore, concludes that the original net depreciated cost of the seven (7) systems is $540,675 ($579,045 less $38,370).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In this case, the only evidence of the fair value of the Applicant's property used and useful in rendering utility service to the public within this State was its original cost. There was no evidence of replacement cost or trended original cost and these are items upon which the burden of proof lies with the Applicant. [G. S. 62-134(c)]

The Commission takes note of Staff Witness Creasy's testimony that the Applicant's plant has excess capacity amounting to approximately 25.38% of the total plant presently installed for the seven (7) systems, or in other words, amounting to approximately 34% of the plant which can be reasonably allocated to the present customers of the seven (7) systems. According to the Staff Engineer the net plant in service, after deducting depreciation reserve and other plant adjustments, should be reduced by 25.38% to eliminate the cost of excess plant from the fair value of Applicant's property.

In consideration of the fact that the fair value of the Applicant's utility plant must be calculated using the net depreciated original cost and, therefore, includes no increment for replacement cost or trended original cost, and that the Staff analysis has already eliminated thirteen (13) systems with abnormally high levels of excess plant due to such systems being in the initial stages of development, the Commission concludes for the purposes of this case only, that the fair value of the Applicant's utility plant should not be further reduced for excess plant capacity, even though such an adjustment might be appropriate in most cases. The net depreciated original cost of the Applicant's utility plant is, therefore, $540,675.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

In order to determine or find the fair value of Applicant's property used and useful in rendering utility service in North Carolina, the Commission must first

determine the proper working capital allowance to be added to net depreciated original cost and the proper amount of contributions in aid of construction to be deducted therefrom.

From a regulatory point of view, working capital represents an investment in materials and supplies plus the cash required to pay operating expense prior to the time revenues for services rendered are received. The reason for including an allowance for working capital in the rate base is to compensate the investor with a return on the capital furnished by him for these purposes.

Both Staff Witness Kent and Company Witness Johnson agree on the method of computing the cash requirements and materials and supplies components of the allowance for working capital. Company Witness Johnson proposed a cash requirement of $9,686.|8 and an allowance for materials and supplies of $945.79. Staff Witness Kent proposes a cash requirement of $5,73| and an allowance for materials and supplies of $|,002. The primary reason for the different amounts is the result of Company Witness Johnson using all twenty (20) systems as the basis for his determinations while Staff Witness Kent used only the seven (7) systems selected for analysis in this case.

Consistent with our findings in Finding of Fact No. 5, we will use those amounts determined by Staff Witness Kent. In addition Staff Witness Kent deducted an amount for average tax accruals of $5,|8| from the cash and materials and supplies requirements. Company Witness Johnson gives no consideration to average tax accruals in his proposed allowance for working capital. Since tax accruals represent an item of cost-free capital which can be used by the Company to meet its working capital requirements, the Commission will deduct the average tax accruals in determining the proper allowance for working capital and, therefore, adopts an allowance for working capital of $|,552 consisting of a cash requirement of $5,73| plus materials and supplies of $|,002 less average tax accruals of $5,|8|.

Both Staff Witness Kent (Exhibit No. |, Schedule 2) and Company Witness Johnson (Exhibit No. |, page 4) agree that the recorded contributions in aid of construction of $|75,59| should be deducted in determining the fair value of the Company's property in accordance with G. S. 62-|33. In addition, Staff Witness Kent deducts $242,|64, which was recorded on its books by the Company as an acquisition adjustment. It was Staff Witness Kent's position on both direct (Tr. |83) and on cross-examination (Tr. |89) that amounts recorded in the acquisition adjustment account, in fact, represent contributions in aid of construction. Company Witness Heater agreed on cross-examination (Tr. 83) that $488,000 of the total investment in twenty (20) systems of $645,000 represents amounts paid by someone other than Heater Utilities. It is clear from Mr. Heater's testimony at Tr. 86 that the Company is seeking to earn a return on

dollars which Heater Utilities Company did not actually invest in some of these systems.

The Commission concludes that to allow the Applicant to earn a rate of return on property which was donated to him or which was acquired at no cost would result in "windfall" profits to the Applicant and its shareholders and a penalty to the customers. The $175,591 contributions in aid of construction actually recorded by the Company presents no problem in this regard. Certainly, a ratepayer should not be expected to pay a rate of return on property which he himself has provided directly to the utility. The Commission also concludes that the $242,164 acquisition adjustment must be treated just as a direct contribution from the ratepayer to the utility. The evidence fully demonstrates that this money does not represent actual investment by the utility or an actual cost to it. The only logical and reasonable inference which can be drawn from the evidence herein, is that the $242,164 amounts to an indirect payment from the customers to Heater through the purchase price of their lots, which allowed the original owners of the systems to sell them to Heater for amounts far less than the probable cost of installation. The shareholders are entitled to earn a fair rate of return on the fair value of their property and to protect their investment. Anything less would amount to a confiscation of their property. However, the Commission in this case concludes that it would be unfair and inequitable to the ratepayers to allow the shareholders of Heater Utilities to earn a profit on plant not provided by their debt or equity investment.

In arriving at its determination of fair value, the Commission has weighed and considered the increment, if any, to be added to fair value due to the presence of the thirteen (13) additional systems not included in the analysis of revenues and expenses. The Commission concludes that such systems do not increase its determination of fair value because (a) the thirteen systems were almost entirely contributed to Heater, (b) the thirteen systems have an extremely high amount of excess plant, and (c) such inclusion would be inconsistent with the analysis of revenues and expenses heretofore determined.

For the foregoing reasons, the Commission concludes that the fair value of Applicant's property used and useful in rendering utility service in this State (i.e., the rate base) is $124,472 consisting of the net depreciated original cost of the utility plant of $540,675 plus the allowance for working capital of $1,552 less the contributions in aid of construction of $175,591 and $242,164.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The Applicant presented no evidence as to the annualized gross revenues for the test year under present rates. Company Witness Johnson did present a calculation of gross annualized revenues in the amount of $163,203 which would be

produced under Heater's proposed rates. This calculation is based on the premise that the Applicant should and would recover from the 846 end-of-period customers the total revenue requirements for an investment having the capacity to serve 1,335 customers.

Staff Witness Kent presented annualized gross revenues for the seven (7) systems during the test year under present rates of $63,510 based on adjusted book revenues of $51,078 increased by an annualization factor of 1.2434. Staff Witness Kent presented gross annualized revenues for the same seven (7) systems under proposed rates of $156,942, which revenues were based on customers and average consumption per customer computed by the Staff Engineering Division. The Commission concludes that the revenues and annualizing factor developed by Staff Witness Kent are proper for use in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Applicant presented testimony that the annualized operating expenses for the twenty (20) systems was $95,894, including certain increased expenses necessary to serve a growing number of customers.

Staff Witness Kent presented annualized operating expenses of $64,946 for the seven (7) systems calculated by applying an annualization factor of 1.2434 to the operating expenses per books as adjusted by the Staff of $52,233. Staff Witness Kent, in arriving at the total operating expenses, reduced depreciation expense in order to exclude the depreciation on contributed property and in order to make certain other adjustments (see Kent Exhibit No. 1, Schedule 3-1). To this sum of $5,680, the annualizing factor of 1.2434 was applied resulting in a total end-of-period depreciation expense of $7,063.

The Commission concludes that Applicant is not entitled to depreciation on property in which it has no investment. To require the ratepayer to pay in, through the rate structure, funds to cover depreciation expense on property he has contributed to the Company, would be unreasonable and unjust. The statute [G. S. 62-133(b) (3)] is clear that it is the investment actually consumed, not the property actually consumed, which the Applicant is entitled to deduct as an operating expense. This view is consistent with the position of the Internal Revenue Service, which holds that a taxpayer can depreciate only that portion of a business asset which represents an actual expense to the taxpayer. The Applicant contends that depreciation must be allowed on the entire plant in order to build up a reserve for replacement. However, Applicant is not, in fact, setting aside its depreciation reserve to finance future plant and has failed to show that future replacement must be financed by a depreciation reserve rather than future debt or equity financing.

Since the seven (7) systems being used are representative of the total operations in this case, the Commission adopts the operating expenses developed by Staff Witness Kent. The Commission further concludes that the annualization factor of 1.2434 employed by Staff Witness Kent is proper. This factor is, very simply, a numerical expression of the amount by which it is necessary to multiply test period revenues and expenses in order to bring them up to end-of-period levels.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

No testimony was presented as to the fair rate of return the Applicant should have the opportunity to earn on its fair value rate base. The Applicant asked for rates which were designed to produce an 8% rate of return on the much higher rate base determined by Applicant. In determining the proper rate of return, the Commission has considered the rates being earned by other utilities of similar size and risk, the fact that all contributed property was excluded from rate base, the present day inflationary spiral and the need for Applicant to make certain improvements in his service as testified to at the hearing. The Commission concludes that an 11% rate of return on the fair value of Applicant's property as determined herein will allow Applicant, by sound management, to produce a fair profit for its shareholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

As set forth in Findings of Fact Nos. 8, 9, and 10, the fair value of Applicant's property is $124,472. The proper level of revenues before rate increase is $63,510, which is the product of $51,078 revenues for the seven (7) systems during the test period times the 1.2434 annualizing factor. The proper level of operating expenses is $64,946, as determined under Finding of Fact No. 10 above. Deducting the operating expenses of $64,946 from the revenues of $63,510 produces a net operating loss of $1,436. Interest expense of $4,555 increases this to a net loss of $5,991. Applying the 11% rate of return heretofore determined to be just and reasonable to the fair value of Applicant's property of $124,472 results in a required net operating income of $13,692 which added to the net operating loss of $1,436 produces a deficiency of $15,128. The additional gross revenues required to eliminate this deficiency are $19,222 computed as follows:

| | |
|---|---|
| 1. Deficiency | $15,128 |
| 2. Deduct net loss ($1,436 + $4,555) | 5,991 |
| 3. Taxable portion of deficiency (net income) | $ 9,137 |
| 4. Retention factor* | .7039 |
| Total (Line 3 ÷ Line 4) | $12,981 |
| 5. Add gross revenues required to cover net loss including gross receipts tax ($5,991 + $250) | 6,241 |
| 6. Additional gross revenues required | $19,222 |

* The retention factor is computed as follows:

| | |
|---|---|
| Total | 100.00% |
| Deduct gross receipts tax | 4.00 |
| | 96.00% |
| Deduct state income tax (96% x 6%) | 5.76 |
| | 90.24% |
| Deduct Federal income tax (90.24% x 22%) | 19.85 |
| Retention Factor | 70.39% |

The total gross revenues necessary to produce an 11% rate of return on fair value are $82,732 consisting of the gross revenues before rate increase of $63,510 plus the required increase of $19,222. The Commission, therefore, concludes that the Applicant has a gross revenue requirement of $82,732 which must be raised by its rate structure in order for Applicant to earn the rate of return heretofore determined to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The proposed rate structure will produce approximately $82,760 for the seven (7) systems, based on 705 end of test year customers, consuming an average of 6,350 gallons per month and on 92 end of test year customers at a flat monthly rate. (See computation below.) The tap fees proposed by Applicant were unopposed and the Commission finds, determines and concludes that such fees are just and reasonable and ought to be allowed as a part of Applicant's rate structure.

Computation of Revenues Under Allowed Rate Structure

| | |
|---|---|
| 92 Flat Rate Customers at $5.00 per mo. Flat Rate = | $ 5,520 |
| 705 Metered Customers at $5.00 min. (2,000 gals.) = | $42,300 |
| 705 Metered Customers at $4.13 excess (4,350 gals.) = | $34,940* |
| Total Revenues | $82,760 |

* $ .95 X 4.35 = $4.1325
$4.13 X 705 X 12 = $34,940

IT IS, THEREFORE, ORDERED:

|. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-|38.

2. That said Schedule of Rates is hereby authorized to become effective immediately for water service furnished after the date of this Order, provided said Schedule of Rates does not become effective on bills which are applicable to water service furnished prior to the date of this Order.

3. That all interim rates charged in excess of rates approved and allowed herein shall be refunded.

ISSUED BY ORDER OF THE COMMISSION.

This the |2th day of December, |974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-274, SUB |4

SCHEDULE OF RATES

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Heater Utilities, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

All Service Areas

WATER RATE SCHEDULE

Flat Rates - Minimum charge under metered rates ($5.00 per month).

Metered Rates - 3/4" X 5/8" meters

First 2,000 gallons (minimum charge and flat rate) or first 267.4 cubic feet -$ 5.00

Each |,000 gallons over first 2,000 gallons (metered systems only) or each |33.7 cubic feet over 267.4 cubic feet -$ .95

Metered Rates - |" meters

Minimum charge, including first 4,000 gallons, per month -$ 10.00
All over 4,000 gallons per month, per 1,000 gallons -$ .95

Connection Charges - 3/4" X 5/8" meters

For taps inside platted subdivision -$135.00
For taps outside platted subdivision -$350.00

Connection Charges - Meters exceeding 3/4" X 5/8"

For all taps - 120% of actual cost

Reconnection Charges

If water service cut off by utility for good cause [NCUC Rule R7-20(f)] $4.00
If water service discontinued at customer's request [NCUC Rule R7-20(g)] $2.00

Bills Due - On billing date

Bills Past Due - Fifteen (15) days after billing date

Billing Frequency - Shall be monthly, for service in arrears

Finance Charges for Late Payment - Are one percent (1%) per month of unpaid balance still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 14, on December 12, 1974.

DOCKET NO. W-365, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application by Page-Boling-Jessup Corp., 1000 Schaub Drive, Raleigh, North Carolina, and by Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina, for Authority to Transfer the Water Utility Franchise in Greenbriar Estates Subdivision, Wake County, North Carolina, and for Approval of Rates ) ORDER APPROVING RATES

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, September 25, 1974, at 10:00 a.m.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioners Ben E. Roney and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Mr. Robert T. Hedrick
Hedrick and Jackson
Attorneys at Law
P. O. Box 27344
Raleigh, North Carolina 27602
Appearing for: Bailey's Utilities

For the Intervenor:

Mr. William Anderson
Weaver, Noland & Anderson
Attorneys at Law
Box 2226
Raleigh, North Carolina 27602
Appearing for: Greenbriar Estates Residents Committee for Water Service

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
Ruffin Building - One West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon filing of joint application by Page-Boling-Jessup Corporation, Raleigh, North Carolina, and by Bailey's Utilities, Inc., for authority to transfer the water utility franchise in Greenbriar Estates Subdivision, Wake County, North Carolina. This proceeding was set for hearing on November 2, 1973, and came on for hearing before Chairman Marvin R. Wooten as Hearing Commissioner.

The Recommended Order granting franchise, approving rates and allowing transfer was issued by the Commission on January 31, 1974.

Exceptions to the Recommended Order were filed with the Commission on February 15, 1974, by Intervenor, Greenbriar Estates Residents Committee for Water Service. Order setting exceptions for Oral Argument on February 28, 1974, was issued by the Commission on February 18, 1974. Oral Argument was held as scheduled before Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane, Jr., who concluded that the proceeding should have been declared a general rate case and that Applicant had not carried the burden of proof as required by law nor had Applicant provided requisite public notice upon which to justify increased rates.

Order affirming in part and reversing and remanding in part the Recommended Order of January 31, 1974, was issued on April 26, 1974. Said Order set further hearing before the full Commission in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, September 25, 1974, at 10:00 a.m., and directed the Applicant to give sufficient public notice.

Petition for Reconsideration and Rescission of a portion of the Commission Order dated April 26, 1974, was filed with the Commission on May 9, 1974, by Intervenor, Greenbriar Residents Committee for Water Service. Order correcting error and dismissing petition was issued by the Commission on June 3, 1974. Errata Order correcting Exhibit "A", Notice to the Public, which was a part of the April 26, 1974, Order was issued on July 22, 1974.

At the time of hearing all parties were present and represented by counsel. The Applicant at the time of hearing agreed by stipulation to amend his application to request rates at the same level as was granted in Recommended Order granting franchise and approving rates and allowing transfer issued on January 31, 1974. Upon this stipulation, Intervenor, Greenbriar Residents Committee for Water Service, by and through its counsel, agreed to withdraw its protest and entered certain stipulations of fact which were agreed to by both Applicant and Intervenor.

Applicant at this time offered Mr. T. L. Bailey, President of Bailey's Utilities, Inc., for cross examination by counsel for Intervenors regarding service and service complaints in Greenbriar Estates Subdivision. Based on testimony given, exhibits presented, and evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That Applicant, Bailey's Utilities, Inc., is a North Carolina corporation engaged in operation of a public water utility as defined in G. S. 62-3 and it is presently furnishing water utility service to more than one hundred (100) customers in five subdivisions or service areas in Wake, Johnston and Lee Counties in North Carolina.

2. Bailey's Utilities proposes to purchase the water system in Greenbriar Estates Subdivision from the present franchised holders, Page-Boling-Jessup Corporation. Bailey's Utilities also seeks a franchise to furnish water utility service in Greenbriar Estates and has filed a schedule of rates for said service.

3. Greenbriar Estates Subdivision is a residential subdivision consisting of approximately fifteen (15) streets and approximately 325 lots. The subdivision is located off U. S. 401 south of Raleigh, North Carolina, in Wake County. There are approximately 296 customers presently receiving water service in the subdivision.

4. Bailey's Utilities has entered into a contract agreement with Page-Boling-Jessup whereby Bailey's will acquire the present water system at a price which is subject to renegotiation if the proposed rates are not allowed.

5. Bailey's Utilities proposes to improve the pump houses and landscaping of the well sites if the transfer is approved. It maintains a twenty-four (24) hour answering service and has six employees and necessary equipment to service the water system.

6. Mr. T. J. Thompson of Page-Boling-Jessup is the only person in the corporation capable of taking care of the water system and he wants relief from the personal responsibility because of his age and other responsibilities. Mr. Thompson is a stockholder in Page-Boling-Jessup and also in Greenbriar Realty. Page-Boling-Jessup chose to sell the water system rather than seek rate relief because of the time and difficulty involved in rate cases.

7. That the appropriate test period for the proceeding in this year ended April 30, 1974.

8. That the Applicant's annual revenues under the present rates based on 296 customers are $14,030.11 based on average consumption of 6,000 gallons per month per customer.

9. That the Applicant's annual revenues based on 296 customers under the revised proposed rates will be approximately $26,609.00. That the Applicant's reasonable test year operating and maintenance expenses and other revenue deductions before income taxes on a year-end basis are $17,339.44.

10. That the net investment in plant in service at original cost at the time first devoted to public use is $100,000.00. Accordingly, the figure to be entered on Bailey's Utilities, Inc., books for original cost before depreciation is $100,000.

11. That the total contributions to date amount to $28,720 to be entered on the books of said purchasing utility. (this figure is based on tap fees collected, but erroneously never booked by Greenbriar and Page-Boling-Jessup as to 70% of the houses, amounting to $60 from 207 customers plus the $16,300 recording and set forth in the Applicant's late exhibit).

12. That the difference between net original cost, net depreciation and the present purchase price shall be accounted for as an acquisition adjustment subject to amortization as directed by the Commission, but the Commission shall not give any rate case effect to this adjustment in this or any subsequent case which would have the effect of increasing water rates to the customers because of the transfer to Bailey's Utilities.

13. That the Applicant's evidence of replacement cost consisting of the testimony and exhibits of Mr. Bailey as to his reproduction cost new figures along with the cross examination shall be incorporated in the record herein by reference for Commission consideration of its rate and probative value, if any.

14. That the $26,600 revenues derived from the proposed rates will produce a net income which represents a fair rate of return on the fair value of the plant in service.

15. That Bailey's Utilities shall not hereafter seek rate relief for this subdivision except as a part of the overall operations of Bailey's Utilities, Inc., in all of its utility service areas.

Based on these Findings of Fact the Commission makes the following

CONCLUSIONS

G. S. 62-131 dictates that every rate demanded or received by any public utility or by any two or more public utilities jointly shall be just and reasonable. The Supreme Court speaking to this matter stated that a rate shall not only be fair, just and reasonable to the consumer, but fair, just and reasonable to the utility. State v. Carolinas Committee for Industrial Power Rates, 257 NC 560, 126 SE 2d 325. The Commission concludes that in this proceeding that since both the Applicant, Bailey's Utilities, Inc., and the Intervenors, Greenbriar Residents Committee for Water Service, have agreed to the proposed rates for water service that said rates are just and reasonable. The Commission further concludes that since all parties agree to said rates these rates should be allowed to be instituted immediately upon the acquisition of Greenbriar Estates by Bailey's Utilities, Inc., from Page-Boling-Jessup, Inc.

IT IS, THEREFORE, ORDERED:

1. That the schedule of rates attached heretq as Appendix "A" is hereby approved and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

2. That Bailey's Utilities, Inc., shall file with this Commission report of actions taken and transactions consummated pursuant to the authority granted previously to transfer the water system and that said report shall be filed within thirty (30) days after the consummation of said transfer. The report shall include the general entry recording the transfer, showing the effect of said transfer in accordance with the system of accounts prescribed by this Commission.

3. That Bailey's Utilities, Inc., is hereby required to include in the transactions relating to the transfer of a

water system an entry on its books reflecting the $28,720.00 tap fees collected by Page-Boling-Jessup from the customers and also an entry on the books reflecting the original cost of plant of $100,000 and also an entry on its books to reflect the addition to the plant account in the amount of the difference between the $100,000 original cost of plant and the $40,000 plant on the books of Page-Boling-Jessup and also an entry on its books reflecting the difference between the original cost of plant and the purchase price of Bailey's Utilities, which shall be accounted for as an acquisition adjustment and also an entry on its books reflecting the depreciation reserve accumulated on the books of Page-Boling-Jessup.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of October, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-365, SUB 2

SCHEDULE OF RATES

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Bailey's Utilities, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Greenbriar Estates Subdivision

WATER RATE SCHEDULE

METERED RATES

Up to first 3,000 gallons per month-$5.00 minimum
All over 3,000 gallons per month-$ .65 per 1,000 gallons

CONNECTION CHARGES

$135.00 for each 3/4-inch house connection to main
Actual cost plus 20% for house connection larger than 3/4 inch
$150.00 for each lot served by new main extensions, in addition to house connection charge

RECONNECTION CHARGES

| | |
|---|---|
| If water service cut off by utility for good cause [NCUC Rule R7-20(f)] | $4.00 |
| If water service discontinued at customers' request [NCUC Rule R7-20(g)] | $2.00 |

BILLING FREQUENCY

Monthly, for service in arrears

BILLS DUE

On billing date

BILLS PAST DUE

Sixteen (16) days after billing date

FINANCE CHARGE FOR LATE PAYMENT

None

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-365, Sub 2 on October 14, 1974.

DOCKET NO. W-241, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Application by Springdale Water Company of Raleigh, Inc., P. O. Box 6502, Raleigh, North Carolina, for Approval of Increased Rates for Water Utility Service in Springdale Estates Subdivision, Wake County, North Carolina, and for Approval of Rates. | ORDER APPROVING INCREASED RATES |

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 3, 1974, at 10:00 A. M.

BEFORE: Hearing Commissioners: Marvin R. Wooten, Chairman, presiding, Hugh A. Wells, Ben E. Roney, Tenney I. Deane, and George T. Clark, Jr.

APPEARANCES:

For the Applicant:

Marshall B. Hartsfield
Poyner, Geraghty, Hartsfield, and Townsend
Attorneys at Law
615 Oberlin Road, P. O. Box 10096
Raleigh, North Carolina 27605

For the Commission Staff:

John R. Molm
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On February 1, 1974, the Applicant, Springdale Water Company of Raleigh, Inc., filed an application with the North Carolina Utilities Commission for approval of increased rates for water utility service in Springfield Estates Subdivision, Wake County, North Carolina.

By Order issued on March 5, 1974, the Commission established a general rate case, set the matter for public hearing, suspended rates, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Springdale Estates Subdivision by the Applicant, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Lester C. O'Neal, President of the Applicant, and Mr. C. D. Holland, Accountant for the Applicant, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. Mr. E. T. Aiken, a Commission staff accountant presented testimony concerning his investigation of the Applicant's books and records as a witness for the Commission staff. Mr. J. R. Bailey, an engineer, also appeared as a witness for the Commission staff, and presented testimony concerning the quality of the water in the system. Mr. P. T. Wooten, a resident of Springdale Estates and representing the homeowners in the subdivision, appeared at the hearing and presented testimony protesting the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Springdale Water Company of Raleigh, Inc., provides water service to approximately 100 customers in Springdale Estates Subdivision at the present time.

2. The Applicant's original cost net investment in utility plant is $58,980.44 based on the audit performed by the Commission Staff. This does not include the value of the land serving as well sites or the site for the elevated storage tank.

3. Under its present rates the Applicant collected $6,590.92 during the test period while expenses for the period totaled $11,741.95 for the test year.

4. The proposed rates would increase revenues by $5,246.39 and reduce the Applicant's loss to $1,552.86 for a year's operation.

5. The quality of the untreated water from Well No. 1 does not meet the U. S. Public Health Drinking Water Standards with respect to physical and chemical characteristics, as it contains an excessive amount of manganese. Treatment should be provided to control the objectionable characteristic of this element.

Based on the foregoing Findings of Fact, the Commission now reaches the following:

CONCLUSIONS

1. The Applicant is losing money at its present rates and the Applicant will not be able to completely cover its expenses with its proposed increased rates in effect.

2. To the extent that the Applicant provides untreated water to its customers from Well No. 1, service is inadequate. To provide adequate service the Applicant should be required to treat the water from Well No. 1.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the increased rates proposed by the Applicant, Springdale Water Company of Raleigh, are hereby approved and said rates contained in the Schedule of Rates attached hereto as Appendix "A" are hereby deemed to be filed pursuant to G. S. 62-138.

2. That said Schedule of Rates is hereby authorized to become effective immediately for water provided after the date of this Order, provided said Schedule of Rates does not become effective on bills which are applicable to water service furnished prior to the date of this Order.

3. That the Applicant shall submit to the Commission within thirty (30) days from the date of this Order a report proposing a method of treating the water from Well No. 1 to

control the objectionable effects of its high manganese content.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of July, 1974.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-241, SUB 1

SCHEDULE OF RATES

==========

Springdale Water Company of Raleigh, Inc.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Springdale Estates Subdivision
Wake County

WATER RATE SCHEDULE

METERED RATES:

Up to first 3,000 gallons per month-$5.25 minimum
All over 3,000 gallons per month-$1.00 per 1,000 gallons

CONNECTION CHARGES:

$100.00

RECONNECTION CHARGES:

| | |
|---|---|
| If water service cut off by utility for good cause (NCUC Rule R7-20f): | $4.00 |
| If water service discontinued at customer's request (NCUC Rule R7-20g): | $2.00 |

BILLS DUE: on billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to unpaid balance of all bills still past due twenty-five (25) days after billing

date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-241, Sub 1 on July 17, 1974.

DOCKET NO. W-440

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Joint Application by Robert M. Oehler, Sr., d/b/a Oehler Water Company, 10102 Mallard Creek Road, Charlotte, North Carolina, and by Lassiter & Harkey Well Drilling Company, Inc., P. O. Box 551, Paw Creek, North Carolina, for Authority to Transfer the Water Utility Franchise in Four Subdivisions in Mecklenburg and Gaston Counties, North Carolina, and for Approval of Rates. | ) | RECOMMENDED ORDER APPROVING TRANSFER AND INCREASED RATES |

HEARD IN: Courtroom "F", Fourth Floor, Gaston County Courthouse, South Street, Gastonia, North Carolina, on Thursday, May 9, 1974, at 10:00 a.m.

BEFORE: Hearing Examiner, Robert F. Page.

APPEARANCES:

For the Applicant:

Wayne M. Brendle
Attorney at Law
209 Cameron-Brown Building
Charlotte, North Carolina 28204

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

PAGE, HEARING EXAMINER: On March 14, 1974, the Applicants, Robert M. Oehler, d/b/a Oehler Water Company and Lassiter & Harkey Well Drilling Company, Inc., filed an application with the North Carolina Utilities Commission whereby Lassiter & Harkey Well Drilling Company, Inc., seeks authority to sell its water systems serving four (4) subdivisions in Mecklenburg and Gaston Counties to Robert M. Oehler, Sr., d/b/a Oehler Water Company.

By Order issued on March 29, 1974, the Commission scheduled the Application for public hearing, and required that Public Notice of the hearing be given by the Applicant. The Commission continued the hearing from May 7 to May 9, 1974, by Order issued on May 1, 1974. Public Notice was furnished to each customer in the four subdivisions by the Applicants, and was published in the Gastonia Gazette, Gastonia, North Carolina, and The Mecklenburg Gazette, Davidson, North Carolina, advising that

anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. The Commission received a letter of protest signed by approximately ten (10) customers in Gallagher Trails Subdivision.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert M. Oehler, Sr. and Mr. John Lassiter appeared at the hearing as witnesses for the Applicants and presented testimony in support of the application. Mr. Clark Huntsinger and Mr. J. W. Emmit, water customers in Gallagher Trails Subdivision appeared at the hearing to offer their concerns in regard to the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

1. Lassiter & Harkey Well Drilling Company, Inc., holds water utility franchises from the Commission to provide water utility service in Gallagher Trails, Biltmore Estates, and Shangri-La Subdivisions in Gaston County and in Two Point Community in Mecklenburg County, North Carolina.

2. Mr. Robert M. Oehler, Sr., d/b/a Oehler Water Company has contracted to buy these four (4) water systems from Lassiter & Harkey Well Drilling Company, Inc., for $5,000 and proposes to assume the responsibilities of operating them. Mr. Oehler is in the well drilling business, has cared for Mr. Lassiter's water systems for the past four months, and in addition, operates other small water systems.

3. After completing the purchase of the water systems, Oehler Water Company proposes to provide water utility service at a flat rate of $5.00 per month. The present rate being charged by Lassiter & Harkey Well Drilling Company, Inc., is $4.00 per month. Applicant also proposed that the connection charge be increased from $75 to $150 in all the subdivisions except Gallagher Trails.

4. The tariffs now on file with the Commission for these water systems show that a metered rate has been approved by the Commission for use when meters are installed. This metered rate if $4.00 minimum for the first 4,000 gallons of water used per month and $.75 for each additional 1,000 gallons used.

5. Meters have been installed on many of the connections on the water systems and Applicant proposes to have meters installed on all connections so that the metered rates can be charged.

6. At the present rate of $4.00 per month, the revenues earned by these water systems are barely sufficient to cover operating expenses.

7. Mr. Oehler stipulated that he would accept one collect long-distance call from any of the subdivisions not in his local exchange area concerning any service or repair problem. He will be available to answer such calls on a twenty-four hour per day basis.

8. Mr. Lassiter proposes to sell his well drilling business as well as his water utility business because he is in poor health.

Based on the foregoing Findings of Fact, the Hearing Examiner reaches the following:

## CONCLUSIONS

Robert M. Oehler, d/b/a Oehler Water Company is qualified to operate the public water utility systems now owned by Lassiter & Harkey Well Drilling Company, Inc., and has the capability to provide full-time maintenance and repair service to the systems. The proposed transfer should therefore be allowed.

The increased flat rates proposed by the Applicants should be allowed until meters can be installed on all connections and metered rates can be charged. This increased flat rate is not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein. The Applicant's present arrangements for providing maintenance and repair service appear to be adequate.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Lassiter & Harkey Well Drilling Company, Inc., is hereby granted authority to transfer its water utility systems to Robert M. Oehler, Sr., d/b/a Oehler Water Company.

2. That upon completion of such transfer, the Certificate of Public Convenience and Necessity originally granted to Lassiter & Harkey Well Drilling Company, Inc., is hereby transferred to Robert M. Oehler, Sr., d/b/a Oehler Water Company.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4. That Robert M. Oehler, Sr., d/b/a Oehler Water Company, the Utility, shall continue to charge the flat rate approved herein until meters are installed on all

connections. At that time, Oehler Water Company shall charge the metered rates approved herein as a part of Schedule "A".

5. That the books and records of the utility operation shall be maintained in such a manner that all the applicable items of information required in the Utility's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be used by the Utility in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

6. That in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements, which shall be at least as reliable as the present arrangements, and the Utility shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

DOCKET NO. W-440

SCHEDULE OF RATES

Robert M. Oehler, d/b/a Oehler Water Co.
Name of Company or Owners

SUBDIVISION OR SERVICE AREAS

Gallagher Trails Subdivision, Gaston Co.
Biltmore Estates Subdivision, Gaston Co.
Shangri-La Subdivision, Gaston County
Two Point Community, Mecklenburg County

WATER RATE SCHEDULE

METERED RATES:

First 4,000 gallons - $4.00 (minimum charge)
All over 4,000 gallons - .75 per 1,000 gallons

FLAT RATES:

$5.00 per month. To be charged until meters are installed on all connections.

CONNECTION CHARGES:

| | |
|---|---|
| Gallagher Trails | $100 |
| Biltmore Estates | $150 |
| Shangri-La | $150 |
| Two Point Community | $150 |

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE: on billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

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Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-440 on June 7, 1974.

DOCKET NO. W-365, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Joint Application by Page-Boling-Jessup Corp., 1000 Schaub Drive, Raleigh, North Carolina, and by Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina for Authority to Transfer the Water Utility Franchise in Greenbriar Estates Subdivision, Wake County, North Carolina, and for Approval of Rates | ) ) ) ) ) ) | ORDER AFFIRMING IN PART AND REVERSING AND REMANDING IN PART RECOMMEND-ED ORDER OF JANUARY 31, 1974 |

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Thursday, February 28, 1974, at 9:30 a.m.

BEFORE: Commissioners Hugh A. Wells, Presiding, and Ben E. Roney, and Tenney I. Deane

APPEARANCES:

For the Applicants:

Robert T. Hedrick
Hedrick and Jackson
Attorneys at Law
3311 North Boulevard
Raleigh, North Carolina

For the Intervenor:

William E. Anderson
Attorney at Law
Box 2234
Raleigh, North Carolina
For: Greenbriar Residents Committee for Water Service

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding arose out of the joint application by Page-Boling-Jessup Corporation and by Bailey's Utilities, Inc., for authority to transfer the water utility franchise in Greenbriar Estates Subdivision, Wake County, North Carolina, and approval of rates which was filed with the North Carolina Utilities Commission on June 27, 1973. A public hearing was scheduled and public notice was mailed or hand-delivered to each customer and was published in The News and Observer, Raleigh, North Carolina.

Protests and interventions were filed in response to the public notice and the public hearing was rescheduled at a later date in order to afford intervenors an opportunity to review the application.

The public hearing was held at the scheduled time and place and testimony was offered by several witnesses, to wit: T. J. Thompson, President of Page-Boling-Jessup and Manager of the water system since 1958; T. L. Bailey, President of Bailey's Utilities, Inc.; David F. Creasy, Chief of the Commission's Staff Water and Sewer Section; and E. P. Stephenson, resident of Greenbriar Estates and a customer of the water utility. J. M. May and R. P. Bryan, also residents of Greenbriar Estates, were tendered as adopting the testimony of E. P. Stephenson.

Based upon testimony given, the exhibits presented, and the evidence adduced, the Hearing Commissioner issued Recommended Order dated January 31, 1974, granting franchise, approving rates and allowing transfer in this

matter. On February 15, 1974, exceptions to Recommended Order were filed by intervenor, Greenbriar Residents Committee for Water Service, excepting to the Recommended Order issued in this proceeding and requesting Oral Argument.

By Order dated February 18, 1974, Oral Argument was set in the Commission Hearing Room, on Thursday, February 28, 1974. Attorneys for each of the parties appeared at the specified time and place and presented oral argument. After careful review of the entire record in this proceeding and the arguments of counsel at the hearing on February 28, 1974, the Commission makes the following

FINDINGS OF FACT

1. That Applicant, Bailey's Utilities, Inc., is a North Carolina corporation engaged in the operation of a public water utility as defined in G. S. 62-3 and it is presently furnishing water utility service to more than one hundred (100) customers in five subdivisions service areas in Wake, Johnston, and Lee Counties in North Carolina.

2. Bailey's Utilities proposes to purchase the water system in Greenbriar Subdivision from the present franchise holders, Page-Boling-Jessup Corporation. Bailey's Utilities also seeks a Certificate to furnish water utilities service in Greenbriar Estates and has filed a schedule of rates for said service.

3. Greenbriar Estates Subdivision is a residential subdivision consisting of approximately fifteen (15) streets and approximately 325 lots. The Subdivision is located off U. S. 401 south of Raleigh, North Carolina, in Wake County. There are approximately 296 customers presently receiving water utility service in the subdivision.

4. Bailey's Utilities has entered into a contract agreement with Page-Boling-Jessup Corporation whereby Bailey's will acquire the present water system at a price which is subject to renegotiation, if the proposed rates are not allowed.

5. Bailey's Utilities proposes to improve the pump houses and landscaping at the well sites if the transfer is approved, to maintain a twenty-four hour answering service, and has six employees and necessary equipment to service his water systems.

6. That Mr. T. J. Thompson of Page-Boling-Jessup is the only person in the corporation capable of taking care of the water system now and he wants relief from the personal responsibility because of his age and other responsibilities. Mr. Thompson is a stockholder in Page-Boling-Jessup and also in Greenbriar Realty.

7. Bailey's Utilities, Inc., is ready, willing, financially able, and is otherwise qualified to perform the water utility service in a satisfactory manner.

8. That if the proposed transfer is allowed, the quality of service provided to the residents of Greenbriar Estates Subdivision will not be diminished.

9. That this proceeding should have been declared a general rate case.

10. That Applicant has not carried the burden of proof as required by G. S. 62-130, G. S. 62-131, G. S. 62-132, and G. S. 62-133 to establish that the proposed rates requested by Bailey's Utilities were just and reasonable.

Based on these Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Commission concludes that the Applicant, Page-Boling-Jessup Corporation and Bailey's Utilities, Inc., have carried the burden of proof as required by G. S. 62-111 in showing that the public convenience and necessity will be justified if Page-Boling-Jessup Corporation is allowed to transfer the water utility system in Greenbriar Estates Subdivision. Applicants have further shown that Bailey's Utilities is fit, willing and financially able to maintain and operate the aforementioned water system; and, therefore, the Commission concludes that intervenors' exceptions No. 4, No. 6, No. 7, No.8, and No. 15 should be overruled and that the Recommended Order issued in this matter should be affirmed as it relates to the proposed transfer of Greenbriar Estates Subdivision water system from Page-Boling-Jessup Corporation to Bailey's Utilities, Inc.

The Commission further concludes that the rates previously established for Greenbriar Estates Subdivision must be deemed to be just and reasonable, as they are afforded that presumption by law, and that in order to establish new rates there must be a general rate case proceeding with requisite public notice provided so that opponents to the proposed rate increase shall have time to prepare evidence and testimony in regard to whether the proposed rates are just, reasonable and fair.

This Commission concludes that the Applicant, Bailey's Utilities, Inc., has not carried the burden of proof required by North Carolina General Statutes 62-131, 62-133, 62-134, 62-136, and 62-137, nor has it provided requisite public notice upon which it may justify increased rates.

The Commission, therefore, concludes that Applicant, Bailey's Utilities, should in seeking a general rate increase, provide public notice and present the Commission

with evidence upon which it can properly determine whether such proposed rates are just, reasonable, and fair.

IT IS, THEREFORE, ORDERED

1. That Exceptions Nos. 4, 6, 7, 8, and 15 be, and hereby are, overruled and that the proposed transfer of the water utility system in Greenbriar Estates from Page-Boling-Jessup Corporation to Bailey's Utilities, Inc., be, and hereby is, approved.

2. That Exceptions Nos. 1, 2, 3, 5, 9, 10, 11, 12, 13, 14 and 16 be, and hereby are, affirmed and that the portions of the Recommended Order dated January 31, 1974, which relate to increased rates and charges by Bailey's Utilities be, and hereby are, reversed and remanded for further hearing.

3. That the matter of increased rates and charges by Bailey's Utilities in the Greenbriar Estates Subdivision, Wake County, North Carolina, be, and hereby is, declared to be a general rate case.

4. That Bailey's Utilities, Inc., shall file testimony and supporting data with this Commission sixty (60) days prior to the date of the hearing.

5. That an investigation into the general rate case be instituted by the North Carolina Utilities Commission Staff concerning the reasonableness of the requested rate increase.

6. That this matter be set for hearing before the full Commission in its Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, September 25, 1974, at 10:00 a.m.

7. That the Notice to the Public attached hereto as Appendix "A" be mailed with sufficient postage or hand delivered by Bailey's Utilities, Inc., to all customers being provided water utility service in Greenbriar Estates Subdivision by Bailey's Utilities, Inc., not later than August 1, 1974, and that said Notice be mailed or hand delivered not later than two (2) days prior to the date of the hearing to any additional customers who begin receiving said service between August 1, 1974, and the date of the hearing, and that the Applicant, Bailey's Utilities, Inc., submit to the Commission the attached Certificate of Service properly signed not later than the date of the hearing.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

NOTICE TO THE PUBLIC

DOCKET NO. W-365, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved the transfer of the water utility system in Greenbriar Estates Subdivision from Page-Boling-Jessup Corp. to Bailey's Utilities, Inc.

NOTICE IS ALSO GIVEN that Bailey's Utilities, Inc., seeks authority to increase the rates and charges for water utility service in Greenbriar Estates Subdivision as follows:

| METERED RATES | Present Rates | Proposed Rates |
|---|---|---|
| First 3,000 gallons per month-minimum charge | $2.00 | --- |
| Next 1,000 gallons per month | $ .50 | --- |
| First 4,000 gallons per month-minimum charge | --- | $6.00 |
| Over 4,000 gallons per month-per 1,000 gallons | $ .45 | $ .65 |

TAP FEE to new lots served

| | | |
|---|---|---|
| 3/4" X 5/8" meter | $100.00 | $135.00 |
| Larger than 3/4" X 5/8" meter | --- | Cost plus 20% |

The proposed new rates would increase the average monthly bill for water service from approximately $3.72 to approximately $7.76, based on an average residential water consumption of approximately 6,700 gallons per month per customer. The present rates have been in effect since August, 1958.

The Applicant, Bailey's Utilities, Inc., was requested to mail or hand deliver this Notice to the Public to each of their water utility customers in Greenbriar Estates not later than fifteen (15) days from the date of this Notice.

The Commission has declared this matter a general rate case and has scheduled public hearing in the Commission

Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, September 25, 1974, at 10:00 a.m.

Anyone desiring to intervene in this proceeding or to protest the application is requested to file their intervention or their protest with the North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina, not later than ten (10) days prior to the date of the hearing.

A copy of the application is available to the customers for inspection at the office of Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina, and at the office of the North Carolina Utilities Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, during regular office hours.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of April, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all our customers in Greenbriar Estates Subdivision the attached Notice to the Public issued by Order of the North Carolina Utilities Commission in Docket No. W-365, Sub 2, and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____day of _____, 1974.

By_____
Signature and Title

DOCKET NO. W-365, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Joint Application by Page-Boling-Jessup Corp., 1000 Schaub Drive, Raleigh, North Carolina, and by Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina, for Authority to Transfer the Water Utility Franchise in Greenbriar Estates Subdivision, Wake County, North Carolina, and for Approval of Rates | ORDER CORRECTING ERROR AND DISMISSING PETITION |

BY THE COMMISSION: This matter was brought to the attention of the Commission upon the filing of petition on May 9, 1974, by Mr. William Anderson, Attorney at Law, for and on behalf of Intervenor, Greenbriar Residents Committee for Water Service, requesting reconsideration and rescission of a portion of the Commission Order dated April 26, 1974, in the matter of the above-captioned case. Upon consideration of the said petition and further review of the record in this matter, the Commission makes the following

FINDINGS OF FACT

1. That Exception No. 3 in Exceptions to Recommended Order in the above-captioned matter filed February 15, 1974, should have been overruled.

2. That Exception No. 3 should have been included in the Ordering Paragraph No. 1.

3. That due to inadvertence, Exception No. 3 was placed in Ordering Paragraph No. 2.

4. That Order Affirming in Part and Reversing and Remanding in Part the Recommended Order of January 31, 1974, in the matter of the above-captioned case should be amended by placing Exception No. 3 in Ordering Paragraph No. 1, which would have the effect of overruling said exception, in order to correct the aforementioned mistake.

5. That Petition for Reconsideration and Rescission has been filed with this Commission which involves the subject matter of this mistake.

6. That the aforementioned amendment to the Commission Order Affirming in Part and Reversing in Part in the above-captioned case will have the effect of remedying the defect of which the Petition complains.

Based on these Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Commission concludes that through inadvertence Exception No. 3 of Exceptions to Recommended Order in the matter of joint application by Page-Boling-Jessup and Bailey's Utilities for transfer of water utility franchise in Greenbriar Estates Subdivision was placed in the affirming Ordering Paragraph No. 2 of Commission Order dated January 31, 1974, when it should have, in fact, been placed in the overruling Ordering Paragraph No. 1 and thereby overruled. The Commission is of the opinion that said exception should be overruled and that failure to do so would subvert and undermind the true intention and decision of the Commission in this matter. The Commission is further of the opinion that under the power vested in it by G. S.

62-80, it may amend the prior Order in order to correct errors.

The Commission concludes that in order to properly reflect the decision of this Commission, Commission Order dated April 26, 1974, affirming in part and reversing in part Recommended Order of January 31, 1974, should be amended to overrule Exception No. 3 of exceptions filed by Greenbriar Residents Committee for Water Service on February 15, 1974.

The Commission further concludes that by correcting this error it will render Intervenor's Petition for Reconsideration and Rescission filed May 9, 1974, in this matter moot and, therefore, said petition should be dismissed.

IT IS, THEREFORE, ORDERED

1. That Exception No. 3 in Exceptions to Recommended Order filed February 15, 1974, in the matter of joint application by Page-Boling-Jessup and Bailey's Utilities, Inc., for authority to transfer the water utility franchise at Greenbriar Estates Subdivision be, and hereby is, overruled.

2. That Order Affirming in Part and Reversing and Remanding in Part Recommended Order of January 31, 1974, dated April 26, 1974, be, and hereby is, amended to remove Exception No. 3 from Ordering Paragraph No. 2 and place it in the Ordering Paragraph No. 1, thereby reflecting the overruling of said exception.

3. That Petition for Reconsideration and Rescission filed May 9, 1974, in this matter be, and hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of June, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-256, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Investigation of Water Utility Service by Urban Water Company, Inc., P. O. Box 742, Newton, North Carolina, in Eastwood Acres, Oxford Park, Starmont Village, Rock Bridge Heights, Cedar Valley, Homestead Park, and Hickory Woods Subdivisions, Catawba County, North Carolina. | ) ) ) ) ) ) ) | RECOMMENDED ORDER REQUIRING WATER SYSTEM IMPROVEMENTS |

HEARD IN: Auditorium, Catawba County Administration Building, Newton, North Carolina, on June 10, 1974.

BEFORE: Hearing Examiner, Robert F. Page

APPEARANCES:

For the Respondent:

Jesse Sigmon, Jr.
Sigmon and Sigmon
Attorneys at Law
P. O. Box 88
Newton, North Carolina

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

PAGE, HEARING EXAMINER: On April 29, 1974, the Commission staff received a formal complaint from Bobby R. Miller, et al of Hickory Woods Subdivision and additional complaints from residents of several other subdivisions all of which complained of inadequate service and/or poor water quality. At the time, the Commission was of the opinion that a general service hearing was in the best interest of the Respondent and the Respondent's customers.

By Order issued on May 21, 1974, the Commission scheduled this matter for public hearing, and required the Respondent to give Public Notice of the hearing to all of its customers in Catawba County.

The public hearing was held at the time and place specified by the Commission's earlier Order. Mr. C. Mac Stewart, Sanitary Engineering Technician, Western Regional Office, Division of Health Services, presented testimony concerning his inspection of all of the Respondent's water systems during the week previous to the hearing. Mr. Robert

T. Flament, Regional Representative with Styles Chemical Corporation, which sells Aquadene, presented testimony concerning tests he ran on the Hickory Woods water system on two different occasions.

The following presented testimony concerning the water service provided by Urban Water Company in their respective subdivisions:

| Hickory Woods | Starmont Village |
|---|---|
| Mr. Don Johnson | Mr. Robert T. McLawhorn |
| Mr. Bobby R. Miller | Mr. Bob Fowler |
| Mrs. Troy Harris | Mr. P. B. Riley |
| Mr. A. J. McCloy | |

| Eastwood | Homestead |
|---|---|
| Mr. Phillip O. Mansfield | Mr. Joe Brittain |
| Mr. David Lowe | Mr. Donald Dagenhardt |
| | Mrs. Peggy B. Davis |

Oxford Park

Mr. David K. Rokes

The following were offered for cross-examination as adopting the testimony of the witnesses of their respective subdivisions:

| Hickory Woods | Eastwood |
|---|---|
| Mr. Tom Bolick | Mrs. Mary Lee Lowe |
| Mr. Richard C. Mayfield | Mrs. Linda Mansfield |
| Mrs. Clyde Bruner | |
| Mrs. Ira Church | |
| Mr. & Mrs. E. J. Petrone | |
| Mr. W. P. Taylor, Jr. | |
| Mrs. B. D. Johnson | Homestead |
| Mrs. Don Miller | |
| Mrs. W. Louis Harris | Mr. Mike Auffstuttle |
| Mrs. Kenneth E. Anderson | Mr. Scotty M. Lovelace |
| Mr. Jim Hamlin | Mr. Gary Rollins |
| Mr. Edward Watson | Mr. Steven Davis |
| Mr. A. C. Wendel | |
| Mr. Garland Barb | |
| Mr. Nelson Teague | |
| Mr. Edward Nelson | |
| Mr. & Mrs. Earle Poole | |
| Mr. J. A. Seay | |

Mr. Donald Long, Secretary-Treasurer and General Manager of Urban Water Company, Inc., testified in behalf of the Respondent.

Based on the information contained in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT AND CONCLUSIONS

HICKORY WOODS:

1. The water from the system is not of of good quality since the iron content is 2.4 ppm, which is in excess of the allowable .3 ppm. The water is rust colored and has the tendency to discolor clothes, kitchen appliances and bathroom fixtures some of which are totally ruined. Several residents have had to purchase drinking water, and also replace the heating elements in their hot water heaters more than once in the 1 1/2 years they have lived in the subdivision.

2. A sequestering agent, Aquadene, is presently being fed into the water, but the feed system is not being sufficiently maintained by the Respondent so that the iron problem is continuously controlled.

3. The Aquadene system when properly maintained will control the objectionable characteristics of the iron in this water. This has been proved on several occasions with this water system.

STARMONT VILLAGE:

4. The amount of water pressure available at any one time to the customers is inadequate. There have been numerous occasions where some customers at the higher elevations in the subdivision have had absolutely no water for lengthy periods of time.

5. A second well has recently been put into operation and this additional well has helped improve the water shortage situation. The installation of the proposed transfer pump, which is on order, will help even more.

EASTWOOD:

6. The water pressure at the present time seems to be adequate according to the customers.

7. On occasion the water appears to be muddy and has sediment in it. The iron content is .35 ppm, which is in excess of the .30 ppm, and it is this iron bacteria which apparently is settling in the bottom of the tank and is stirred up when the storage tanks are aircharged.

8. Routine emptying and cleaning of the storage tanks may help to minimize this problem, but additional chlorination would probably be the most beneficial method of eliminating this problem. Also, the addition of air

compressors and their appurtenances to the storage tanks would be beneficial.

HOMESTEAD:

9. At the present time, there is an inadequate amount of water available to the customers. During the peak hours of the early evening, there are periods of no water at all.

10. The reconnection of the second well, the installation of the new 5,000 gallon pressure tank, and the addition of a booster pump should eliminate the water shortage problem now experienced by the residents in this subdivision.

11. It also appears that surface water after storms is draining into the well site area, but the construction of a diversionary ditch should eliminate this problem.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Urban Water Company, Inc., is to comply with the recommendations of the Commission Staff and the Division of Health Services as summarized above and as set forth in the letter addressed to the Respondent on June 24, 1974, from C. Mac Stewart, Sanitary Engineering Technician, within six months from the date of this Order. The Commission staff's recommendations, some of which are included in Mr. Stewart's letter, are listed below:

Hickory Woods:

1. Properly maintain Aquadene system.

Starmont Village:

2. Continue to operate second well.

3. Install transfer pump.

Eastwood:

4. Install chlorination equipment.

5. Add air compressors to storage tanks.

Homestead:

6. Reconnect second well and install new 5,000 gallon tank.

7. Add booster pump to system.

2. That the Respondent is to report to the Commission staff every sixty (60) days as to the progress the Respondent has made in fulfilling the abovementioned recommendations.

3. That the Respondent shall seek to obtain the recommended water system equipment through as many sources as possible in order to minimize the delays associated with ordering equipment.

4. That the Respondent is instructed that if it cannot provide a 24-hour a day, 7-day per week repair service and normal maintenance service, then it shall consider those steps necessary to provide said service; i.e., hiring of additional personnel, purchase of new equipment, etc. The Respondent shall also consider the possibility of subcontracting the maintenance service to another party. Any such agreement between the Respondent and any other party regarding service would have to be approved by the Commission prior to that agreement being instituted. However, the delegation of maintenance and repair service by the Respondent to any other party will not relieve the Respondent of its responsibility under the Public Utilities Laws of this State to provide adequate and efficient service to its customers.

5. That the Respondent is hereby instructed that this Order does not necessarily constitute the final Order in this matter. If the recommendations in this Order and the aforementioned letter are not sufficient to eliminate the problems presently occuring in these subdivisions, the Respondent will receive further Orders until such time as the Respondent is found by this Commission to be providing the same adequate water service as is expected of any Public Water Utility.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of July, 1974.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

## Subject Index to Orders Reported

### SUBJECT INDEX
### UTILITIES COMMISSION ORDERS FULL REPORT PRINTED
### CONDENSED INDEX OUTLINE

SUBJECT INDEX

UTILITIES COMMISSION ORDERS FULL REPORT PRINTED

DETAILED INDEX OUTLINE

Subject Index to Orders Not Reported

TABLE OF ORDERS

Not Printed

Condensed Outline

TABLE OF ORDERS

Not Printed

Detailed Outline

I. ELECTRICITY

A. Rates

| | | |
|---|---|---|
| 1. New River Light & Power Company - Order Granting Application | E-34, Sub 7 | 7-26-74 |

B. Securities Authorized

| | | |
|---|---|---|
| 1. Carolina Power & Light Company - 650,000 Shares of Serial Preferred Stock | E-2, Sub 235 | 2-8-74 |
| 2. Carolina Power & Light Company - $125,000,000 Principal Amount of First Mortgage Bonds | E-2, Sub 239 | 4-25-74 |
| 3. Carolina Power & Light Company - Amendment to Order Granting Authority to Issue and Sell First Mortgage Bonds | E-2, Sub 239 | 5-17-74 |
| 4. Carolina Power & Light Company - Supplemental Order Approving Negotiated Terms of Sale of First Mortgage Bonds | E-2, Sub 239 | 5-20-74 |
| 5. Carolina Power & Light Company - Order Approving the Issuance & Sale of 944,068 Shares of Common Stock Pursuant to its Stock Purchase - Savings Program for Employees | E-2, Sub 240 | 5-3-74 |
| 6. Carolina Power & Light Company - 3,500,000 Shares of Common Stock | E-2, Sub 246 | 8-15-74 |
| 7. Carolina Power & Light Company - 3,500,000 Shares of Common Stock | E-2, Sub 250 | 12-20-74 |

| | | | |
|---|---|---|---|
| 8. | Carolina Power & Light Company - Order Granting Authority to Issue & Sell First Mortgage Bonds | E-2, Sub 25| | 12-20-74 |
| 9. | Duke Power Company - 5,000,000 Shares of Common Stock | E-7, Sub 165 | 4-10-74 |
| 10. | Duke Power Company - Amendment to Order Granting Authority to Issue and Sell Common Stock & First & Refunding Mortgage Bonds | E-7, Sub 165 | 5-3-74 |
| 11. | Duke Power Company - Supplemental Order Approving Negotiated Terms of Sale of First & Refunding Mortgage Bonds | E-7, Sub 165 | 5-8-74 |
| 12. | Duke Power Company - Order Granting Authority to Issue & Sell Intermediate-Term Notes & to Provide for a Revolving Credit Facility | E-7, Sub 170 | 8-27-74 |
| 13. | Duke Power Company - Order Granting Authority to Issue & Sell Common Stock Securities | E-7, Sub 171 | 10-31-74 |
| 14. | Pinehurst, Incorporated - Order Denying Request to Pledge Assets | E-16, Sub 8 | 11-1-74 |
| 15. | Virginia Electric & Power Company - Order Granting Authority to Issue $50 Million 6-Year Term Note & to Issue up to $25 Million 5-7-Year Unsecured Notes | E-22, Sub 159 | 1-9-74 |
| 16. | Virginia Electric & Power Company - 800,000 Shares of Preferred Stock | E-22, Sub 162 | 3-11-74 |
| 17. | Virginia Electric & Power Company - $25 Million 10-Year Term Bank Loan | E-22, Sub 163 | 3-22-74 |
| 18. | Virginia Electric & Power Company - Supplemental Order Adding Two Additional Provisions to the Loan Agreement | E-22, Sub 163 | 4-30-74 |
| 19. | Virginia Electric & Power Company - $125,000,000 Principal Amount First & Refunding Mortgage Bonds | E-22, Sub 164 | 5-31-74 |

| | | |
|---|---|---|
| 20. Virginia Electric & Power Company - Amendment to Order of 5-31-74 | E-22, Sub 164 | 6-24-74 |
| 21. Virginia Electric & Power Company - Final Order Approving Terms | E-22, Sub 164 | 7-1-74 |
| 22. Virginia Electric & Power Company - Amended Order Approving Terms | E-22, Sub 164 | 7-15-74 |
| 23. Virginia Electric & Power Company - Order Granting Authority to Issue & Sell Common Stock | E-22, Sub 167 | 10-23-74 |

II. GAS

A. Rates

| | | |
|---|---|---|
| 1. North Carolina Natural Gas Corporation - Order Approving Depreciation Rates | G-21, Sub 122 | 9-18-74 |
| 2. Pennsylvania & Southern Gas Company, Inc. - Order Allowing Interim Rate Increase | G-3, Sub 58 | 7-10-74 |
| 3. Piedmont Natural Gas Company, Inc. - Order Allowing Interim Rate Increase | G-9, Sub 131 | 4-16-74 |
| 4. Public Service Company of North Carolina, Inc. - Order Allowing Interim Rate Increase | G-5, Sub 102 | 6-11-74 |

B. Tracking Increases

| | | |
|---|---|---|
| 1. North Carolina Natural Gas Corporation | G-21, Sub 115 | 4-11-74 |
| 2. North Carolina Natural Gas Corporation - Order Approving Tracking Increase | G-21, Sub 120 | 7-10-74 |
| 3. North Carolina Natural Gas Corporation - Amendment to Order Approving Tracking Increase Dated July 10, 1974 | G-21, Sub 120 | 7-15-74 |

| | | | |
|---|---|---|---|
| 4. | North Carolina Natural Gas Corporation | G-2|, Sub |23 | 9-30-74 |
| 5. | Pennsylvania & Southern Gas Company, North Carolina Gas Service Division | G-3, Sub 57 | 4-|2-74 |
| 6. | Pennsylvania & Southern Gas Company, North Carolina Gas Service Division | G-3, Sub 60 | 7-||-74 |
| 7. | Pennsylvania & Southern Gas Company, North Carolina Gas Service Division | G-3, Sub 6| | |0-2|-74 |
| 8. | Piedmont Natural Gas Company | G-9, Sub |30 | 3-29-74 |
| 9. | Piedmont Natural Gas Company | G-9, Sub |33 | 4-|2-74 |
| |0. | Piedmont Natural Gas Company | G-9, Sub |34 | 6-28-74 |
| ||. | Piedmont Natural Gas Company | G-9, Sub |35 | 7-|8-74 |
| |2. | Piedmont Natural Gas Company | G-9, Sub |37 | 9-|7-74 |
| |3. | Piedmont Natural Gas Company | G-9, Sub |38 | |0-7-74 |
| |4. | Public Service Company of North Carolina, Inc. | G-5, Sub |0| | 4-|-74 |
| |5. | Public Service Company of North Carolina, Inc. | G-5, Sub |04 | 6-28-74 |
| |6. | Public Service Company of North Carolina, Inc. | G-5, Sub |05 | 9-24-74 |
| |7. | United Cities Gas Company | G-|, Sub 42 | |-|7-74 |
| |8. | United Cities Gas Company | G-|, Sub 44 | 4-||-74 |
| |9. | United Cities Gas Company | G-|, Sub 45 | 7-||-74 |
| 20. | United Cities Gas Company | G-|, Sub 46 | 9-23-74 |

III. MOTOR BUSES

A. Certificates

| | | |
|---|---|---|
| 1. Cape Fear Valley Coaches, Inc. - Order Cancelling Certificate No. B-23 | B-23, Sub 21 | 11-7-74 |
| 2. Highland Tours - Order Granting Application | B-303, Sub 1 | 3-5-74 |
| 3. Hines, Roy Chester - Order Cancelling Certificate No. B-310 | B-310 | 10-22-74 |
| 4. Olde London Bus Company - Order Granting Application as Amended | B-317 | 5-17-74 |
| 5. Olde London Bus Company - Order Granting Motion & Cancelling Operating Authority | B-317 | 10-11-74 |
| 6. Pope Field Rider Association - Order Cancelling Permit No. B-289 | B-289, Sub 1 | 7-31-74 |
| 7. Wilmington City Lines, Inc. - Order Cancelling Certificate No. B-78 | B-78, Sub 12 | 11-7-74 |

B. Leases

| | | |
|---|---|---|
| 1. Carolina Coach Company, Lessor, & North Carolina Wesleyan College, Lessee - Order Cancelling Lease of Operating Authority | B-115, Sub 128 | 8-14-74 |
| 2. Dillahunt, John T. - Order Approving Supplementary Lease Agreement | B-128, Sub 1 | 7-31-74 |

C. Rates

| | | |
|---|---|---|
| 1. Kannapolis Transit Company - Order Granting Petition in Part and Denying Petition in Part | B-189, Sub 5 | 6-24-74 |

D. Sales & Transfers

| | | |
|---|---|---|
| 1. Intermountain Transit, Incorporated - Order Approving Sale & Transfer of Certain Routes in Western North Carolina | B-316 | 6-27-74 |
| 2. Intermountain Transit, Incorporated - Order Rescinding Order of June 27, 1974 | B-316 | 11-19-74 |
| 3. Shelby Bus Lines - Order Approving Sale & Transfer | B-45, Sub 3 | 12-15-74 |
| 4. Twin State Coach Lines from Greyhound Lines, Inc. - Order Approving Transfer | B-313 | 1-22-74 |
| 5. Twin State Coach Lines from Greyhound Lines, Inc. - Order Granting Petition | B-313 | 2-27-74 |
| E. Stock Sales & Transfers | | |
| 1. Suburban Coach Lines, Inc. - Order Cancelling Order Approving Sale & Transfer of Stock & Change of Control | B-13, Sub 24 | 10-9-74 |
| F. Terminals | | |
| 1. Continental Southeastern Lines, Inc., & Greyhound Lines, Inc. (Eastern Division), Asheville Union Bus Station - Order Granting Petition | B-275, Sub 44 | 6-20-74 |
| 2. Greyhound Lines, Inc. (East Division), & Continental Southeastern Lines, Inc., Winston-Salem Union Bus Station - Order Granting Petition | B-275, Sub 30 | 8-2-74 |
| G. Miscellaneous | | |
| 1. Carolina Coach Company - Order Granting Petition to Suspend Operations | B-15, Sub 175 | 1-8-74 |
| 2. Satellite Commuter Service - Order Dismissing | B-314 | 5-3-74 |

| | | |
|---|---|---|
| 3. Southern Coach Company & Carolina Coach Company - Order Closing Docket Upon Completion of Appeal Proceedings | B-30, Sub 46<br>B-15, Sub 17 | 3-18-74 |

IV. MOTOR TRUCKS

A. Authority Denied & Dismissals

| | | |
|---|---|---|
| 1. Bullock's Mobile Home Parks and Sales - Recommended Order Dismissing Application | T-1714 | 9-16-74 |
| 2. Day's Mobile Transport - Recommended Order Dismissing Application | T-1705 | 6-27-74 |
| 3. Gibson, James M. - Recommended Order Denying Application | T-1610, Sub 1 | 1-28-74 |
| 4. Grantham's Mobile Home Park Sales & Service - Recommended Order Denying Application | T-1640, Sub 1 | 10-25-74 |
| 5. Harper Trucking Company - Order Denying Application to Expand Contract Carrier Operations; Redefining Boundary Line | T-521, Sub 14 | 3-18-74 |
| 6. Tharrington's Mobile Home Service - Recommended Order Allowing Motion to Dismiss and Denying Application | T-1706 | 7-24-74 |
| 7. Williams, J. L., Trailer Moving Company - Recommended Order Denying Application | T-1517, Sub 1 | 11-13-74 |

B. Authority Reinstated

| | | |
|---|---|---|
| 1. Humphrey-Hardison Oil Co. - Order Reinstating Contract Carrier Authority | T-1202, Sub 2 | 2-18-74 |

C. Authority Revoked

| | | |
|---|---|---|
| 1. Baldwin, H. G. - Recommended Order Revoking Authority | T-1544 | 2-26-74 |

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| 2. Neighbors, J. T., Trucking Company, Inc. - Recommended Order Revoking Authority | T-1493 | 10-4-74 |

D. Certificates and/or Permits

| | | |
|---|---|---|
| 1. Allen Brothers Transfer Company - Certificate Cancelled | T-98, Sub 4 | 8-23-74 |
| 2. Atlantic Oil Service, Inc. - Granting Permit | T-1703 | 7-9-74 |
| 3. Bryan Transport Company - Certificate Cancelled | T-1019, Sub 3 | 10-8-74 |
| 4. Burris Express, Inc. - Additional Operating Authority | T-681, Sub 4 | 4-17-74 |
| 5. Citizen Express, Inc. - Certificate Cancelled | T-68, Sub 7 | 10-8-74 |
| 6. Clemmons Pallet & Skid Works, Inc. - Granting Permit | T-1712 | 10-11-74 |
| 7. Colonial Building Maintenance Co., Inc. - Granting Permit | T-1731 | 12-20-74 |
| 8. Custom P.T.H.D. Builders, Inc. - Certificate Cancelled | T-1657 | 3-27-74 |
| 9. Elledge, Wade - Granting Permit | T-1698 | 5-8-74 |
| 10. English, Novene Mobley - Certificate Cancelled | T-1482, Sub 1 | 5-3-74 |
| 11. Frady, James Woodrow - Granting Application | T-1506, Sub 2 | 10-26-74 |
| 12. Fussell Equipment Company - Certificate Cancelled | T-1628 | 8-2-74 |
| 13. Glover Sales, Inc. - Granting Operating Authority | T-1727 | 12-4-74 |
| 14. Glover Sales, Inc. - Clarifying Scope of Authority | T-1727 | 12-16-74 |
| 15. Hill's Truck Line, Inc. - Certificate Cancelled | T-140, Sub 6 | 12-2-74 |
| 16. Hopkins, Dillard Odell - Common Carrier Certificate | T-1694 | 5-17-74 |

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|---|---|---|
| 17. Hudson Truck Line - Application Denied | T-1675 | 3-29-74 |
| 18. Indianhead Truck Line, Inc. - Granting Operating Authority | T-1676, Sub 1 | 12-17-74 |
| 19. Jackson, Jimmy - Application Denied | T-1684 | 3-7-74 |
| 20. Kindle Pick-Up & Delivery Service - Application Denied | T-1682, Sub 1 | 8-20-74 |
| 21. Lemmonds, Walter L. - Certificate Cancelled | T-607, Sub 1 | 10-7-74 |
| 22. Lower Creek Mobile Homes - Application Denied | T-1516, Sub 2 | 9-10-74 |
| 23. Modular Transfer Corporation - Certificate Cancelled | T-1598 | 10-23-74 |
| 24. Murray, Phillip D., Trucking Company - Granting Permit | T-1683 | 6-12-74 |
| 25. Naylor, Cleadous - Certificate Cancelled | T-513, Sub 2 | 9-9-74 |
| 26. O'Neal Trailer Sales - Application Denied | T-1679 | 2-11-74 |
| 27. Package Delivery, Inc. - Application Denied | T-1696 | 8-29-74 |
| 28. Piedmont Mobile Home Movers - Granting Common Carrier Authority | T-1691 | 4-1-74 |
| 29. Planter Oil Company - Certificate Cancelled | T-1442, Sub 1 | 11-21-74 |
| 30. Ray-Mac Supply Company, Inc. - Granting Extension of Authority | T-1326, Sub 3 | 4-18-74 |
| 31. Record Truck Line, Inc. - Granting Permit | T-1687 | 5-16-74 |
| 32. Short Enterprises, Inc. - Granting Application | T-1719 | 9-18-74 |
| 33. Tar Heel Industries, Inc. - Granting Permit | T-1701 | 6-26-74 |
| 34. Tucker's Mobile Home Dealer - Amending Permit | T-1648, Sub 1 | 1-2-74 |

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|---|---|---|
| 35. Wallace Farmers Exchange, Inc. - Certificates Cancelled | T-|56| | 3-|8-74 |
| 36. Weaver, Edward Herman - Granting Permit | T-|7|5, Sub | |0-28-74 |
| 37. Wood Mobile Home Movers - Application Denied | T-|674 | 8-|-74 |
| E. Change of Name | | |
| |. Bullard Moving & Storage Haulers, Inc., from A. C. Simpson Transfer | T-844, Sub 3 | 3-22-74 |
| 2. Farrar Transfer & Storage Warehouse, Inc., from Farrar Transfer & Storage Warehouse | T-9|0, Sub | |0-23-74 |
| 3. Martin, W. M. Transfer, Inc., from W. M. Martin Transfer | T-653, Sub 5 | 2-|9-74 |
| 4. Strader Motor Lines, Inc., from R. B. Strader Motor Lines, Inc. | T-|668, Sub 2 | 2-|5-74 |
| F. Mergers | | |
| |. Clarkson Brothers Machinery Haulers, Inc., from Carolina Freightways, Inc. | T-|688 | 3-22-74 |
| G. Rates | | |
| |. Motor Common Carriers of Household Goods - Order Granting Application in Part and Denying Application in Part | T-825, Sub |8| | 7-29-74 |
| 2. Transit Homes, Inc. - Suspension and Investigation of of Proposed Increase in Rates and Charges | T-825, Sub |82 | 7-29-74 |
| H. Sales & Transfers | | |
| |. Allgood Wrecker Service from Forsyth Mobile Homes Movers & Service | T-|735 | |2-20-74 |

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|---|---|---|---|
| 2. | Capital Moving & Warehousing, Inc., from Barker Transfer Service | T-1713 | 7-31-74 |
| 3. | Carolina Carriers, Inc., from Washburn Oil Company | T-727, Sub 5 | 12-3-74 |
| 4. | Citizens Express, Inc., from Carolina Delivery Service Company, Inc. | T-68, Sub 7 | 9-30-74 |
| 5. | Columbus Motor Lines, Inc., from Northeastern Trucking Company | T-304, Sub 7 | 7-12-74 |
| 6. | Commercial & Package Delivery Service, Inc., from Transfer, Inc. | T-1362, Sub 6 | 3-22-74 |
| 7. | Custom Moving & Storage, Inc., from Walter Hill Truck Line | T-1700 | 7-9-74 |
| 8. | Doug's Mobile Home Towing from Campbell 66 Service | T-1721 | 11-8-74 |
| 9. | Eller, Sam D., Motor Carriers, Inc., from Sam D. Eller Motor Carrier | T-1347, Sub 5 | 3-26-74 |
| 10. | Ellington Transport, Inc., from Earnest R. Jones | T-1718 | 9-27-74 |
| 11. | Forbes Refrigerated Transport, Inc., from Forbes Transfer Company | T-1710 | 8-28-74 |
| 12. | Forsyth Mobile Home Movers & Service from Roy's Mobile Home Movers & Service | T-1697 | 4-22-74 |
| 13. | Freck Mobile Home Service from Engle Mobile Home Service | T-1702 | 6-9-74 |
| 14. | Gastonia Moving & Storage Company - Recommended Order Denying Transfer and Authorizing Motor Carrier Operations | T-240, Sub 2<br>T-240, Sub 3 | 12-9-74 |
| 15. | Infinger Transportation Company, Inc., from Southern Oil Transportation Company, Inc. | T-698, Sub 3 | 2-4-74 |
| 16. | Kinston Moving & Storage, Inc., from Kinston Moving & Storage Company | T-1644, Sub 1 | 7-12-74 |

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|---|---|---|
| 17. Lamb's Wrecker Service & Garage from Hunter's Trailer Transit | T-1729 | 12-31-74 |
| 18. Lisk, Howard from Walters Transfer & Farms, Inc. | T-1685 | 3-12-74 |
| 19. Media Express, Inc., from Carolina Delivery Service Company, Inc. | T-1722 | 9-30-74 |
| 20. Oliver Trucking Company, Inc., from Webb Transfer Line, Inc. | T-1363, Sub 1 | 1-17-74 |
| 21. O'Quinn, Earl from W.B.C. Trucking Company, Inc. | T-1725 | 10-11-74 |
| 22. Overnite Transportation Company from Aaron Smith Trucking Company, Inc. | T-208, Sub 32 | 12-20-74 |
| 23. Pilot Van Lines, Inc., from M. E. Whitmore, Incorporated | T-1680 | 1-11-74 |
| 24. Pope's Mobile Home Moving from Auto Service Center | T-1704 | 6-6-74 |
| 25. Sheets Transfer & Storage Company, Inc., from Sheets Transfer & Storage | T-1592, Sub 1 | 12-19-74 |
| 26. Smith, Elton C., Jr., Moving Company from Elton C. Smith | T-1002, Sub 1 | 1-11-74 |
| 27. Smith Transfer Company, Inc., from Smith's Transfer Company | T-470, Sub 2 | 2-19-74 |
| 28. Strader, R. B., Contractors, Inc., from Oliver Trucking Company, Inc. | T-1668, Sub 1 | 1-14-74 |
| 29. Strader Motor Lines, Inc., from Batts Transfer | T-1668, Sub 3 | 8-28-74 |
| 30. Super Motor Lines, Inc., from Super Motor Lines | T-155, Sub 3 | 11-22-74 |
| 31. Tri-County Transport, Incorporated, from Star Truck Lines | T-1708 | 7-24-74 |
| 32. Umstead Brothers, Inc., from Umstead Transfer | T-1439, Sub 1 | 8-28-74 |

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|---|---|---|
| I. Stock Sales & Transfers | | |
| 1. DeHart Motor Lines, Inc., from Hawthorne Aviation - Sale & Transfer of Capital Stock | T-1569, Sub 2 | 10-22-74 |
| 2. Edmac Trucking Company, Incorporated - Transfer of Stock Ownership | T-70, Sub 7 | 9-20-74 |
| 3. Mini-Haul, Inc. - Sale & Transfer of Stock & Change of Control | T-1572, Sub 1 | 6-5-74 |
| 4. Parker's Van & Storage, Inc. - Sale & Transfer of Stock & Change of Control | T-1651, Sub 1 | 5-6-74 |
| J. Withdrawals of Applications | | |
| 1. Harper Trucking Company | T-521, Sub 9<br>T-521, Sub 10 | 7-29-74 |
| 2. Purolator Courier Corp. | T-1077, Sub 12 | 11-27-74 |
| K. Vacations | | |
| 1. United Parcel Service, Inc. | T-1317, Sub 7 | 11-4-74 |
| V. RAILROADS | | |
| A. Discontinuance of Agency Stations | | |
| 1. Atlantic & East Carolina Railway Company - Discontinue Agency Station at Cherry Point, North Carolina | R-10, Sub 11 | 2-26-74 |
| 2. Norfolk Southern Railway Company - Retire & Dismantle Agency Building in Durham, North Carolina | R-4, Sub 73 | 3-26-74 |
| 3. Norfolk Southern Railway Company - Retire & Dismantle Agency Building in Charlotte, North Carolina | R-4, Sub 74 | 4-9-74 |

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|---|---|---|---|
| 4. | Norfolk Southern Railway Company - Remove Station at Scott's Siding, North Carolina, from Open & Prepay Tariff | R-4, Sub 75 | 4-30-74 |
| 5. | Norfolk Southern Railway Company - Remove Station at Mt. Herman, North Carolina, from Open & Prepay Tariff | R-4, Sub 76 | 5-3-74 |
| 6. | Norfolk Southern Railway Company - Remove Station at Rockton, North Carolina, from Open & Prepay Tariff | R-4, Sub 77 | 5-3-74 |
| 7. | Norfolk Southern Railway Company - Remove the Station at South Side, North Carolina, from the Open & Prepay Tariff | R-4, Sub 78 | 5-3-74 |
| 8. | Norfolk Southern Railway Company - Remove Station at Laboratory, North Carolina, from Open & Prepay Tariff | R-4, Sub 79 | 5-3-74 |
| 9. | Norfolk Southern Railway Company - Discontinue Agency Station at Duncan, North Carolina, & Dismantle & Remove Present Station Building | R-4, Sub 80 | 7-24-74 |
| 10. | Norfolk Southern Railway Company - Remove Stations at Hilltop, Seaforth, & Farrington, North Carolina, from Open and Prepay Tariff | R-4, Sub 82 | 12-2-74 |
| 11. | Norfolk and Western Railway Company - Change Agency Station at Walnut Cove, Stokes County, North Carolina, to Non-Agency Station & Retire Station Building Thereat | R-26, Sub 26 | 8-13-74 |
| 12. | Norfolk and Western Railway Company - Change Agency Station at Walnut Cove, Stokes County, North Carolina, to Non-Agency Station & Retire Station Building Thereat | R-26, Sub 26 | 9-19-74 |
| 13. | Seaboard Coast Line Railroad Company - Abandon & Remove Station Building at Rocky Point, North Carolina | R-71, Sub 36 | 2-26-74 |
| 14. | Southern Railway Company - Dismantle & Remove Station Building at Hillsborough, North Carolina | R-29, Sub 196 | 7-12-74 |

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| 15. Southern Railway Company - Retire & Dismantle Agency Building in Newton, North Carolina | R-29, Sub 203 | 4-30-74 |
| 16. Southern Railway Company - Retire & Dismantle Former Agency Station Building at Selma, North Carolina | R-29, Sub 204 | 5-9-74 |
| 17. Southern Railway Company - Remove Station at Cindy, North Carolina, from Open & Prepay Tariff | R-29, Sub 205 | 5-30-74 |
| 18. Southern Railway Company - Retire & Remove Furnace Branch Belt Line at Greensboro, North Carolina | R-29, Sub 206 | 7-29-74 |
| 19. Southern Railway Company - Retire & Dismantle Old Agency Building at Lexington, North Carolina | R-29, Sub 208 | 9-4-74 |
| 20. Southern Railway Company - Dismantle & Remove Old Freight Depot at Reidsville, North Carolina | R-29, Sub 210 | 11-1-74 |
| 21. State University Railroad Company (Southern Railway Company) - Remove Station at Blackwood, North Carolina, from Open & Prepay Tariff | R-73 | 7-9-74 |
| 22. State University Railroad Company (Southern Railway Company) - Remove Station at Eubank, North Carolina, from Open & Prepay Tariff | R-73, Sub 1 | 7-9-74 |
| B. Mobile Agency Concept | | |
| 1. Southern Railway Company - Order Approving Petition to Make Permanent the Mobile Agency Concept in Mocksville, North Carolina, & to Retire & Remove the Station Buildings at Mooresville, Huntersville, & Woodleaf, North Carolina | R-29, Sub 199 | 1-30-74 |
| 2. Southern Railway Company - Order Approving Petition to Make Permanent the Mobile Agency Concept in Belmont, North Carolina, & to Dispose of the Station Buildings at China Grove, Landis & | R-29, Sub 200 | 1-30-74 |

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| Kings Mountain, North Carolina | | |
| 3. Southern Railway Company - Order Approving Petition to Make Permanent the Mobile Agency Concept in Newton, North Carolina, & to Retire or Dismantle the Agency Station Buildings at Claremont, Catawba, Valdese, Drexel & Conover, North Carolina | R-29, Sub 201 | 12-16-74 |
| 4. Southern Railway Company - Order Granting Petition to Establish a Mobile Agency Service Out of High Point, North Carolina, Serving the Agency Station of Thomasville, North Carolina | R-29, Sub 209 | 9-27-74 |
| C. Relocation of Mobile Agency Stations | | |
| 1. Seaboard Coast Line Railroad Company - Relocate Wilmington, North Carolina, Freight Agency Station from Present Location to Navassa, North Carolina | R-71, Sub 38 | 3-19-74 |
| D. Team Tracks, Spur Tracks, & Side Tracks | | |
| 1. Seaboard Coast Line Railroad Company - Order Allowing Motion to Eliminate the Former Nonagency Station of Deppe, North Carolina, from the Jacksonville Mobile Agency Concept & to Authorize Retirement of the Team Track at Deppe | R-71, Sub 26 | 1-30-74 |
| 2. Seaboard Coast Line Railroad Company - Order Granting Authority to Retire Team Track at Waxhaw, North Carolina, & to Dismantle that Point as a Nonagency Station | R-71, Sub 37 | 2-20-74 |
| 3. Seaboard Coast Line Railroad Company - Order Granting Application Effective July 1, 1974, to Retire the Team Track at Bagley, North Carolina, & Discontinue that Point as a Nonagency Station | R-71, Sub 39 | 5-6-74 |
| 4. Seaboard Coast Line Railroad Company - Order Granting Application to Retire its Team Track at Wrightsboro, North Carolina, & to Change the Status of Wrightsboro from a Non- | R-71, Sub 40 | 7-12-74 |

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| agency Station to a Private Siding Station | | |
| 5. Southern Railway Company - Order Granting Application to Remove & Retire the Spur Track No. K-27-2 in Winston-Salem, North Carolina | R-29, Sub 202 | 4-22-74 |
| 6. Southern Railway Company - Order Granting Application to Retire & Remove the Side Track at Cornatzer, from the Open & Prepay Tariff | R-29, Sub 212 | 12-16-74 |

VI. TELEPHONE

A. Closing Dockets

| | | |
|---|---|---|
| 1. Old Town Telephone System, Incorporated - Order Closing Docket | P-44, Sub 66 | 1-16-74 |
| 2. North Carolina Association of Broadcasters, Inc., vs. Southern Bell Telephone & Telegraph Company - Order Closing Docket | P-89, Sub 6 | 11-21-74 |
| 3. Southern Bell Telephone & Telegraph Company - Order Closing Docket | P-55, Sub 718 | 6-13-74 |

B. Complaints

| | | |
|---|---|---|
| 1. Southern Bell Telephone & Telegraph Company - Complaint of The Reverend Albert R. Hastings - Recommended Order Dismissing Complaint | P-55, Sub 734 | 2-28-74 |

C. Miscellaneous

| | | |
|---|---|---|
| 1. Oldtown Telephone Systems, Inc., & Mid-Continent Telephone Corporation - Order Approving Service Agreement | P-44, Sub 68 | 2-21-74 |
| 2. Pineville Telephone Company - Approval of Exchange Service Area Map | P-120 | 3-18-74 |

D. Radio Common Carriers

| | | |
|---|---|---|
| 1. Ra-Tel Company, Inc. - Order Granting Authority to Transfer Stock | P-92, Sub 10 | 3-18-74 |
| 2. Ra-Tel Company, Inc. - Order Granting Authority to Transfer Stock | P-92, Sub 12 | 5-17-74 |

E. Stocks & Financing

| | | |
|---|---|---|
| 1. Carolina Telephone & Telegraph Company - Order Granting Authority to Issue & Sell Note in the Principal Amount of $10,000,000 | P-7, Sub 599 | 10-23-74 |
| 2. Concord Telephone Company - Order Approving Plan for Voluntary Conversion of Certain Preferred Stock into Class B Non-Voting Common Stock | P-16, Sub 123 | 6-28-74 |
| 3. Concord Telephone Company - Order Granting Authority to Sell Class B Non-Voting Common Stock | P-16, Sub 122 | 3-26-74 |
| 4. General Telephone Company of the Southeast - Order Granting Authority to Issue & Sell First Mortgage Bonds | P-19, Sub 156 | 1-10-74 |
| 5. Mid-Carolina Telephone Company - Order Approving Interim Financing Between Mid-Carolina Telephone Company & its Parent, Mid-Continent Telephone Corporation | P-118, Sub 1 | 11-1-74 |
| 6. Norfolk & Carolina Telephone & Telegraph Company - Order Granting Authority to Issue & Sell Securities | P-40, Sub 133 | 6-14-74 |
| 7. Old Town Telephone System, Inc. - Order Granting Authority to Borrow Funds | P-44, Sub 69 | 11-19-74 |
| 8. Service Telephone Company - Order Approving Application | P-60, Sub 32 | 5-20-74 |

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| 9. Western Carolina Telephone Company - Order Granting Authority to Issue & Sell Securities | P-58, Sub 92 | 5-30-74 |
| 10. Western Union Telegraph, The - Order Granting Authority to Sell Promissory Notes | WU-97 | 2-11-74 |
| 11. Western Union Telegraph, The - Amendment to Order, Docket No. WU-97, Dated February 11, 1974 | WU-97 | 4-9-74 |

F. Tariffs

| | | |
|---|---|---|
| 1. Carolina Telephone & Telegraph Company - Order Denying Petition | P-7, Sub 596 | 7-2-74 |
| 2. Barnardsville Telephone Company - Order Approving Tariff on Less Than Statutory Notice | P-75, Sub 15 | 1-9-74 |
| 3. Central Telephone Company - Order Approving Tariff on Less Than Statutory Notice | P-10, Sub 343 | 7-2-74 |
| 4. General Telephone Company of the Southeast - Order Approving Tariff on Less Than Statutory Notice | P-19, Sub 157 | 4-29-74 |
| 5. Sandhill Telephone Company - Order Approving Tariff on Less Than Statutory Notice | P-53, Sub 36 | 2-4-74 |
| 6. Southern Bell Telephone & Telegraph Company - Order Disapproving Tariffs | P-55, Sub 738 | 5-22-74 |
| 7. Southern Bell Telephone & Telegraph Company - Order Approving Tariff on Less Than Statutory Notice | P-55, Sub 741 | 5-6-74 |

VII. RATES - RAILROAD

| | | |
|---|---|---|
| 1. Rail Common Carriers - Order Granting Petition | R-66, Sub 64 | 4-10-74 |

VIII. WATER & SEWER

A. Amending Name

| | | |
|---|---|---|
| 1. Jemaca Enterprises, Inc., T/A Crestview Water Company from J. Carl & Jewel H. Hartsfield, d/b/a Jemaca Enterprises, Inc. - Order Amending Name | W-195, Sub 2 | 4-23-74 |
| 2. Jemaca Enterprises, Inc., T/A Mount Vernon Park Water System from J. Carl & Jewel H. Hartsfield, d/b/a Mount Vernon Park Water System - Order Amending Name | W-72, Sub 2 | 4-23-74 |
| 3. Jemaca Enterprises, Inc., T/A Regalwood Water Company from J. Carl & Jewel H. Hartsfield, d/b/a Regalwood Water Company - Order Amending Name | W-187, Sub 3 | 4-23-74 |
| 4. Mercer Environmental Corporation from Arthur Utilities, Inc. - Order Amending Name | W-198, Sub 7 | 4-22-74 |

B. Certificates Granted or Amended

| | | |
|---|---|---|
| 1. Abernathy, Joe D., Sandy Ridge Acres Subdivision | W-456 | 7-5-74 |
| 2. Arthur Utilities, Inc. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-198, Sub 5 | 1-18-74 |
| 3. Associated Realty & Investment, Inc., Mt. Ridge Estates Subdivision (Temporary Authority) | W-384 | 4-24-74 |
| 4. Associated Realty & Investment, Inc., Mt. Ridge Estates Subdivision (Certificate Granted) | W-384 | 9-17-74 |
| 5. Avalon Water System, Inc., Colonial Estates Subdivision (Temporary Authority) | W-382 | 3-26-74 |
| 6. Bald Mountain Development Corporation - Recommended Order Granting Franchise & Approving Rates | W-410 | 1-31-74 |

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| 7. | Bethlehem Utilities, Inc. - Recommended Order Granting Franchise & Approving Rates | W-259, Sub 1 | 7-30-74 |
| 8. | Bolick, Albert L. - Recommended Order Granting Franchise & Approving Rates | W-430 | 5-9-74 |
| 9. | Bost, O. J., Shade Tree Acres Subdivision | W-455 | 6-24-74 |
| 10. | Brindle's Well Drilling - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-228, Sub 1 | 1-14-74 |
| 11. | Brookwood Utilities, Inc. - Recommended Order Granting Franchise & Approving Rates | W-470 | 11-29-74 |
| 12. | Carolina Trace Corporation, Carolina Trace Subdivision (Temporary Authority) | W-436 | 5-14-74 |
| 13. | Carolina Trace Corporation (Certificate Granted) | W-436 | 9-5-74 |
| 14. | Castor Court Water Company, Inc., Castor Court Subdivision | W-423, Sub 1 | 6-4-74 |
| 15. | Cline, H. C., Building & Supply Co., Inc. - Recommended Order Granting Franchise & Approving Rates | W-418 | 5-13-74 |
| 16. | Cocoa Homes, Inc., Hollyview Subdivision | W-449 | 7-29-74 |
| 17. | Community Water System, Milstead Community Subdivision (Temporary Authority) | W-416 | 3-8-74 |
| 18. | Corriher Water Service, Inc. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-233, Sub 4 | 3-11-74 |
| 19. | Cox, S. M., White Oak Subdivision (Temporary Authority) | W-442 | 5-28-74 |

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| 20. Cross-State Development Company, Inc., Nicanor Acres & Ashe Lake Sections of Blue Ridge Manor Subdivision (Temporary Authority) | W-408 | | 5-13-74 |
| 21. Dockery, David N. - Recommended Order Granting Franchise & Approving Rates | W-438 | | 5-31-74 |
| 22. Essential Utilities, Inc. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-297, | Sub 3 | 1-25-74 |
| 23. Finger, Kemp A., Harold J. Heavner & James R. Goodson, Brookwood Acres Subdivision (Temporary Authority) | W-441 | | 7-15-74 |
| 24. Fisher, G. Bruce, Sherrill Park Subdivision (Temporary Authority) | W-458 | | 9-6-74 |
| 25. Glynwood Mobile Home Park - Recommended Order Granting Franchise & Approving Rates | W-454 | | 6-24-74 |
| 26. Gordon Heights Water System, Leonard J. Dover, d/b/a Gordon Heights Subdivision (Temporary Authority) | W-407, | Sub 1 | 1-24-74 |
| 27. Goss Utility Company - Recommended Order Granting Franchise & Approving Rates | W-457 | | 8-6-74 |
| 28. Gower, Jerry, Construction Company - Recommended Order Granting Franchise & Approving Rates | W-465 | | 9-16-74 |
| 29. Grandview Water Company - Recommended Order Granting Franchise & Approving Rates | W-183, | Sub 1 | 3-19-74 |
| 30. Guffie, Junior H., Skyland Drive Subdivision (Temporary Authority) | W-415, | Sub 1 | 3-12-74 |
| 31. Hanover Utilities, Inc. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-411 | | 1-24-74 |

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| 32. | Hefner Builders, Inc., Northwood & Westwood Subdivisions (Temporary Authority) | W-480 | 12-4-74 |
| 33. | Hickory Hills Service Co., Inc. - Recommended Order Granting Franchise & Approving Rates | W-460 | 8-21-74 |
| 34. | Holbrook, Mrs. Maurice L., Robinbrook Place Subdivision (Temporary Authority) | W-433 | 4-22-74 |
| 35. | Hollandale Water Company, Holland Construction Co., Inc., d/b/a (Temporary Authority) | W-419 | 5-23-74 |
| 36. | Homestead Community Water - Recommended Order Granting Franchise & Approving Rates | W-452 | 7-15-74 |
| 37. | Honeycutt, Wayne M. - Recommended Order Granting Franchise & Approving Rates | W-472 | 10-22-74 |
| 38. | Honey Hill Water Company - Recommended Order Granting Certificate & Approving Rates | W-420 | 3-20-74 |
| 39. | Honey Hill Water Company - Order Amending Application | W-420 | 4-8-74 |
| 40. | Hope Brothers Builders, Inc. - Recommended Order Granting Franchise & Approving Rates | W-413 | 1-18-74 |
| 41. | Huffman, George W., Washington Forest Subdivision (Temporary Authority) | W-424 | 3-20-74 |
| 42. | Huntley, F. W., Construction Co., Inc., Olde Creek Subdivision (Temporary Authority) | W-477 | 12-16-74 |
| 43. | Hydraulics, Ltd. - Recommended Order Granting Franchise & Approving Rates | W-218, Sub 9 | 9-4-74 |
| 44. | Hydraulics, Ltd., Seagate Subdivision (Temporary Authority) | W-218, Sub 11 | 8-30-74 |

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| 45. Jackson Utility Company, Inc., c/o Sapphire Valley Development Corporation, Sapphire Valley Subdivision (Water & Sewer Utility) | W-448 | | 6-25-74 |
| 46. Jones, J. W., & Wife, Irene Jones, Hedgewood Circle Subdivision (Temporary Authority) | W-422 | | 6-12-74 |
| 47. Longleaf, Inc. - Recommended Order Granting Franchise & Approving Rates | W-462 | | 9-20-74 |
| 48. Mason, Mrs. C. G., Sr., 31st Avenue, N. E. Area (Temporary Authority) | W-429 | | 5-10-74 |
| 49. Meadow Lake Subdivision - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-417 | | 2-19-74 |
| 50. Minnesott Beach Water Works, Garvin B. Hardison & Beasley-Kelso Associates, Inc., T/A Minnesott Beach Community | W-443 | | 8-29-74 |
| 51. Mosely-Nash Water Corporation - Recommended Order Granting Franchise & Approving Rates | W-475 | | 11-14-74 |
| 52. Moss Hill Water Works Company, Coharie, Incorporated, d/b/a Fox Lake Subdivision (Temporary Authority) | W-459 | | 8-30-74 |
| 53. Ratchford, Lucius L., Pineview Subdivision (Temporary Authority) | W-421 | | 4-22-74 |
| 54. Richey, C. A., Cedar Village Subdivision (Temporary Authority) | W-450 | | 6-17-74 |
| 55. Riverbend Estates, Inc., T/A Riverbend Estates Water System, Riverbend Estates Subdivision (Temporary Authority) | W-390<br>W-390 | <br>Sub 1 | 12-4-74 |
| 56. Rozelle, Fred D., Royal Heights Subdivision | W-202 | Sub 5 | 1-21-74 |
| 57. Ruff Water Company, Green Meadows, Southgate No. 2 & Fox Run Subdivisions (Temporary Authority) | W-435 | | 5-17-74 |

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| 58. | Ruff Water Company - Certificate Granted | W-435 | 6-4-74 |
| 59. | Scotland Water Company - Recommended Order Granting Certificate & Approving Rates | W-426 | 3-20-74 |
| 60. | Shook, John H. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-412 | 1-24-74 |
| 61. | Shamrock Water Corporation - Recommended Order Granting Franchise & Approving Rates | W-432 | 5-9-74 |
| 62. | Springdale Water Company - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-406 | 1-14-74 |
| 63. | Spring Valley Estates Water System - Recommended Order Granting Franchise & Approving Rates | W-425 | 5-3-74 |
| 64. | Stanley, S. P. - Recommended Order Granting Franchise & Approving Rates | W-324, Sub 1 | 8-30-74 |
| 65. | Steward, Paul A., Quail Ridge & Fleetwood No. 2 Subdivisions - Temporary Authority | W-414, Sub 1 | 6-24-74 |
| 66. | Surry Water Company, Inc. - Recommended Order Granting Certificate of Public Convenience & Necessity & Approval of Rates | W-314, Sub 10 | 1-14-74 |
| 67. | Surry Water Company, Inc. - Order Granting Franchise & Approving Rates | W-314, Sub 12 | 8-2-74 |
| 68. | Surry Water Company, Inc. - Recommended Order Granting Franchise & Approving Rates | W-314, Sub 13 | 12-13-74 |
| 69. | Tarlton & Rinaldo Land Co. - Recommended Order Granting Franchise & Approving Rates | W-318, Sub 1 | 1-24-74 |
| 70. | Treasure Cove Water Company - Order Granting Certificate of | W-445 | 5-30-74 |

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| Public Convenience & Necessity & Approval of Rates | | |
| 71. Urban Water Co., Inc. - Recommended Order Granting Franchise & Approving Rates | W-256, Sub 6 | 5-10-74 |
| 72. Watauga Vista, Inc. - Recommended Order Granting Franchise & Approving Rates | W-447 | 7-9-74 |
| 73. Waterco, Inc. - Recommended Order Granting Franchise & Approving Rates | W-80, Sub 19 | 8-22-74 |
| C. Dismissing Show Cause | | |
| 1. Bumgarner, J. C. - Recommended Order Dismissing Show Cause | W-398, Sub 1 | 4-16-74 |
| D. Exemptions | | |
| 1. Union Utilities Corporation - Order Exempting Applicant | W-186, Sub 95 | 10-24-74 |
| E. Franchises & Certificates Cancelled or Abandoned | | |
| 1. Carmel Country Club, Inc. - Order Cancelling Franchise | S-5, Sub 2 | 7-24-74 |
| 2. Huffman, H. C., Water Systems, Inc. - Order Authorizing Abandonment of Service | W-95, Sub 3 | 11-20-74 |
| 3. Water Company of Kannapolis, Inc. - Order Allowing Abandonment | W-10, Sub 6 | 3-11-74 |
| 4. Water Company of Kannapolis, Inc. - Order Allowing Abandonment & Cancelling Certificate | W-10, Sub 6 | 8-28-74 |
| F. Rates | | |
| 1. Chimney Rock Water Works - Order Approving Rates | W-102, Sub 2 | 1-29-74 |
| 2. Hensley Enterprises, Inc. - Recommended Order Approving | W-89, Sub 11 | 4-24-74 |

Increased Rates

| | | |
|---|---|---|
| 3. Lake Sagamore Water Company, Inc. - Order Approving Interim Availability Charges | W-376 | 10-17-74 |
| 4. Linn, D. C. - Order Requiring Notice & Approving Rates | W-144, Sub 4 | 8-6-74 |
| 5. Minnesott Beach Water Works - Order Approving Interim Availability Charge | W-443 | 10-17-74 |
| 6. Mercer Environmental Corporation - Order | W-198, Sub 6 | 10-25-74 |
| 7. Montclair Water Company - Recommended Order Granting Rate Increase | W-173, Sub 9 | 6-27-74 |
| 8. Sapphire Valley Development Corporation - Order Approving Interim Availability Charges | W-448 | 10-17-74 |
| 9. Surry Water Company, Inc. - Order Approving Increased Rates | W-314, Sub 11 | 8-2-74 |
| 10. Transylvania Utility Company - Order Approving Interim Availability | W-378 | 10-17-74 |

G. Sales & Transfers

| | | |
|---|---|---|
| 1. City of Charlotte from Sardis Utilities Company - Order Approving Transfer of Sewerage System | S-4 | 2-11-74 |
| 2. City of Charlotte from Sharonwood Acres Utilities, Inc. - Order Allowing Transfer | W-114, Sub 2 | 3-28-74 |
| 3. Kings Grant Water Company from Aqua Company - Order Approving Transfer & Rates | W-250, Sub 2 | 8-22-74 |
| 4. Ski Mountain Service Corporation from Carolina Mill & Lumber Company - Order Approving Transfer of Franchise & Rates | W-473 | 10-1-74 |

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| 5. Suburban Water Company & Suburban Heights Water System - Recommended Order Allowing Transfer | W-394, Sub 1 | 10-23-74 |
| 6. Waterco, Inc. - Recommended Order Allowing Transfer | W-80, Sub 18 | 3-21-74 |
| H. Securities | | |
| 1. General Waterworks Corporation - Order Authorizing General Waterworks Corporation to Raise its Interest Rates on its Series B, C, & D Bonds | W-54, Sub 22 | 9-3-74 |
| 2. General Waterworks Corporation - Amended Order Authorizing General Waterworks Corporation to Raise its Interest Rates on its Series B, C, and D Bonds | W-54, Sub 22 | 11-7-74 |
| 3. Southern Terrace, Inc. - Recommended Order Approving Transfer of Stock | W-292, Sub 1 | 1-25-74 |
| I. Tariffs | | |
| 1. Carolina Caribbean Utility Company - Order Granting Approval of Tariff Amendment | W-300, Sub 4 | 5-20-74 |
| 2. Piedmont Construction & Water Company, Inc. - Order Granting Approval of Tariff Amendment | W-262, Sub 14 | 5-3-74 |