EIGHTY-FOURTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1994, through December 31, 1994

* Hugh A. Wells, Chairman

William W. Redman, Jr., Commissioner

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

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

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

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* Hugh A. Wells, appointed Chairman August 1, 1994, replacing John E. Thomas

LETTER OF TRANSMITTAL

December 31, 1994

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, 1994, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1994, and ending December 31, 1994.

The additional report provided under G.S. 62-17(a), comprising the statistical and analytical report of the Commission, is printed separately from this volume and will be transmitted immediately upon completion of printing.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Hugh A. Wells, Chairman

William W. Redman, Jr., Commissioner

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

Geneva S. Thigpen, Chief Clerk

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of the
North Carolina Utilities Commission

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DOCKET NO. E-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

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

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

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

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

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

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

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

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

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

IT IS, THEREFORE, ORDERED as follows:

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

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

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

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

Rule R8-14 Meter testing at request of consumers.

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

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

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

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

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

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

DOCKET NO. E-100, SUB 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Self-Generation Deferral Rates, Dispersed Energy Facilities and Economic Incentive Rates	)	ORDER ADOPTING INTERIM GUIDELINES AND REQUESTING FURTHER COMMENTS

BY THE COMMISSION: On April 22, 1994, the Public Staff filed a petition requesting that a generic proceeding be initiated to consider the regulatory and policy implications of certain changes currently underway in the electric utility industry. As a part of its petition, the Public Staff proposed interim guidelines for addressing self-generation deferral rates pending the conclusion of the generic proceeding.

The Public Staff petition described three mechanisms by which electric utilities are increasingly offering rate discounts to industrial customers for the purpose of retaining industrial load or for attracting new industrial load. They are: (1) self-generation deferral rates - a discounted rate offered to a customer to encourage the customer not to install its own electric generation facilities; (2) dispersed energy facilities - whereby the utility constructs a new generation facility on the property of a customer, or acquires the existing self-generation facilities of the customer, as a means of retaining the customer and/or obtaining the economic benefits of cogeneration; and (3) economic incentive rates - a discounted rate offered to new industrial loads to encourage industrial development that is beneficial to the utility and/or to the State.

On May 13, 1994, the Commission issued its Order initiating an investigation into certain changes currently occurring in the electric utility industry, the regulatory and policy implications of such changes, and the framework for addressing such changes. The Order also requested initial and reply comments on the interim guidelines proposed by the Public Staff for addressing self-generation deferral rates, such comments to be filed prior to June 27, 1994.

On May 29, 1994, the Commission issued its Order clarifying that the scope of the proceeding was intended to focus on three particular changes in the electric utility industry as identified in the Order of May 13, 1994: (1) self-generation deferral rates, (2) dispersed energy facilities, and (3) economic incentive rates. The Order also clarified that the comments requested by the Order of May 13, 1994, should address: (1) the merits of the proposed interim

guidelines for self-generation deferral rates (with a view toward adoption of interim guidelines based on the written comments alone), and (2) recommendations as to what procedures the Commission should follow in considering the remaining issues raised.

On July 1, 1994, the Public Staff filed a motion requesting that the interim guidelines it had proposed earlier be modified, and requesting that the modified interim guidelines be adopted expeditiously. Also on July 1, 1994, the Commission issued its Order directing that responses to the Public Staff motion of July 1, 1994, or comments on the modified proposed interim guidelines be filed by July 11, 1994.

Comments and/or reply comments were filed by the Public Staff, CP&L, Duke, NC Power, NC Natural Gas, the Attorney General, CIGFUR, CUCA, Southern Environmental Law Center, Cogentrix, Peregrine Energy, the N.C. Board of Economic Development, and the N.C. Department of Commerce.

HIGHLIGHTS OF COMMENTS

The Public Staff commented that the generic proceeding should be based initially on written comments/briefs and reply comments/briefs on the appropriate issues, after which it could be determined if there is a need for expert testimony or public hearings. The thrust of the Public Staff's procedural recommendations is that the legal and policy requirements for dealing with the complex issues in this docket are better addressed prior to the Commission's being confronted with a specific proposal that needs a relatively quick resolution.

The Public Staff recommended that the Commission expeditiously adopt the proposed interim guidelines for self-generation deferral rates; that comments and/or briefs on issues regarding economic incentive rates be requested immediately and be due in early August; and that comments and/or briefs on issues regarding dispersed energy facilities be due approximately mid-September.

The Public Staff commented that CP&L's recommendation to apply the proposed interim guidelines to economic incentive rates and to dispersed energy facilities without further comments or policy review was unacceptable. It said that the proposed guidelines were never intended to apply to other rate options.

The Public Staff commented that adopting Duke's proposed interim guidelines would essentially eliminate as a criteria that any self-generation deferral rate be in the long-term best interest of the ratepayers.

The Public Staff agreed that the waiver clause proposed by NC Power has merit, and incorporated a version of it in its modified interim guidelines filed on July 1, 1994.

Carolina Power & Light Company (CP&L) commented that the interim guidelines proposed by the Public Staff adequately address the applicable issues associated with the three mechanisms discussed in this proceeding, and that the guidelines should be made permanent, effective immediately, and applicable to all three mechanisms. As a result, no further action by the Commission in this docket would be necessary.

CP&L pointed out certain information in the guidelines that may be difficult to develop or obtain, or may be cost prohibitive or irrelevant, such as the requirement to assess the impact of self-generation deferral rates on the customer's use of an alternative energy source (irrelevant and data not available), or the requirement to perform an embedded cost study showing the effect of self-generation deferral rates on the remaining retail rates of the utility and on the rates of each customer class (cost prohibitive and difficult to obtain data).

Duke Power Company commented that the interim guidelines proposed by the Public Staff are excessively burdensome and need to be simpler and more general in nature. Duke proposed its own version of interim guidelines, and recommended that they be adopted in lieu of the guidelines proposed by the Public Staff. As an alternative, Duke suggested that a broadly defined set of policy guidelines would be even better.

Duke recommended that the guidelines should contain a maximum 30-day review period, with provisions to lengthen it or shorten it when appropriate, instead of the 90-day maximum review period proposed by the Public Staff. Duke also recommended that the length of contract be determined on a case-by-case basis rather than be limited to the maximum 5-year contract term proposed by the Public Staff.

Duke also commented that matters involving dispersed energy facilities and economic incentive rates should be considered on a case-by-case basis rather than developing rules or guidelines for unknown situations in a dynamic and competitive environment.

North Carolina Power (NC Power) commented that the proposed interim guidelines should include a provision indicating that the guidelines are recommended, and not mandatory, filing requirements and that non-compliance with any particular requirement should be explained but should not necessarily invalidate an application for a self-generation deferral rate. NC Power recommended a waiver clause for insertion into the guidelines.

NC Power also recommended that the effective date of a self-generation deferral rate be no later than 30 days after filing instead of the 90 days recommended by the Public Staff, and it pointed out that the Commission may suspend the effective date of the rate on its own motion or the motion of any party pursuant to G.S. 62-134(b).

NC Power suggested revised language for the modified interim guidelines proposed by the Public Staff that would eliminate references indicating that self-generation deferral rates assume the ultimate loss of the affected load. It also suggested eliminating references indicating that the economic consequences of self-generating deferral rates will be shared between ratepayers and shareholders.

NC Power commented that generic proceedings would be of little benefit to the Commission in addressing dispersed energy facilities or economic development rates, given the fact-specific inquiry that would be necessary for each such request. Instead, the Company suggested that such proposals could be addressed under the proposed interim guidelines discussed herein (as modified with its recommended "waiver" clause).

North Carolina Natural Gas (NCNG) commented that self-generation deferral rates should not be allowed at the expense of natural gas loads. NCNG pointed out G.S. 62-2(9), which states that the policy of the State is to encourage expansion of natural gas into unserved areas.

NCNG also recommended that the interim guidelines require a description of the fuel intended to be used for self-generation, including annual, seasonal and daily usages, so as to reveal any impact the rate would have on natural gas expansion.

The Attorney General (AG) commented that it would not go so far as NCNG's suggestion that self-generation deferral rates not be allowed at the expense of natural gas expansion. However, the AG did support a requirement in the interim guidelines that a proposed self-generation deferral rate's contribution to the overall energy efficiency of the State's economy be evaluated when investigating such a rate.

The AG also suggested that the scope of the generic inquiry should include, especially in regard to dispersed energy facilities and economic incentive rates, some consideration of the risks and benefits of competition. For example, all customers should benefit from the proposed innovative rates; costs of such innovative rates should be assigned equitably to the various customer classes; and revenue shortfalls resulting from the innovative rates should be shared between ratepayers and shareholders.

The AG also suggested that the maximum contract term of any self-generation deferral rate be established in the interim guidelines, and that a utility be required to specify in detail the adjustments in its Integrated Resource Plan necessary to account for the ultimate loss of the customer.

Carolina Industrial Groups for Fair Utility Rates (CIGFUR) commented that the proceeding should include consideration of cost allocation methodologies and variations in customer class rates of return, as well as other issues. CIGFUR recommended that the Commission reconsider its May 26, 1994, Order limiting the scope of this proceeding.

CIGFUR contended that the proposed interim guidelines are too rigid, burdensome, or time consuming to deal with a dynamic competitive market.

Carolina Utility Customers Association (CUCA) commented that this proceeding should include consideration of the fact that industrial customers are subsidizing other retail customers. CUCA cited the cost allocation methodologies utilized and the resulting relative customer class rates of return in recent

electric general rate cases as evidence of such subsidies. CUCA expressed concern over Public Staff statements indicating that high load factor customers might not necessarily be good for the utility system at all times, and that such customers might actually accelerate the need for additional base load plants.

CUCA also stated that detailed guidelines could lead to Commission micro-management of the issue of competitive rates, which would be inefficient and inappropriate. CUCA urged simpler guidelines.

CUCA objected to the statement in the proposed guidelines that "The purpose of self-generation deferral rates is to allow the affected utility time to adjust its generation planning to account for the ultimate loss of that load." CUCA suggests that this statement is presumptuous and not necessarily true.

CUCA recommended that evidentiary hearings be held soon to examine the appropriateness of dispersed energy facilities and economic incentive rates.

Southern Environmental Law Center (SELC) commented that the guidelines should include consideration of the energy efficiency efforts of the customer, and that self-generation deferral rates should be denied to a customer who has not availed himself of all appropriate energy efficiency measures.

SELC recommended that the proposed interim guidelines contain provisions protecting ratepayers who do not receive the discounted rates, such as provisions addressing the sharing of revenue losses due to discounted rates, and provisions addressing whether the discounted rates cover the utility's incremental costs or make a contribution to fixed costs.

SELC also recommended that a three year limitation be placed on any self-generation deferral rate consistent with the reassessment of a utility's Integrated Resource Plan every three years.

Cogentrix commented that it supports the motion by CIGFUR for reconsideration of the Order of May 29, 1994, narrowing the scope of the generic proceeding to just three principal issues. It recommended that the Commission designate a representative to participate with the North Carolina Economic Development Board in developing strategies for economic development and expansion throughout the State.

Cogentrix also recommended that the proposed interim guidelines should not be applied to dispersed energy facilities or to economic incentive rates, and that those two issues be considered more fully in this proceeding.

Peregrine Energy Corporation commented that North Carolina has never specifically answered the question of whether a private negotiated sale of electricity between a commercial vendor and a customer is a public utility service when the transaction does not involve the use of transmission or distribution services. Peregrine asserts that it can compete directly with electric utilities in North Carolina by building generating facilities on the customer's property and selling such power to the customer.

Peregrine also commented that its concerns about the proposed interim guidelines are not in the details but in the philosophy of trying to promote competition while limiting public utility service to a single provider (the regulated utility). It cited open access to transmission lines and retail wheeling as other measures which should be encouraged.

Peregrine contended that the five-year term limit on contracts for self-generation deferral rates is too short, and it recommended fifteen years instead. It also contended that extensive disclosure of proprietary operating information of an industrial applicant, as contained in the proposed interim guidelines, would discourage many applicants.

The North Carolina Board of Economic Development, commented that it was unsuccessful in too many instances in recruiting new industries or expansion of existing industries because of noncompetitive electrical rates in certain areas of the State. The Board recommended to the General Assembly this year that a task force be established to look at the affects of electric and other energy rates on the State's competitiveness. The Board indicated that a broad in-depth study of our energy policy and its ability to create high paying jobs in North Carolina is needed, and encouraged the Commission to initiate an investigation of economic incentive rates.

The North Carolina Department of Commerce commented that recruitment of new industry, and expansion and retention of existing industry, are critical elements in the Department's goal of creating more and better jobs in North Carolina and of ensuring more equitable distribution of economic opportunity across the state. The Department supported the Commission's examination of innovative rates for electric service, but cautioned that any incentive for industrial customers should not unduly harm or burden remaining customers.

The Department recommended that the Commission initiate a proceeding at a later date to consider the full range of innovative rates, and not limited to the three issues addressed herein.

The Department also recommended that while some guidelines may be necessary, they should be as flexible as practical in order to allow the utilities to maximize their competitiveness.

CONCLUSIONS

The Commission has carefully considered the various comments on the self-generation deferral rate guidelines offered by the parties, and concludes that the modified guidelines proposed by the Public Staff should be adopted except for certain revisions described hereafter. The modified guidelines contain a waiver clause that allows an applicant for self-generation deferral rates to request a modification of any of the filing requirements for good cause shown.

The guidelines adopted herein also do not contain the proposed statement that self-generation deferral rates cannot be used to gain a customer's natural gas load. The Commission is of the opinion that the guidelines should not favor one form of energy over another. The Commission further notes that competition between electric and natural gas utilities is the subject of separate proceedings pending before the Commission in Docket Nos. E-100, Sub 71 and M-100, Sub 124.

The guidelines adopted herein also do not contain references that indicate that self-generation deferral rates assume ultimate loss of the affected load, or that the economic consequences of self-generation deferral rates will be shared between ratepayers and shareholders. The Commission is of the opinion that such references are speculative and unnecessary.

The Commission further concludes that the guidelines adopted herein should be subject to re-evaluation after one year upon request by any party to this proceeding. A period of experience in the use of the waiver clause contained in the guidelines will be helpful in this regard.

The Commission also concludes that further comments/briefs should be requested addressing economic incentive rates, with the first round of comments due approximately 90 days after the date of this Order and reply comments due approximately 15 days thereafter. The Commission is of the opinion that the issue of economic incentive rates could be more lengthy than many people expect, and that it may not be wise to attempt to deal with the issue on a more expedited basis.

IT IS, THEREFORE, ORDERED as follows:

1. That the Interim Guidelines and Filing Requirements for Self-Generation Deferral Rates attached hereto as Appendix A are hereby adopted as interim guidelines pending a final determination of this docket.

2. That the interim guidelines adopted herein may be reconsidered after one year upon request by any party to this proceeding.

3. That the parties to this proceeding shall file initial written comments regarding economic incentive rates on or before October 21, 1994, and shall file reply comments on or before November 4, 1994. The comments shall address the issues raised in the petition of the Public Staff filed on April 22, 1994, regarding economic development rates.

4. That the issue of dispersed energy facilities shall be addressed on a case by case basis pending a resolution of the economic incentive rate issue.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

APPENDIX A

INTERIM GUIDELINES AND FILING REQUIREMENTS FOR
SELF-GENERATION DEFERRAL RATES

(a) GENERAL PROVISIONS - No self-generation deferral rate shall become effective without a demonstration that it is in the best interest of the utility's ratepayers and until allowed by order of the Commission. Prior to the

application being filed, the customer for which the deferral rate is being sought must have provided to the utility self-generation information sufficient for the utility, the Public Staff and the Commission to analyze the customer's intent, capability and economic incentive to self-generate.

Self-generation deferral rates allow the affected utility to prevent the immediate loss of load. One of the benefits of such rates is that they allow the affected utility to take into account the potential loss of such load in system planning. Because of the uncertainty inherent in forecasting load over a long-term planning horizon, any rate schedule and/or contract offering a deferral rate can only be for a fixed, limited term. This term cannot exceed five years unless adequate justification for a longer term is provided and the longer term is found to be in the public interest. At the end of the fixed term, the contract and tariff automatically expire. If a self-generation deferral rate appears to be warranted at that time, a new application must be made and all supporting documentation, as discussed hereinafter, must be filed.

No rate recovery will be allowed for any revenue decrease resulting from a deferral rate between the time a deferral rate goes into effect and the utility's next general rate case. The appropriate ratemaking treatment will be determined as required in general rate case proceedings.

All information provided in support of any application and in compliance with these guidelines shall be presumed public, absent a by-item request for confidential treatment. Al items requested to be treated as confidential must be so identified.

The effective date of any proposed deferral rate shall be 90 days after the application filing date. The Commission may waive or shorten this 90-day period if circumstances warrant. Upon its own motion or the motion of a party, the Commission may extend the review period when the revenue impact is substantial and/or there are relatively complex issues associated with a particular rate application.

The utility shall review the combined effects of existing deferral rates annually within the approved LCIRP process and file the results in its short-term action plan, in addition to filing the information required by subsection (d) of these guidelines. The utility shall describe in its filing how it is accounting for the potential loss of the loads of each affected customer and what effect, if any, such potential loss of loads has on its generation planning.

(b) APPLICATION - The application shall contain, either embodied in the application or attached thereto as exhibits, the following:

(1) The full and correct name, business address, and business telephone number of the applicant.

(2) The full and correct name, business address, agent and business telephone number of the customer for whom the application is being made.

(3) The full and correct name and address of the site(s) for which deferral rates have been negotiated.

(4) The following for each site:

(i) capacity (MW) and contract demand (MW);
(ii) summer and winter peak loads;
(iii) current annual energy (kWh) sales;
(iv) current annual electric revenue; and
(v) percentage and dollar difference.

(5) A copy of the currently applicable rate schedules and riders.

(6) The proposed deferral rate schedule(s), including the following as a minimum:

(i) customer availability;
(ii) service/use applicability;
(iii) type of service;
(iv) negotiated monthly rate (e.g., demand, energy, voltage level, power factor)
(v) contract period.

(7) Support for the assertion that any deferral rate will comply with existing statutes and rules prohibiting unjust discrimination and undue preference.

(8) A copy of the negotiated contract and citations to the following information:

(i) any terms and conditions that would restrict or preempt Commission authority to set rates;

(ii) termination criteria;

(iii) detailed information demonstrating the extent to which the contract period provides the utility with flexibility in terms of generation expansion planning; and

(iv) information that demonstrates the extent to which the proposed rate will encourage the customer to continue or improve existing load patterns that produce significant system benefit (i.e., time-of-use operations, peak shaving, standby generation).

(9) A statement that discusses the result of an energy efficiency and conservation analysis of the customer, including whether recommendations have been implemented or if prior action has already been taken to reduce peak usage and/or improve efficiency.

(c) TECHNICAL DOCUMENTATION - The following technical information with associated supporting workpapers, shall accompany the application:

(1) Time of use - a description of when and how the existing customer uses electricity and what benefits or detriments this use has on existing system operation.

(2) Quantity of use - the existing capacity, level of customer energy use, and a statement indicating the potential for future customer load growth once served on the proposed tariff.

(3) Manner of Service - a description of the present manner of service and how much utility transmission and distribution plant will be stranded if the customer ultimately pursues self-generation.

(4) Billing determinants - the customer's billing determinants over the past twelve months and projected billing determinants for the ensuing twelve months.

(5) Revenue Impact - the revenue difference between the proposed and existing rate. This difference should be provided with reference to the appropriate time-of-use and standard rate as follows:

(i) annual for each site;
(ii) annual customer total; and
(iii) customer total for contract period.

(6) Customer Self-Generation Information - the following must be provided, including supporting workpapers:

(i) a description of the customer's self-generation option, including, but not limited to, its size and fuel source;

(ii) detailed documentation of the customer's actual self-generation costs and an evaluation of these costs. This evaluation should include a verifiable analysis of the self-generation option with the assumptions used over the life of the option. The cost evaluation also should include a comparison of the cost of the self-generation option to the deferral rate;

(iii) an evaluation of the reasonable feasibility of the customer's ability to obtain all required permits for on-site self-generation;

(iv) an evaluation of the reasonableness of the customer's self-generation option in terms of the need for back-up power, the need for natural gas service infrastructure, emissions, and zoning ordinances; and

(v) a statement regarding the availability of and the Commission's and the Public Staff's access to customer information.

(7) Customer Cost of Service - the actual cost of serving the customer for which the proposed rate is requested, including:

(i) return on plant investment, allocated working capital, and other rate base items;

(ii) depreciation and property taxes; and

(iii) other assignable or allocated operating expenses.

(d) SYSTEM IMPACT - The utility shall support the proposed rates by an analysis that demonstrates the impact at system and customer levels. The evaluation and filing shall include the following:

(1) Marginal Cost Analysis. Any negotiated deferral rate shall be supported by a net present value analysis that demonstrates the projected marginal revenues exceed the projected marginal costs. This analysis shall be based on forecasted load and all projected marginal costs, including future costs of capital and expenses associated with projected increments or decrements of capacity, are to be included.

(2) Rate Impact Analysis. The utility is required to demonstrate that ratepayer benefits resulting from the deferral outweigh the short- and long-term resource acquisition costs caused by the deferral and identify the effect on the rates of other customers. Expected benefits, identified in terms of rate effects, resource planning effects and any other identifiable effects, shall be described in detail. Net impacts should be identified by isolating the net benefits specifically attributable to the deferral.

(3) Future Planning Analysis. The utility is required to file an analysis of the effect of the deferral rate on future load growth and planned capacity expansion, including the cumulative effect of all existing and pending deferral rates.

(e) MODIFICATION OR WAIVER - In conjunction with any application for deferral rates, the applicant may request a modification to or the waiver of any of the above filing requirements. The Commission may grant such request for good cause shown. For purposes of such a request, good cause shall include a demonstration that meeting a requirement without modification would:

(1) be impossible, impractical, or unduly burdensome to the applicant or customer; or

(2) not materially aid the Commission in determining whether the proposed rate is just and reasonable and in the public interest.

DOCKET NO. G-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-36A, Which Requires Franchised Natural Gas Local Distribution Companies to Report on Plans for Providing Natural Gas Service In Areas in Which Natural Gas Service is Not Available	)	ORDER ADOPTING RULE CHANGE

BY THE COMMISSION: On July 14, 1994, the Commission issued an Order proposing to change Commission Rule R6-5(11). The Commission provided that the proposed change would be made effective in 30 days if no opposing comments were filed. The change will require that the local distribution companies' biennial update reports, which are now due on or before January 1 of even-numbered years, shall in the future be filed with the Commission on or before October 31 of odd-numbered years.

No opposing comments have been filed.

IT IS, THEREFORE, ORDERED that Commission Rule R6-5(11) should be, and hereby is, changed as shown on Appendix A attached to the Commission's Order of July 14, 1994, in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August 1994.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Cynthia S. Trinks, Chief Clerk

DOCKET NO. G-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On June 8, 1994, the Commission issued an Order proposing to change Commission Rule R1-17(k)(6)(a) and (b). The Commission provided that the proposed change would be made effective in 30 days if no opposing comments were filed. The change relates to the filing date and hearing date for the annual gas cost prudence review of North Carolina Natural Gas Corporation.

No opposing comments have been filed.

IT IS, THEREFORE, ORDERED that Commission Rule R1-17(k)(6)(a) and (b) should be, and hereby is, changed as shown on Appendix A attached to the Commission's Order of June 8, 1994, in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of July 1994.

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

DOCKET NO. G-100, Sub 63

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Accounting for Buy/Sell and Capacity Release Transactions by the Natural Gas Local Distribution Companies) ORDER ADOPTING ACCOUNTING PROCEDURES

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday, June 20, 1994, at 2:00 p.m.

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

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 26000, Greensboro, North Carolina 27420

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For North Carolina Natural Gas Corporation:

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For Carolina Utility Customers Association, Inc.:

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

For the Using and Consuming Public:

Antoinette R. Wike, General Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 19, 1993, the Public Staff filed a Petition in this docket asking the Commission to establish interim accounting procedures for "buy/sell transactions" between natural gas local distribution companies (LDCs) and their transportation customers.

In support of its Petition, the Public Staff stated that FERC Order 636 requires, among other things, that interstate natural gas pipelines implement a capacity release program as part of their restructuring. Under a capacity release program, the holders of firm capacity rights on the interstate pipeline, such as LDCs, will sell those rights during off-peak periods to others, such as large industrial plants, who are in the same delivery zone as the LDC or upstream. Transco has filed a restructuring plan to comply with Order 636. FERC has indicated that it will allow "grandfathering" of buy/sell agreements in place before the effective date of the capacity release program. A buy/sell transaction is an arrangement whereby an LDC buys gas from a shipper (such as an industrial end user) at a pooling point on the interstate pipeline system, transports the gas using its firm transportation rights on the pipeline system, sells the gas back to the shipper at its city gate interconnection, and then transports the gas to the end user on its system in accordance with its transportation tariffs. The transaction allows the end user to save on transportation of its gas and allows the LDC to receive compensation that would otherwise have been paid to the interstate pipeline.

By its Petition, the Public Staff asked the Commission to order the LDCs to record 90% of the net compensation on buy/sell transactions in their respective deferred accounts as a reduction of demand and storage charges for purposes of the true-up required by Commission Rule R1-17(k)(4)(a). This treatment would apply 90% of net compensation to the benefit of ratepayers and allow the LDCs to retain 10% as an incentive to sign buy/sell agreements in time for "grandfathering." Net compensation was defined as the gross compensation received by an LDC from a shipper for a buy/sell transaction less all transportation charges, taxes, and other costs, including the LDC's purchase price of the gas involved, directly related to the buy/sell transaction. The Public Staff stated that it would work with the LDCs on procedures to be followed after restructuring.

North Carolina Natural Gas Corporation (NCNG) and Pennsylvania and Southern Gas Company (Penn and Southern) agreed to the interim procedures proposed by the Public Staff.

Piedmont Natural Gas Company, Inc. (Piedmont) filed a response requesting that the Commission authorize it to enter into buy/sell agreements and defer 100% of the revenues from such agreements pending further Commission ruling. Public

Service of North Carolina, Inc. (Public Service) filed a response arguing that it should be permitted to retain 100% of the revenues or, alternatively, suggesting a 50-50 split of the revenues or deferral of 100% of the revenues pending further Commission order. NCNG filed a response supporting the Public Staff's position.

On August 30, 1993, the Commission issued an Order establishing interim procedures which authorized the LDCs to enter into buy/sell agreements. The Order provided that Piedmont and Public Service should defer 100% of the net compensation from such agreements subject to the Commission's further order. NCNG and Penn and Southern were required to follow, on a provisional basis, the procedures proposed by the Public Staff and agreed to by them. The procedures for NCNG and Penn and Southern were made provisional to insure that all LDCs can be treated alike when a final decision is made. The Order further provided that the Public Staff and the LDCs should report to the Commission before October 31, 1993, on their negotiations with respect to the appropriate accounting procedures for the capacity release program of Transco and that the Commission would issue a further order in this docket dealing with the proper accounting and distribution of buy/sell revenues and capacity release revenues.

On October 28, 1993, the Public Staff filed a report on its negotiations with the LDCs regarding the appropriate accounting procedures for Transco's capacity release program. The Public Staff indicated that only NCNG had agreed to a 90/10 split of capacity release revenues and that further negotiations would likely prove futile.

As a result of such report, the Commission issued an Order on November 10, 1993, requiring the parties to file comments addressing (1) what relief each party wishes the Commission to order with respect to the proper accounting and distribution of buy/sell revenues and capacity release revenues and (2) what procedure each party recommends to resolve this docket. Comments were filed, and they are summarized below.

By Order dated May 18, 1994, the Commission scheduled oral argument dealing with the proper accounting and distribution of buy/sell revenues and capacity release revenues. The Order further provided that NCNG and Penn and Southern should, on a provisional basis, continue to follow the interim accounting procedures on buy/sell and capacity release transactions as proposed by the Public Staff and agreed to by them and that Piedmont and Public Service should continue to place 100% of net compensation from buy/sell and capacity release transactions in a deferred account subject to further order of the Commission.

Oral argument was held on the date indicated above. Penn & Southern offered a letter setting forth its position in lieu of its appearance at the oral argument.

In its comments filed in this docket and arguments before the Commission, the Public Staff states that Rule R1-17(k)(4)(a) requires each LDC to record in its deferred account, on a monthly basis, the difference between the demand and storage charges billed to customers and the actual demand and storage charges. Rule R1-17(k)(5)(d) allows the LDC to adjust its rates to refund or collect

balances accumulated in the Deferred Account. The effect of Rule R1-17(k) is that the amount recovered from customers is trued-up to actual demand and storage charges incurred by the LDCs.

The Public Staff argues that buy/sell transactions involve the sale of unutilized capacity rights by an LDC to a shipper and therefore affect the true-up of demand and storage charges that is required by Rule R1-17(k). Further, the Public Staff points out that buy/sell transactions are similar in substance to Transco's capacity release program, which became effective with Transco's restructuring. Capacity release will result in a reduction to the LDC's capacity bill from Transco for the cost of the released capacity and thus the capacity costs recovered from customers pursuant to G.S. 62-133.4 and Rule R1-17(k). According to the Public Staff, its proposal to record the net compensation received on buy/sell transactions as a credit to the cost of gas is clearly consistent with what occurred when the capacity release program became effective. The issue then is not whether there is a reduction in the cost of gas but how much of the reduction should be recognized for purposes of computing the demand and storage charge true-up.

The Public Staff argues that since 100% of prudently incurred demand costs are recovered from ratepayers through the true-up mechanism, it is reasonable to give ratepayers the benefit of revenues that mitigate those costs. To argue as some of the LDCs have done that buy/sell and capacity release are unrelated to the cost of gas is to ignore the fact that the FERC adopted the capacity release program expressly to mitigate the impact of the straight fixed-variable rate design method for pricing firm transportation service on the LDCs and their customers.

Piedmont, in its filings and arguments, suggests that FERC has jurisdiction over buy/sell and capacity release revenues in that these revenues come from the transportation or sale of gas in interstate commerce and the Natural Gas Act gives FERC jurisdiction over the transportation and sale of gas in interstate commerce. Piedmont also questions the Commission's jurisdiction to require an LDC to refund revenues in the absence of a general rate case or general rulemaking docket. Piedmont points out that the Commission has refused in the past to consider changes in one item of cost or revenue outside the context of a general rate case where all changes can be reviewed.

Piedmont's position in this docket would be to allow the LDCs to retain 100% of the compensation associated with these transactions until the next general rate case where a reasonable sharing could be determined. It further suggests that a sharing of approximately 50/50 may be appropriate, but it would not be willing to agree to 90/10 as proposed of the Public Staff.

Public Service states that under buy/sell arrangements, it bills and receives revenues for the service it is providing to transportation customers and its capacity costs are unaffected by these transactions. According to Public Service, the net effect of these transactions is to generate additional or incremental revenues and the Commission has never held that the effect of such incremental revenues is in some way a "reduction" of the Company's "costs" that must be flowed back to ratepayers. The prevailing view of the Commission has been that changes in revenues or costs arising between rate cases are properly reflected in the next such proceeding, not outside of a general rate case.

In settlement discussions with the Public Staff, Public Service contended that 100% of the revenues should be retained by the Company, but in an effort to reach an accommodation proposed a 50/50 sharing arrangement which would have entailed substantial benefits for both the Company and ratepayers.

With respect to the "threshold legal questions" raised by Piedmont, Public Service does not contest the jurisdiction of the Commission, but believes the appropriate forum for resolution of these issues is in an LDC's next general rate case.

NCNG, in its comments filed in this docket, recommends that the 90/10 sharing arrangement that was previously approved by the Commission on an interim basis be continued for all future buy/sell and capacity release activity in which NCNG receives some compensation for its unutilized firm transportation rights.

According to NCNG, the 90/10 sharing arrangement can be achieved through accounting procedures whereby the net compensation received from capacity release and buy/sell agreements would be applied as a credit to gas costs. Then, to account for the customers' portion, 90% of the net compensation would be reflected in the monthly fixed cost recovery true-up. This would result in recording the customers' portion in the Deferred Gas Cost Account - All Customers for future distribution through a purchased gas adjustment filing.

NCNG points out that the 90/10 sharing arrangement is fair in that all customers pay the pipeline fixed cost, which have increased as a result of the straight fixed-variable (SFV) rate design mandated by the FERC in Order 636. Both Transco and Columbia have adopted SFV rate design, thus fixed charges to NCNG and its customers have increased substantially since September 1992, when Transco adopted SFV. At the same time, buy/sell and capacity assignment transactions increase NCNG's administrative costs and add yet another element of risk in gas supply planning and acquisition. NCNG should be compensated for its additional costs and risk.

Penn & Southern suggests that any additional revenues to the company arising out of buy-sell transactions should be treated as additional revenue of Penn & Southern and considered in conjunction with Penn & Southern's next general rate case. According to Penn & Southern, this approach is both consistent with the nonexistent nature of such costs currently (or in the foreseeable future) as well as Penn & Southern's suggestion that the cost and accounting issues relative to these transactions cannot be known at this time. Also, it further provides a ready mechanism for disposing of these issues in connection with established procedures without creating additional accounting and administrative costs associated with such transactions, the cost of which will ultimately be borne by Penn & Southern's customers.

Carolina Utility Customers Association, Inc. (CUCA) in its filings and arguments before the Commission, suggests that the Commission's decision should be based upon an analysis of three different factors. First, the Commission should recognize the validity of the Public Staff's concern that allowing the LDCs to retain 100% of all buy/sell and capacity release revenues creates a risk that the utilities will overcollect their capacity costs. Secondly, the Commission should recognize that the overall revenues which the utilities receive as the result of buy/sell and capacity release arrangements are intended to cover

the cost of the LDCs' interstate pipeline capacity used by the end-user involved in the buy/sell or capacity release arrangements, to reimburse the LDCs for the administrative costs of facilitating and implementing such buy/sell and capacity release transactions, to compensate the LDCs for any increased gas supply risks, and to provide the LDCs' stockholders with a return. Thirdly, the Commission should recognize that most businesses, including local distribution companies, are reluctant to enter into new fields of endeavor and that the LDCs should not be discouraged from entering into buy/sell or capacity release arrangements because of overly-restrictive state-level ratemaking practices."

Further, CUCA states the present record does not permit the Commission to determine the exact portion of the gross compensation which will be received by each LDC in connection with particular buy/sell or capacity release transactions that effectively reimburses the utility for the use of its interstate pipeline capacity.

CUCA suggests that the Commission adopt a 50/50 sharing arrangement on an interim basis with the understanding that the appropriate treatment of buy/sell and capacity release revenues would be considered in-depth in each LDC's next general rate case.

On July 8, 1991, the General Assembly of North Carolina enacted Chapter 598 of the 1991 Sessions Laws. Sections 7 and 8 of the legislation repealed G.S. 62-133(f) and added a new statute, G.S. 62-133.4, which authorizes gas cost adjustment proceedings for the LDCs. Section (k) of Rule R1-17 was adopted to set forth the procedures by which the LDCs can file to adjust their rates pursuant to G.S. 62-133.4. The express intent of those rules, as stated therein, is to permit the LDCs to recover 100% of their prudently incurred gas costs applicable to North Carolina operations. "Gas costs" were defined to mean the total delivered cost of gas paid to suppliers, including but not limited to all commodity/gas charges, demand charges... and any other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.

Buy/sell arrangements and capacity release transactions involve the selling by the LDCs of their unutilized capacity rights, and are clearly an integral part of managing gas system capacity rights. The effect of Rule R1-17(k) is that demand and storage charges recovered from customers are trued-up to the actual demand and storage charges incurred by the LDCs. Accordingly, the Commission concludes that since Rule R1-17(k) guarantees the LDCs full recovery from ratepayers of every dollar spent for capacity, it is only reasonable that ratepayers should receive most of the net compensation received from the sale of capacity. Therefore, the Commission will require the LDCs to record 90% of the net compensation on buy/sell and capacity release transactions in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charges true-up required by Commission Rule R1-17(k)(4)(a). This treatment will apply 90% of the net compensation to the benefit of ratepayers and allow the LDCs to retain 10%. The Commission recognizes that FERC Order No. 636 has created new operational and purchasing responsibilities for the LDCs. For this reason, the Commission finds

appropriate a sharing of benefits based on the percentages used by the FERC for refunding interruptible transportation revenues from Transco to its firm customers. Since the LDCs' capacity release and buy/sell service offerings will compete directly with Transco's interruptible transportation service, a similar sharing is logical.

In reaching its conclusion in this matter, the Commission agrees with the LDC's position that changes in one element of costs/revenues generally should be reviewed in the context of a rate case where all changes may be considered. However, under Rule R1-17(k), the Commission has provided for a dollar-for-dollar true-up on a monthly basis outside of a rate case of all prudently incurred capacity costs incurred by the LDCs. Accordingly, it seems appropriate to give ratepayers the benefit of compensation that mitigate those costs. FERC implemented the capacity release program to mitigate the impact of its straight fixed-variable rate design on the LDCs and provide an opportunity for cost reductions by the LDCs. Further, with respect to capacity release, the compensation will actually be reflected as a credit on the LDC's bills from Transco.

With respect to the jurisdictional issues raised in this proceeding, the Commission recognizes that FERC has jurisdiction over the sale and transportation of gas in interstate commerce and the Commission's decision herein is not intended to usurp such jurisdiction or discourage the LDCs from entering into transactions of the nature involved herein. In reaching its decision herein, the Commission is of the opinion that the sharing arrangement authorized will provide the necessary encouragement and opportunity for cost reductions by the LDCs which can benefit the LDCs as well as the ratepayers. The General Assembly has given the Commission broad authority to change rates outside a general rate case as changes in the cost of gas supply and transportation require, including the authority to define the word "cost". G.S. 62-133.4. Under NCUC Rule R1-17(k) implementing this statute, ratepayers pay the full cost of firm interstate capacity rights prudently purchased by the LDCs.

IT IS, THEREFORE, ORDERED that the LDCs shall record 90% of the net compensation on buy/sell transactions and capacity release transactions entered into on and after August 30, 1993, in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charges true-up required by Commission Rule R1-17(k)(4)(a) as hereinabove provided.

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

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

DOCKET NO. G-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Consideration of Certain Standards for Natural Gas Utilities Relating to Integrated Resource Planning and Investments in Conservation and Demand-Side Management pursuant to Section 115 of the Energy Policy Act of 1992	))))))	ORDER PURSUANT TO SECTION 115 OF THE ENERGY POLICY ACT OF 1992

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 25, 1994

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioners William W. Redman, Charles H. Hughes, and Ralph A. Hunt

APPEARANCES:

For Piedmont Natural Gas Company, Inc. and Pennsylvania and Southern Gas Company:

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For North Carolina Natural Gas Corporation:

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For Carolina Utility Customers Association, Inc.:

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For the Using and Consuming Public:

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BY THE COMMISSION: This proceeding was instituted for the purpose of complying with the provisions of Section 115 of the Energy Policy Act of 1992 (EPACT). Section 115 of the EPACT amends Sections 302 and 303 of the Public Utility Regulatory Policies Act of 1978 (PURPA), codified as 15 U.S.C.A. §§3202 and 3203.

Section 115 of EPACT establishes the following new Federal standards:

> Integrated resource planning.--Each gas utility shall employ, in order to provide adequate and reliable service to its gas customers at the lowest system cost. All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority. . . .
>
> Investments in conservation and demand management.--The rates charged by any State regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. this objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes..

15 U.S.C.A. §3203(b)(3) and (4).

The term "integrated resource planning" (IRP) is defined as planning by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand-side management measures and the supply of gas by a gas utility to minimize life-cycle costs of adequate and reliable utility services to gas consumers. Integrated resource planning takes into account diversity, reliability, dispatchability, and other factors of risk and treats demand and

supply to gas consumers on a consistent and integrated basis. 15 U.S.C.A. §3202(9). The term "demand-side management" (DSM) includes energy conservation, energy efficiency, and load management techniques. 15 U.S.C.A. §3202(10).

Section 115 of EPACT further provides that each State regulatory authority, with respect to each natural gas utility for which it has ratemaking authority, shall provide public notice and conduct a hearing respecting the above-quoted standards. 15 U.S.C.A. §3203(a). The State regulatory authority shall, on the basis of the hearing, adopt the standards "if, and to the extent, such authority. . . determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law." 15 U.S.C.A. §3203(a)(2). The purposes of the Chapter are "to encourage (1) conservation of energy supplied by gas utilities; (2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and (3) equitable rates to gas consumers of natural gas." 15 U.S.C.A. §3201. The State regulatory authority may determine "that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law" and give the reasons for such determination. 15 U.S.C.A. §3203(a) and (c). The State regulatory authority must conduct the hearing and make its determination by October 24, 1994. 15 U.S.C.A. §3203(a).

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

> (1) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, and
>
> (2) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

15 U.S.C.A. §3203(d).

By Order dated August 11, 1993, the Commission initiated a generic consideration of the new standards established by Section 115 of the EPACT, required public notice, provided for the prefiling of testimony, and scheduled a public hearing for December 14, 1993. The parties were required to address (1) whether, and if so to what extent, adoption of either or both of the above quoted standards is appropriate to carry out the purposes of the chapter, is otherwise appropriate, and is consistent with other otherwise applicable State law; (2) if either standard is implemented, how implementation should assure that utilities do not have an unfair competitive advantage over small demand-side management businesses; and (3) if adoption of either standard is recommended, what Commission rules should be adopted in order to implement the standard.

North Carolina Natural Gas Corporation (NCNG), Pennsylvania and Southern Gas Company (P&S), Piedmont Natural Gas Company, Inc., (Piedmont) and Public Service Company of North Carolina, In,., (Public Service) were made parties of record. The following parties intervened: Carolina Utility Customers Association, Inc., (CUCA), Carolina Power & Light Company (CP&L), Duke Power Company (Duke Power), and the Public Staff.

On November 10, 1993, in response to a motion filed by the Public Staff, the Commission issued its Order Rescheduling Proceeding reserving the December 14, 1993, hearing for public witnesses only and rescheduling the evidentiary hearing to January 25, 1994. On December 15, 1993, NCNG, Piedmont, P&S and Public Service filed Joint Comments.

The matter came on for hearing as scheduled on December 14, 1993, and January 25, 1994. Piedmont presented the direct testimony of Bill R. Morris; NCNG presented the direct testimony of Roy W. Ericson; P&S presented the direct testimony of Michael P. Noone; Public Service the direct testimony of C. Marshall Dickey; and the Public Staff the direct and rebuttal testimony of James G. Hoard.

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

FINDINGS OF FACT

1. This proceeding was initiated by the Commission in compliance with the requirements of Section 115 of the EPACT which amends Sections 302 and 303 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

2. The Federal EPACT Standards must be considered by October 24, 1994.

3. The Commission has ratemaking authority with respect to each of the natural gas LDCs which are regulated utilities under the laws of this State. The Commission constitutes a "State regulatory authority" for purposes of Section 115 of EPACT and under 15 U.S.C.S. §3202(8).

4. State law already requires, "...energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills." G.S. §62-2(3a).

5. State law prohibits utilities from offering "...compensation or consideration..." or furnishing equipment to "...secure the installation or adoption of the use of such utility service..." without Commission approval and without making the offering to all customers in the class. G.S. §62-140(c).

6. The Commission has a docket open in M-100, Sub 124 to determine what types of electric and natural gas incentive programs must be submitted for Commission approval under G.S. §62-140(c).

7. The Commission has a docket open in E-100, Sub 71 to consider the effect of electric IRP and DSM programs on the competition between electric and natural gas utilities.

8. IRP is appropriate for electric utilities because they have high capital costs associated with capital expenditures for power plants and because of the significant environmental impact of operating power plants. Parallels to these issues do not exist to anywhere near the same magnitude in the gas industry.

9. There are significant differences between the gas industry and the electric industry. These differences include industry structure, the ability to obtain emergency backup from other utilities, the size of the investment and long planning horizon needed to add capacity, the relative amounts of avoided costs, competition from alternate fuels and the environmental impact of new capacity additions.

10. North Carolina has a lower gas penetration rate than many other states and may require a different approach than that set forth in the Section 115 Standards.

11. North Carolina should not bind itself to a Federal standard which does not meet the needs and concerns of this State.

12. An annual gas cost prudence review undertaken by the Commission pursuant to G.S. 62-133.4 and Commission Rule R1-17(k) involves the review of gas costs that were actually incurred during a historical twelve-month period and results in conclusions as to whether gas costs were prudently incurred during that historical period. The Commission does not presently have any procedure established for evaluating the LDCs' forecasts of peak day demand, annual throughput, or their plans for capacity and gas supply additions.

13. While the adoption of some planning process may be appropriate to carry out the purposes set out in 15 U.S.C. §3201, this inquiry should be pursued under State law and policy and without the pressure of the deadline imposed by the EPACT.

14. It is not appropriate to consider competitive issues in this proceeding.

15. It is not appropriate for the Commission to initiate a State gas IRP proceeding while the issues raised in Dockets M-100, Sub 124 and E-100, Sub 71 remain to be resolved.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The only issue properly before the Commission in this proceeding is the appropriateness of adopting the regulatory standards enunciated in 15 U.S.C.A. §3203(b)(3) and (4). This issue must be considered without regard to the competitive issues raised by the LDCs' testimony.

The LDCs all advocate the adoption to some extent of the IRP standard set forth in 15 U.S.C.A. §3203(b)(3), but at the same time reject the need for the data gathering, assessments, evaluations and Commission review inherent in the IRP process.

Differences between the gas industry and electric industry were raised as reasons for not adopting the Federal standards. These differences are found in the testimony of NCNG witness Ericson, Piedmont witness Morris, Public Service witness Dickey, P&S witness Noone and Public Staff witness Hoard. Several witnesses testified that electric companies are vertically integrated while LDCs are involved only with the distribution and not the production and interstate transportation of gas. It was pointed out that electricity is necessary for

almost all customers while natural gas is an optional fuel chosen for its inherent thermal and chemical properties. Furthermore, natural gas faces greater alternate fuel competition than electricity. Longer planning periods are required for electric utilities and electric utilities require much greater capital costs to expand their systems on an energy end-use equivalency basis. P&S witness Noone testified that electric utilities are interconnected and can use their extensive transmission and distribution network to deal with emergencies such as outages. Gas utilities do not have this regional pool and must plan carefully for their own reliability. Witness Noone also testified that the avoided costs of natural gas are often much less than the avoided costs of electric programs and therefore DSM programs funded by gas avoided costs will be smaller and much less effective than the programs developed by electric utilities.

Public Staff witness Hoard testified that Least Cost Integrated Resource Planning was appropriate for electric utilities because they have high capital costs associated with capital expenditures for power plants. As an example, Witness Hoard pointed out that the Shearon Harris nuclear power plant cost almost four times the entire rate base of all of the gas LDCs in North Carolina. Witness Hoard also stated that there are significant environmental impacts of operating electric power plants. Witness Hoard added that parallels to these issues do not exist in anywhere near the same magnitude in the gas industry.

The Commission believes it should allow itself the maximum flexibility possible regarding planning issues and therefore declines to adopt the Section 115 standards. Public Staff witness Hoard testified that North Carolina has a lower gas service penetration rate than many other states and therefore may require a different approach than that set forth in the Section 115 standards. Adoption of the standards could raise questions about whether we are bound by other states' interpretations of the standards. While the adoption of some planning process may be appropriate to carry out the purposes set out in 15 U.S.C. 3201, this inquiry should be pursued under State law and policy and without the pressure of the deadline imposed by the EPACT.

The LDCs also contend that the annual gas cost prudence reviews undertaken by the Commission pursuant to G.S. 62-133.4 and Commission Rule R1-17(k) are adequate for evaluating their resource plans. As noted by Public Staff witness Hoard, however, an annual review involves the review of gas costs that were actually incurred during a historical twelve-month period and results in a conclusion as to whether gas costs were prudently incurred during that historical period. The Commission does not presently have any procedure established for evaluating the LDCs' forecasts of peak day demand annual throughput, or their plans for capacity and gas supply additions. Furthermore, the LDCs have substantial incentives already to pursue many DSM programs, particularly load factor-improving and peak shaving programs.

The LDCs presented testimony supporting the adoption of the second standard in order to eliminate what they perceive to be a competitive disadvantage caused by the electric utilities' implementation of DSM programs. In addition, the suggestion was made by more than one LDC that Commission supervision over the

electric industry's and the gas industry's planning processes should be consolidated. Issues relating to competition are not appropriately addressed in this proceeding and will be considered in the generic proceeding the Commission has initiated in Docket No. E-100, Sub 71.

The Public Staff presented testimony supporting the opening of a separate docket to consider gas IRP under State rules and law. However, many of the issues raised in the testimony are issues under consideration in Dockets No. M-100, Sub 124 and E-100, Sub 71. The Commission therefore declines to open such a docket at this time.

IT IS, THEREFORE, ORDERED that this Order be issued as the Commission's consideration and determination pursuant to Section 115 of the EPACT.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 84
DOCKET NO. P-55, SUB 1000

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 84

In the Matter of Issuance of Special Certificates for Providers of Telephone Service by Means of Customer-Owned Pay Telephone Instruments	) ORDER PROMULGATING) FINAL RULE R13-5(r)) CONCERNING
DOCKET NO. P-55, SUB 1000	) RESTRICTIONS ON PAY-) PHONES, REQUIRING
In the Matter of Incoming Call Blocking at Public Telephones Operated By Southern Bell Telephone and Telegraph Company	) LOCAL EXCHANGE) COMPANY TARIFF) CHANGES AND DENYING) CEASE AND DESIST) MOTION AGAINST) SOUTHERN BELL

BY THE COMMISSION: This Order concerns two closely interrelated dockets. The first is the generic proceeding considering the appropriate permanent rule to apply to customer-owned coin operated telephone (COCOT) restrictions as well as the restrictions policy that may apply to local exchange company (LEC) phones. The second deals with the Public Staff's cease and desist motion against Southern Bell Telephone and Telegraph Company (Southern Bell) concerning its current payphone restriction policy under its tariff.

I. Generic Proceeding

By letter dated June 29, 1994, Southeastern Telecom (Southeastern), a certified COCOT provider, requested permission from the Commission to waive certain portions of Rule R13 for two of its payphones at a Raleigh location. Southeastern specifically requested permission to block all incoming calls, to block all local outgoing calls to cellular phones and pagers, and to allow completion of only 911 calls during the hours of 7:00 p.m. and 5:00 a.m.

These modifications have been requested by the owner of the property upon which the payphones are located, the Bragg Street Neighborhood Organization, and the Raleigh Police Department in order to alleviate loitering and suspected drug trafficking.

Subsequent to the filing of its June 29, 1994, request, Southeastern removed one of the payphones from the adjacent business informing the public of the intention of the Commission to address this issue and requesting interested parties to appear before the Commission to voice their concerns.

This matter came before the Regular Commission Conference on July 18, 1994. The Public Staff recommended that the Commission institute a rulemaking to consider the adoption of a procedure for the restriction of service at particular PTAS locations in the interest of public safety and welfare. The Public Staff made a proposal requiring the COCOT providers seek prior approval from the Commission for phone restrictions requested by local government or law

enforcement officials and recommended that this proposal be promulgated for comment and adopted as an interim rule. The Public Staff further recommended that the restrictions on service requested by Southeastern Telecom be permitted under the interim rule.

Mr. Todd Faw, President of Southeastern Telecom, appeared before the Commission. Mr. Melvin Whitley, Chairman of the Bragg Street Community Association, also appeared before the Commission and spoke strongly in favor of allowing payphone restrictions.

Comments

On July 20, 1994, the Commission issued an Order Promulgating Interim Rule R13-5(r) and seeking comments. The interim rule is as follows:

Rule R13-5. General Requirements - Service and equipment.

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict operation or types of calls allowed to and from any specific PTAS instrument in the interest of public safety and welfare under the following conditions.

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the city manager, the city council, the sheriff, the chief of police, or their designees stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from local government or law enforcement on file for inspection upon request by the Commission or Public Staff.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

The Commission stated that it was persuaded that the authority to restrict payphone access is necessary to the public interest in order to fight crime, especially crime related to illegal drug-dealing. The Commission further was of the opinion that the better approach is probably one which does not require the COCOT provider to come to the Commission for each payphone every time restrictions are proposed. Not requiring prior approval will allow restrictions to be implemented on a timely basis without unnecessary regulatory delay. The Commission also stated that the COCOT providers' desire for revenues will arguably tend to prevent overly onerous restrictions which frustrate the communications needs of ordinary citizens. Moreover, the requirement that payphones may be restricted only upon request of appropriate local government or law enforcement authority and that the request be kept on file will also tend to ensure that the restrictions are reasonable responses to actual conditions.

In addition to comments regarding the advisability of the proposed rule for COCOT providers, the Commission asked those commenting to state whether local exchange companies should be able to modify their tariffs to allow restrictions on a similar basis.

The Commission also stated that it agrees with the recommendation that Southeastern be permitted to continue to restrict the phones in question.

On October 6, 1994, the Public Staff filed comments.

The Public Staff agreed that Rule R13 should be amended so as to permit the restriction of telephone service at PTAS locations. The Public Staff, however, proposed certain changes to the Commission's proposed Rule R13-5(r). Specifically the Public Staff recommended that restrictions be permitted only when the request is made by the sheriff or chief of police,[1] rather than "the city manager, the county manager, the board of county commissioners, the city council, the sheriff, chief of police, or their designees" as proposed in the Commission's Order. Since the restrictions are being made on the basis of public safety and welfare, the Public Staff argued that a local sheriff or chief of police is the appropriate party to determine if restrictions are needed. Also, the Public Staff added a paragraph (4) in which it recommended that the Commission require all COCOT providers that have restricted any of their PTAS instruments to file quarterly reports with the Public Staff - Communications Division identifying the restricted instruments and listing the restrictions.

The Public Staff recommended the following language:

Rule R13-5. General requirements - Service and equipment

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict incoming and/or outgoing calls at any specific PTAS instrument in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The COCOT provider shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

[1] On November 3, 1994, the Public Staff filed amended comments stating that the phrase "chief local law enforcement officer" should be substituted for the phrase "sheriff or the chief of police" in its recommended language for Rule R13-5(r) and LEC tariffs.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

(4) Each COCOT provider that restricts PTAS instruments in accordance with Rule R13-5(r) shall file quarterly reports with the Public Staff - Communications Division that identify all PTAS instruments so restricted. Each quarterly report shall list the telephone number, address, and all restrictions for each PTAS instrument. Reports for each quarter shall be due 20 days after the end of that quarter.

GTE filed comments on October 6, 1994, generally supporting proposed Rule R13-5(r) and suggesting that it should apply in its substance to local exchange carriers as well as COCOTs. GTE applauded the fact that the rule does not require prior approval of restrictions by the Commission but suggested that the site owner also sign any written requests from local government or law enforcement to restrict payphones. The site owners should also be able to initiate restrictions without the involvement of local government or law enforcement by requesting such from the payphone provider. GTE said that it was its experience that sometimes law enforcement agencies were reluctant to suggest restrictions.

Southern Bell filed comments on October 7, 1994. Southern Bell maintained that it currently has the authority to impose restrictions as to "the extent, character and location of its coin telephone service," pursuant to GSST Sec. A7.1.2(A) and A2.2.9., concerning payphone use for illegal purposes, but that it favors the interim rule with modifications. Southern Bell stated that it does restrict a percentage of its payphones to outgoing calls only. These are generally located in penal institutions, health care facilities, educational facilities, factories and retail locations where crime is prevalent.

Southern Bell stated that it supports parity between COCOT requirements and LEC tariffs in this regard. Southern Bell further argued that the interim rule should be amended as follows:

1. To allow only an outgoing calls restriction. Other restrictions, such as the ability to retrieve messages from a telephone answering service, should not be allowed generically but could be granted by the Commission if warranted at a particular location.

2. Other locations should be allowed to be restricted to outgoing calls only, such as health care and educational facilities, upon request.

The North Carolina Payphone Association (NCPA) filed comments on October 7, 1994. The NCPA supported the interim rule and recommended that it be adopted permanently. The NCPA does not oppose allowing the local exchange companies to modify their tariffs on a similar basis. As to the notice provision in Rule R13-5(r)(2), the NCPA suggested that a statement such as "incoming and certain outgoing calls restricted" would be preferable to a comprehensive listing of

specific kinds of restricted calls. Since space is limited, more detailed information would undercut the Commission's directive that notice be printed sufficiently large as to be easily readable.

Reply Comments

Public Staff. Referring to the October 7, 1994, Petition for Cease and Desist Order Against Southern Bell, the Public Staff stated that the proper interpretation of the disputed tariff provision, A7.1.2(A), should be considered within that docket.

However, since Southern Bell had endorsed parity and GTE had suggested that similar rules should apply to both LECs and COCOTs, the Public Staff recommended that the following language, which is almost identical to the Rule R13-5(r) language suggested by the Public Staff for COCOTs, be incorporated into LEC tariffs.

7.1.2 Public Telephone Locations and Requirements

Notwithstanding any other provisions of this Tariff, the company may restrict incoming and/or outgoing calls at any specific public telephone in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific public telephone from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The company shall keep a copy of such requests from the chief local law enforcement officer on file for inspection, and upon request by the Commission or Public Staff, shall provide copies of the requests for restrictions. The company shall retain copies of the requests for restrictions so long as the public telephones remain restricted.

(2) A notice of the restrictions applicable to a public telephone must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

(4) The company shall file quarterly reports with the Public Staff - Communications Division that identify all public telephones restricted in accordance with this Tariff. Each quarterly report shall list the telephone number, address, and all restrictions for each public telephone. Reports for each quarter shall be due 20 days after the end of that quarter.

The Public Staff reiterated its view that the discretionary authority claimed by Southern Bell is inconsistent with equal treatment for payphone

operators. The Public Staff further disagreed with the recommendation that service restrictions be allowed solely on the basis of the site or location owner's request. A written request by law enforcement is appropriate. The Public Staff also took exception to the NCPA's suggestion that providers not be required to post specific types of calls that are blocked. The Public Staff maintained that it is highly desirable that the end-user be so informed.

Southern Bell. Southern Bell reiterated its support for parity, but it also maintained that the public interest would be best served by placing the least amount of restrictions possible on payphone providers. Southern Bell also supported GTE's suggestion that payphone providers be allowed to restrict payphones at the written request of location providers. As such, Southern Bell disagreed with the Public Staff suggestions that restrictions only be allowed at the request of law enforcement and that quarterly reports be made. (An annual report would be sufficient). However, Southern Bell does support the Public Staff recommendation that payphone providers retain the written requests for restrictions that they receive.

Carolina and Central. Carolina and Central stated that requests for outward-only payphone service should be restricted to requests from property owners who have the concurrence of law enforcement. This will tend to limit requests to "problem" locations. They also agreed with parity in the rules as between COCOTs and LECs.

II. Cease and Desist Motion Against Southern Bell

On October 7, 1994, the Public Staff filed a petition requesting the Commission order Southern Bell to cease and desist from blocking calls to its public payphones, except those in confinement facilities, grandfathered in Docket No. P-100, Sub 84, of March 28, 1986, and those blocked upon written request of a law enforcement agency.

In its petition, the Public Staff said it had received an anonymous complaint on July 19, 1994, alleging that incoming calls were being blocked at Southern Bell payphones at the RDU Airport. Public Staff investigators confirmed this complaint as to any of Southern Bell's coinless public telephones.

Upon discussions with the Public Staff, Southern Bell cited Sections A7.1.1 and A7.1.2(a) of its General Subscribers Services Tariff (GSST) as conferring discretionary authority to block such calls.

These provisions read as follows:

A7.1.1 Definition and Purpose of Public Telephones

> A public telephone is an exchange station installed at the Company's initiative or at its option, at a location chosen or accepted by the Company as suitable and necessary for furnishing service to the general public. Public Telephones are installed for the use of the general public and their use by any occupants of the premises in which they are located is only incidental to their principal purpose.

A7.1.2 Public Telephone Locations and Requirements

A. The Company recognizes its responsibility for providing adequate telephone facilities to meet all reasonable public requirements, and the decision as to the extent, character and location of the public telephone facilities rests with the Company.

The Public Staff disagrees with Southern Bell's construction of these provisions. The Public Staff's analysis is as follows:

1. Section A7.1.2(A) states that "the decision as to the extent, character and location of the public telephone facilities rests with the Company." The Public Staff agrees that this tariff section gives the Company discretionary authority in regards to public telephone facilities, but not public telephone service. Service is not mentioned in paragraph A. The Public Staff concludes that: "extent" means the number of telephone facilities; "character" means the type of telephone facilities (type of paystation); "location" means where.

2. Section A7.1.1 identifies "a public telephone as an exchange station. . ." The tariff defines an exchange station as "a station which is used for exchange service and is directly or indirectly concerned with a central office." A station is defined as "a unit of service . . . so arranged as to permit sending and receiving messages through the exchange and long distance network." Thus, the Public Staff concludes that a public telephone must be capable of sending and receiving messages. While Section A7.1.1 indicates that the public telephone is installed at the Company's initiative or its option, that tariff provision does not give the Company authority to restrict the service.

3. The tariff defines "Exchange Service" as "a general term describing as a whole the facilities provided for local intercommunication, together with the right to originate and receive a specified or an unlimited number of local messages . . .(emphasis added)." From this, the Public Staff concludes that "exchange service" includes both facilities and the origination and termination of messages.

The Public Staff further noted that in Southern Bell's October 7, 1994, comments in Docket No. P-100, Sub 84, concerning calling restrictions at COCOTs, Southern Bell supported parity among all payphone providers regarding those rules and an amended Rule R13-5(r). The Public Staff submitted that the unlimited discretionary authority claimed by Southern Bell is inconsistent with its support for even an amended Rule R13-5(r).

Lastly, the Public Staff noted certain discrete circumstances where Southern Bell does have the authority to restrict payphones. They are:

1. For public telephones located in confinement facilities, Section A7.1.2.C of the GSST gives the company the authority to arrange those public telephones for outward-only calling if specifically requested by the administration of the confinement facility.

2. The Commission issued an Order in Docket No. P-100, Sub 84, on March 28, 1986, in which it addressed, among other points, blocking incoming calls at public telephones. In that docket, several LEC witnesses expressed the view that the public telephone operator should have discretionary authority to restrict inward calling. The Commission disagreed with the position and stated in its Order ". . . that the option of 'outward-only' calling could adversely affect the public interest and should not be allowed." The Commission did, however, grandfather incoming call restrictions at LEC public telephones that had been placed in service prior to the issuance of the Order. Thus, any Southern Bell public telephones limited to outward-only calling before issuance of that Order may remain restricted.

3. Section A2.2.9 of the GSST gives the company the authority to discontinue service if any law enforcement agency advises the company in writing that the service is being used in an unlawful manner. Thus, Southern Bell is permitted to block incoming calls at a public telephone if done so at the written request of a law enforcement agency.

The Public Staff noted that, currently, 2,632 of Southern Bell's 16,316 telephones in North Carolina are arranged to provide outgoing service only. Of the 2,632, 360 are located in confinement facilities where incoming call restriction is permitted under Section A7.1.2.C. of Southern Bell's GSST. Another 1,116 were installed prior to the Commission's March 28, 1986, Order in Docket No. P-100, Sub 84. Of the remaining categories of public telephones--coinless (69), hospitals and educational facilities (138), and others (949)--any not blocked at the written request of a law enforcement agency are blocking incoming calls in violation of the Commission's Order.

Thus, the Public Staff contends that Southern Bell may only block incoming calls in confinement facilities, at grandfathered phones, and at the written request of law enforcement.

On October 27, 1994, Southern Bell filed an answer and motion to dismiss in which it made the following points:

1. Southern Bell had advised the Public Staff of its position regarding Section A7 by letter dated October 5, 1992, without objection from the Public Staff.

2. While admitting that it has restricted payphones at the RDU Airport and elsewhere, Southern Bell argues that it has tariff authority under GSST Section A.7.1.2.A. Southern Bell maintained that the Public Staff's distinction between facilities and service is untenable. The Public Staff's position appears to be that Southern Bell does not have the authority to block incoming calls to a paystation by restricting the line to the paystation at the central office, but Southern Bell could block calls by placing a set at that location which cannot receive calls because they are part of the facilities. Indeed, the paystations at issue, which

are coinless, do not have ringers. It is Southern Bell's position that the discretion regarding "extent" and "character" allows Southern Bell to determine what use may be made of the paystations. Thus, an outgoing restriction may be imposed either through equipment or service.

3. Southern Bell further denied that its restricted paystations violated the Commission's March 28, 1986, Order in Docket No. P-100, Sub 84. This Order applied by its terms only to COCOTs. Southern Bell filed tariffs complying with this Order in the Public Telephone Access Service Section A.7.4.2.C.7., which applies to COCOTs.

4. Southern Bell reiterated its support for parity as between LECs and COCOTs, but by giving COCOT providers the same discretion to restrict phones as Southern Bell now enjoys.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

There are two separate but related questions regarding calling restrictions which may be placed on payphones. The first is what restrictions policy should apply to COCOT payphones and, by extension, on LEC payphones. The second is whether a cease and desist Order should be issued against Southern Bell for restricting its payphones allegedly without tariff authority.

The Commission concludes that the best way to proceed is to settle on the appropriate policy for payphone restrictions and apply this policy on a go-forward basis to LEC payphones.

There was general support for the interim rule and the principle of parity as between COCOTs and LEC payphones. The Commission agrees that the phrase "chief law enforcement officer" suggested by the Public Staff should be used in the rule instead of the current list of "city manager, the city council, or their designees." However, the Commission does not support the Public Staff's proposed Subsection R13-5(r)(4) requiring the filing of quarterly reports. The Commission doubts the usefulness or necessity of such reports. The Commission notes that the interim rule and the proposed final rule already contain a provision requiring COCOT providers to keep requests for restrictions on file. The Commission considers that it is a corollary to this requirement that the payphone providers also retain records as to which payphones have been restricted and which restrictions apply. COCOT providers and, by extension, the LECs are admonished to comply diligently with these requirements should the Commission or Public Staff seek such information in the future.

On other matters, the Commission concurs with the Public Staff as, for example, regarding the notice to customers. The Commission also agrees that provisions comparable to those enacted regarding COCOTs should apply to LEC payphones.

With respect to the cease and desist motion, the Commission concludes that both Southern Bell and the Public Staff have made strong arguments regarding their respective interpretations. The Commission concludes that the best way to

resolve this dispute is to grandfather existing LEC payphone restrictions and apply the proposed restrictions policy outlined in Rule R13-5(r) to LEC payphones on a go-forward basis.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R13-5 be amended by adding a new subsection (r) as set out in Appendix A.

2. That all LECs file such tariff changes as are necessary to comply with the tariff language set out in Appendix B within 45 days of the issuance of this Order.

3. That the Public Staff's cease and desist motion against Southern Bell be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1994.

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

APPENDIX A

Rule R13-5. General requirements - Service and equipment

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict incoming and/or outgoing calls at any specific PTAS instrument in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The COCOT provider shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 emergency service may not be prevented.

APPENDIX B

7.1.2 Public Telephone Locations and Requirements

Notwithstanding any other provisions of this tariff, the company may restrict incoming and/or outgoing calls at any specific public telephone in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific public telephone from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The company shall keep a copy of such requests from the chief local law enforcement officer on file for inspection, and upon request by the Commission or Public Staff, shall provide copies of the requests for restrictions. The company shall retain copies of the requests for restrictions so long as the public telephones remain restricted.

(2) A notice of the restrictions applicable to a public telephone must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

DOCKET NO. P-100, SUB 119

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Assignment of N11 Dialing Codes) ORDER DENYING N11 ASSIGNMENT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 20, 21, and 22, 1993

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

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

A. S. Povall, Jr., Kim A. Fadel, and Jan Jordan, Southern Bell Telephone and Telegraph Company Legal Department, 1012 Southern National Center, Post Office Box 30188, Charlotte, North Carolina 28230

For The News and Observer Publishing Company and The Greensboro News & Record, Inc.:

Richard W. Ellis and Gary R. Govert, Smith, Helms, Mulliss & Moore, Post Office Box 27525, Raleigh, North Carolina 27611

For MarketLink, Inc.:

Theodore C. Brown, Jr., Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For GTE South, Inc., and Contel of North Carolina, Inc., d/b/a GTE North Carolina:

Kimberly Caswell, Attorney at Law, Post Office Box 110, Tampa, Florida 33601

For The Durham Herald Company and Freedom Newspapers, Inc.:

John A. Bussian, Attorney at Law, Suite 1100, University Tower, Durham, North Carolina 27707

For Multimedia Newspaper Company d/b/a The Asheville Citizen-Times:

Wallace K. Lightsey, Wyche, Burgess, Freeman & Parham, Post Office Box 728, Greenville, South Carolina 29602

For Carolina Telephone and Telegraph Company:

Dwight W. Allen, Vice President of Regulatory Affairs and General Counsel, and Elizabeth A. Denning, Attorney at Law, 14111 Capital Boulevard, Wake Forest, North Carolina 27587

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602-1351, and Marsha Ward, Attorney at Law, MCI Center, Three Ravinia Drive, Atlanta, Georgia 30346-2102

For the Public Staff:

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

For the Attorney General:

Lorinzo L. Joyner, Special Deputy Attorney General, and Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On September 21, and 22, 1992, respectively, petitions were filed with the Commission by Infodial, Inc., and American Tele Access, Inc., requesting assignment of N11 abbreviated dialing codes. The Commission opened Docket No. P-100, Sub 119, but took no further action at that time on the requests. On October 9, 1992, a request for assignment of an N11 code was filed by G.L. Freeman. Letters from other parties expressing interest in the assignment of N11 codes were placed in the Commission's file on this docket. On January 29, 1993, a petition was received from the Durham Herald Company requesting that the Commission direct GTE South, Inc., (GTE) to assign an N11 number to the Durham Herald Company and enact regulations governing the assignment and use of N11 codes.

On February 19, 1993, GTE filed its petition to intervene and comments opposing the Durham Herald's request that GTE be ordered to provide an N11 number to the Durham Herald. Additional petitions to intervene were filed by AT&T and Sprint. On March 12, 1993, the Commission issued an Order setting hearing, defining issues, and scheduling prefiling of testimony. The Order named as parties all persons who had petitioned for assignment of N11 numbers, all local exchange carriers, all interexchange carriers who had intervened in the docket, the Public Staff, and the Attorney General.

The Order of March 12 defined the issues to be addressed as follows:

1. Whether the Commission has jurisdiction over N11 assignments.

2. If the Commission does have jurisdiction over N11 assignments, whether it is in the public interest to assign N11 numbers to non-LEC entities or allow use of remaining N11s by LECs. Among the subissues to this issue are:

    a. Whether there is a scarcity of N11 numbers.

    b. Whether N11 numbers should be reserved for public purposes--e.g., public service and network maintenance purposes.

    c. Advantages and disadvantages of assigning N11 numbers to non-LEC entities.

    d. What the appropriate uses of N11 numbers are by LECs.

Petitions to intervene were filed and allowed as follows:

Party	Filed	Allowed
GTE South, Inc. and Contel of North Carolina, Inc., d/b/a GTE North Carolina	2/19/93	2/22/93
AT&T	2/24/93	2/25/93
Sprint	3/04/93	3/05/93
MCI Telecommunications Corporation	3/26/93	3/29/93
Knight-Ridder	5/06/93	5/10/93
Freedom Newspapers	5/13/93	5/20/93
Asheville Citizen-Times	5/20/93	5/21/93
News and Observer Publishing Company	6/01/93	6/03/93
The Greensboro News and Record, Inc.	6/09/93	6/11/93
N.C. Press Association, Inc.	6/28/93	6/30/93

The Attorney General's Notice of Intervention was filed on April 4, 1993. The Order of March 12 also made all persons who had petitioned for assignment of N11 numbers prior to that date (Infodial, Inc., American Tele Access, Inc., The Durham Herald Company, and G.L. Freeman) parties to the docket.

Direct testimony was prefiled on behalf of Infodial, Inc.; the *Asheville Citizen Times*; GTE South, Inc., and Contel of North Carolina, Inc., d/b/a GTE North Carolina (GTE); the Public Staff; MCI Telecommunications Corporation (MCI); Carolina Telephone and Telegraph Company (CT&T); the News and Observer Publishing Company; Freedom Newspapers, Inc.; the Durham Herald Company; and Southern Bell Telephone and Telegraph Company (Southern Bell). Rebuttal testimony was prefiled on behalf of GTE; Southern Bell; and MCI. Statements of position were filed by AT&T on July 2, 1993, by the Attorney General on July 16, 1993, and by the North Carolina Payphone Association on July 19, 1993. Testimony on behalf of the N.C. Press Association was filed on July 19, 1993. Since the Press Association did not appear at the hearing, and since no witness appeared to sponsor the testimony and respond to cross examination, this testimony will be treated as a statement of position.

The hearing was held as scheduled on July 20, 21, and 22, 1993.

Multimedia Newspaper Company D/B/A *The Asheville Citizen-Times* presented the testimony of James T. McKnight, Vice President of Telecommunications for Cox Newspapers; Cecil B. Kelley, Jr., Director of Operations for Multimedia Newspaper Company; James B. Banks, Publisher of the *Asheville Citizen-Times*; and Reg Ivory, Executive Director of the Southern Newspaper Publishers Association. In addition to his own prefiled testimony, Mr. Banks adopted the prefiled testimony of W. Deberbuere Mebane.

Infodial, which since its original involvement in this docket has become a division of MarketLink, Inc., presented the testimony of Richard S. Bell, Vice President of MarketLink.

The Durham Herald Company presented the testimony of W. Toland Barfield, Director of Sales and Marketing for Herald-Sun Newspapers.

The News and Observer Publishing Company presented the testimony and exhibits of Richard L. Henderson, Vice-President and Director of Sales and Marketing.

Freedom Newspapers, Inc., presented the testimony of Charles Fischer, Publisher of *The Daily News* in Jacksonville, North Carolina.

Southern Bell presented the direct and rebuttal testimony and exhibit of Martha W. Johnson, Staff Manager, Pricing Department.

MCI presented the direct and rebuttal testimony of Don Price, Senior Staff Specialist, Southern Region Regulatory and Governmental Affairs.

GTE presented the direct and rebuttal testimony of Mike Drew, ONA Project Manager - Regulatory Compliance Implementation for GTE Telephone Operations.

CT&T presented the testimony of Marcus H. Potter, Customer Service Planning Manager.

The Public Staff presented the testimony of Millard N. Carpenter III, Utilities Engineer, Communications Division.

Commissioners Sarah Lindsay Tate and Robert O. Wells heard this case, but due to expiration of their terms, did not participate in the decision-making.

On the basis of the testimony and exhibits received at hearing, judicial notice of certain official Commission files and records, and the record as a whole, the Commission makes the following

FINDINGS OF FACT

1. The question of N11 assignment is a matter properly within the jurisdiction of the North Carolina Utilities Commission.

2. The North Carolina Utilities Commission's jurisdiction over N11 assignment is subject to preemption by the Federal Communications Commission.

3. The abbreviated dialing aspect of dialing codes such as N11 would be of marginal value at most in the provision of information services to the public.

4. Billing and collection is, from the perspective of the potential providers, an essential aspect of N11 service.

5. The billing and collection features proposed for N11 service could be made available through other services such as seven-digit local exchange service.

6. Abbreviated dialing codes other than N11 are technically feasible and will be available in the future.

7. If N11 codes are assigned now for use by information providers, they would be withdrawn in the near future after other abbreviated dialing codes become available and would therefore serve only for an interim period.

8. Withdrawal of N11 codes after assignment for commercial provision of information services would result in confusion and expense to the public, the LECs and information providers.

9. The N11 dialing codes constitute a limited asset which would be more suitably employed for purposes other than the commercial provision of info mation services.

EVIDENCE FOR FINDINGS OF FACT NOS. 1 AND 2

Evidence supporting these findings of fact is contained in the testimony and exhibits of Mr. McKnight, Mr. Henderson, Ms. Johnson, Mr. Drew, Mr. Price, Mr. Potter, and Mr. Carpenter. No evidence was offered to contradict the finding that this Commission and the FCC presently share jurisdiction over this subject area or the finding that the FCC could, at its option, exert exclusive jurisdiction.

EVIDENCE FOR FINDING OF FACT NO. 3

Evidence supporting this finding of fact is contained in the testimony and exhibits of Mr. McKnight, Mr. Henderson, Mr. Bell, and Mr. Fischer. These witnesses stressed the relative ease in remembering and dialing a three-digit number as opposed to a seven digit number. The witnesses also acknowledged that in the case of N11 information services, as contrasted with 411 directory assistance or 911 emergency services, more digits must be entered before the service is accessed. Henderson Exhibit 5 shows some of the hundreds of four digit codes required to obtain access to information. These four-digit codes must be dialed after the caller has dialed a three-digit, seven-digit, or ten-digit number and the call has been completed to the provider.

The Commission finds that the ease of remembering and dialing a three digit number is a superficial and largely illusory advantage. Their appeal may, in fact, result more from their novelty. A caller actually using any information service, three-digit, seven-digit, or ten-digit, is likely to have and refer to a menu like Henderson Exhibit 5 which rendering it unnecessary to memorize the numbers involved.

EVIDENCE FOR FINDING OF FACT NO. 4

Evidence supporting this finding of fact is contained in the testimony of Mr. McKnight, Mr. Barfield, and Mr. Henderson. The witnesses testified that advertising revenues generated by the presently available information services do not cover the cost of those services and that further development of information services is dependent on the revenues available from users of the services on a pay-per-call basis.

EVIDENCE FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony of Ms. Johnson, Mr. Drew, and Mr. Potter. Billing and collection by a LEC for calls to a given number requires that the LEC be able to distinguish calls to that number and that the LEC then be able to record billing and rating information for the calls. The witnesses agreed that billing and collection for seven-digit numbers is technically possible. Although Ms. Johnson testified that a dedicated NNX is required to allow identification of numbers for the service, Mr. Potter stated that this was not the case. Mr. Potter cited the Triad and Triangle-J Regional Calling Plans as specific instances in which identification, rating and recording of calls to numbers without dedicated prefixes is not only possible but is actually being performed by both Carolina Telephone and Southern Bell.

EVIDENCE FOR FINDINGS OF FACT NOS. 6 AND 7

The evidence supporting this finding of fact is contained in the testimony and exhibits of Ms. Johnson, Mr. McKnight, and Mr. Henderson. In response to a question on other abbreviated dialing codes, Ms. Johnson said:

> As a matter of fact, we are offering N11 service as an interim service. Once we have the #XXX dialing arrangement, those customers that have N11 service will migrate to that new abbreviated dialing code freeing up these N11 codes for other purposes. (Tr. v 4, p.24)

The May 4, 1993, Order of the Georgia Public Service Commission, McKnight Exhibit 4, expressly provides that "...all information service providers assigned N11 service, including Cox, shall migrate to alternative abbreviated dialing arrangements when such arrangements become available...." Ms. Johnson testified that Bell would make an agreement to migrate to an alternative dialing code a condition of provision of N11 service if the Commission authorized such service in North Carolina. Ms. Johnson testified that Bell anticipated having alternative codes available by the end of 1995.

EVIDENCE FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is contained in the testimony of Mr. Carpenter, Mr. Drew, and Mr. Potter. The Commission finds that the costs and confusion on the part of information providers and the general public associated with the withdrawal of N11 codes and subsequent migration of information services to an alternative abbreviated dialing system will be similar to the costs and confusion associated with any change in a business telephone number. Letterhead and advertising copy must be replaced. The public must be educated about the change and must, in turn, change its habits and records. There is inevitable expense associated with such changes. There are additional expenses, associated with the changes which must be made by the local exchange companies in programming and reprogramming their central offices, which would ultimately be borne by the users of the information services.

Additional confusion would also be result from the provision of N11 service to information service providers by Southern Bell but not by other LECs. Of the four LECs represented at the hearing, only Southern Bell indicated its

willingness to make N11 service available. In situations such as the Triangle and the Triad, where the public has become accustomed to seven-digit local calling on a wide scale, subscribers would be understandably confused when a call from the service area of Carolina or GTE to an N11 number did not connect them to the information provider while a call to the same number from Southern Bell's service area did.

EVIDENCE FOR FINDING OF FACT NO. 9

Evidence supporting this finding of fact is contained in the testimony and exhibits of Mr. McKnight, Mr. Henderson, Mr. Bell, Mr. Fischer, Mr. Carpenter, Mr. Drew, and Mr. Potter. As noted with respect to finding of fact number 2 above, a principal difference between the proposed use of N11 by information service providers and the use of 411 and 911 is that the latter codes connect the caller directly to the desired destination, while the proposed N11 service will almost always require the entry of additional codes. The ease of remembering and dialing a code is most clearly relevant in those instances in which time is critical, as in the case of 911, or in which no further dialing is necessary, as in the case of 411.

Carolina witness Potter indicated that Carolina's current use of the 311 code by its installation and repair crews is particularly advantageous in restoration of service after storms. He noted that when crews from other area are employed in emergency cases, the use of 311 rather than a seven-digit local number enables the repairmen to quickly and reliably reach the test desk without being aware of their local calling area location.

The Attorney General, through cross examination of several witnesses, elicited a number of potential uses of N11 codes which would, like 911 and 411, connect the caller directly to the service needed. Mr. Drew noted that GTE is proposing to use at least one N11 type code for Telephone Relay Services to the hearing impaired.

Southern Bell has announced its intention to migrate N11 information providers to alternative abbreviated dialing codes. The Commission finds that it is not reasonable to assign N11 codes which would be used for only a relatively short period of time. The Commission further finds that approval of N11 for commercial information services for a limited time would require an unnecessary delay in making such codes available for more suitable uses.

CONCLUSION

On the basis of all the evidence, the Commission concludes that the public interest would not be served by making N11 codes available for commercial pay-per-call information services.

IT IS, THEREFORE, ORDERED as follows:

1. That all requests and petitions that the Commission assign N11 codes or that the Commission order any LEC to assign N11 codes for use by commercial information services are denied.

2. That this docket is closed.

ISSUED BY ORDER OF THE COMMISSION
This the 18th of February 1994.

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

Commissioners Allyson K. Duncan and Charles H. Hughes dissent.

COMMISSIONER ALLYSON K. DUNCAN, dissenting:

I dissent from the majority's order concluding that the public interest would not be served by making N11 codes available for commercial information services and denying all requests and petitions for such use. I would not necessarily require all local exchange companies to assign N11 abbreviated dialing codes upon request, but I would, at the least, allow Southern Bell to do so. I find the reasoning of the order to be flawed and unpersuasive; it fails to address most of the subissues set out in the request for comments, and the findings of fact are often internally contradictory.

The purpose of this proceeding, as set out in the Commission's March 12, 1993, order, was to determine whether the Commission has jurisdiction over N11 assignments, and, if so, whether such assignments would be in the public interest. The public interest consideration had four subparts--whether there is a scarcity of N11 numbers, whether they should be reserved for public purposes, the advantages of assigning N11 numbers to non-LEC entities, and the appropriate use of N11 numbers by LECs. The majority's discussion only manages to directly address the question of jurisdiction. After that, the analysis disintegrates. Finding of Fact Number 3 provides that "[t]he abbreviated dialing aspect of dialing codes such as N11 would be of marginal value at most in the provision of information services to the public." Does this mean that the provision of such codes is <u>not</u> in the public interest, or that it <u>is</u> in the public interest, but not by much? And if their value is so marginal, what difference does it make that they will be available in the future (largely redundant Findings of Fact Numbers 6 and 7), or that they are a "limited asset" (Finding of Fact Number 9)? The order understandably does not mention the Federal Communications Commission Notice of Proposed Rulemaking dated June 5, 1992, pointing out that four of the N11 service codes are generally not used at all, and tentatively concluding that they should be available for abbreviated dialing unless and until it becomes necessary to use them for some other purpose.

In any event, it seems to me that the plethora of problems the majority sees associated with the availability of N11 for the provision of information services is either largely illusory or remediable. The order expresses concern over cost, but goes on to acknowledge that that cost greater than advertising revenues "would ultimately be borne by the users of the information services." (Evidence for Finding of Fact Number 8; see also Evidence for Finding of Fact Number 4). The opinion nowhere explains why this is a problem; that the costs associated with a system are recovered from those who avail themselves of it is precisely what <u>should</u> happen.

The order opines about the public confusion that will inevitably result from the need to change the N11 codes when other numbers become available, possibly by the end of 1995. Initially, I must point out that had the Commission not been sitting on this matter for eight months, consumers would have had more than two years to utilize the current N11 codes. In any event, the majority underestimates the public intelligence. Consumers cope all the time, and with apparent facility, with recorded announcements indicating that numbers have changed. Interestingly, the FCC, in its NPRM, found the flexible nature of the N11 Codes to be an advantage: "So long as these codes can be recalled on short notice, their use for purposes other than area codes does not appear to be detrimental. . ."

Nor do I find it insurmountably troubling that one LEC but not others would offer N11 dialing. It is my understanding that caller id became available from different LECs at different times; to my knowledge, noone, including the Commission and the consumers, was discomfited by these distinctions in service.

Finally, the majority expresses concern over the limited number of N11 codes--an odd concern given its conviction about their marginal utility. The majority feels that this limited resource should not be used for the commercial provision of information services. Yet it cannot point to a single other requested use. The majority indicates that Carolina uses the 311 code for repair, and that GTE is "proposing" to use one for the hearing impaired. My recommended disposition of this matter would affect neither Carolina nor GTE. But even if Southern Bell did wish to set aside a number for the hearing impaired, that leaves other numbers still unused.

In other words, the majority has decided to deprive Southern Bell of an opportunity to provide information services to the public in a new format through a currently unused resource, determine its degree of acceptance and appeal, and resolve problems in its operation, for no reason that withstands careful scrutiny. Other states have moved ahead. So should we.

I am authorized to say that Commissioner Charles H. Hughes joins me in this dissent.

Allyson K. Duncan, Commissioner
Charles H. Hughes, Commissioner

DOCKET NO. P-100, SUB 124

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of the Scope of Jurisdiction and Appropriate Regulation of Wireless Communications Providers	)))))	ORDER CONCERNING FURTHER DEREGULATION OF WIRELESS COMMUNICATIONS PROVIDERS AND SEEKING COMMENTS

BY THE COMMISSION: On August 10, 1993, the Omnibus Budget Reconciliation Act (OBRA) was signed into law which, in Section 332(c)(3)(A) concerning Regulatory Treatment of Mobile Services, in essence preempted states from

regulating the entry of or the rates charged by a commercial mobile service, although a State could still regulate other terms and conditions. This preemption became fully effective on August 10, 1994. Section 332(c)(3)(A) provides in relevant part as follows:

> "(3) State Preemption.--(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--
>
> > "(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
> >
> > "(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.
>
> "The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory."

On January 31, 1994, the Commission issued an Order Regarding Cellular Reseller Regulation and the Regulation of Other Mobile Services, in which the Commission concluded the following:

1. That cellular resellers should be subject to an expedited certification procedure until August 10, 1994, at which time entry regulation would no longer be in effect.

2. That the Commission would defer to other bodies regarding complaints against cellular resellers.

3. That the Commission would not petition the Federal Communications Commission (FCC) to retain jurisdiction over either cellular or radio common carrier rates.

4. That OBRA "substantially preempts Commission jurisdiction over existing or potential mobile services such as personal communications systems." However, the Commission opined that there may be "some scope for state jurisdiction" and the "Commission is not precluded from taking appropriate action if conditions warrant and the law so permits."

Accordingly, since the Commission did not petition the FCC to retain rate jurisdiction, the Commission is plainly preempted by OBRA regarding rate and entry regulation of mobile carriers. By OBRA's terms, however, the Commission was not preempted from "regulating other terms and conditions of commercial mobile services."

The term "commercial and private mobile services" encompasses essentially all providers of wireless communications services including cellular providers, both facilities-based and resellers; radio common carriers (RCCs), which are for the most part paging services; the mobile and paging services still offered by some local exchange telephone companies; and personal communications systems, a technology similar to cellular which is still in the early stages of development. The regulatory status of these mobile services is generally as follows:

1. "Facilities-based" cellular carriers. G.S. 62-125 authorized the Commission to exempt "public cellular radio telecommunications service providers, if licensed by the Federal Communications Commission, from regulation under any or all of the provisions" of Chapter 62. On February 14, 1994, the Commission, in Docket No. P-100, Sub 114, exempted such cellular carriers from all regulation under Chapter 62 (including complaints) except as to interconnection with local exchange companies (LECs) and other service providers and the provision of land-to-land services.

2. Cellular resellers. As of August 10, 1994, cellular resellers are exempt from entry regulation. They were already exempt as of August 10, 1993, from rate regulation, and the Commission in its January 31, 1994, Order deferred to other bodies regarding complaint jurisdiction.

3. Radio Common Carriers. RCCs have been regulated under G.S. 62-119 et seq. Paging services are a type of RCC. The Commission has been divested of entry and rate regulation with respect to RCCs, but has not spoken regarding complaint jurisdiction or other regulatory requirements.

4. Personal Communications Systems (PCS). PCS are similar to cellular systems technologically. The Commission has been divested of rate or entry regulation, and the FCC is allowing various companies to conduct PCS trials around the country. There was considerable sentiment in the comments solicited from parties regarding the effect of OBRA that the Commission should forbear to regulate "other terms and conditions" of PCS.

Public Staff Motion

On November 16, 1994, the Public Staff filed a motion requesting that the Commission take certain actions to clarify the scope of its jurisdiction over mobile carriers with a view toward further deregulation of mobile carriers. Among "the other terms and conditions of commercial mobile services" over which the Commission apparently retains jurisdiction and regulatory authority, according to the Public Staff, are the following:

a. Filing of tariffs. G.S. 62-138(a) requires that, "under such rules as the Commission may prescribe," every public utility is to file with the Commission tariffs that are "used or to be used." G.S. 62-143(h) and (i) establish the basis and procedure for detariffing of public utility services.

b. Complaint jurisdiction. G.S. 62-73 and 62-74, respectively, authorize the Commission to hear complaints against and from public utilities.

c. Regulatory fee. G.S. 62-302 requires that public utilities subject to the jurisdiction of the Commission pay a fee based on jurisdictional revenues with a minimum of $25.00 per year. G.S. 62-302(b)(4) defines North Carolina jurisdictional revenues as "all revenues derived or realized from intrastate tariffs, rates and charges approved or allowed by the Commission or collected pursuant to Commission order or rule. . ."

d. Contracts with affiliated companies. G.S. 62-153 requires all public utilities to file contracts with affiliated companies with the Commission and grants the Commission authority to disapprove such contracts if found unreasonable.

e. Annual report. G.S. 62-36 allows the Commission to require any public utility to file annual reports "in such form and of such content as the Commission may require."

f. Mergers and acquisitions. G.S. 62-111 prohibits "any merger or recombination affecting any public utility" without prior written approval of the Commission.

The Public Staff argued that, absent authority to control entry and rates, the Commission will not be in a position to effectively regulate "the other terms and conditions of commercial mobile services." If the providers of service are permitted to operate without first obtaining certification from the Commission, the Commission will then have no convenient way to locate or identify such providers in order to exert any other regulatory authority. If the Commission cannot regulate rates, its authority to require tariffs is problematic.

As was the case with cellular telephone service, the assumption underlying federal preemption of wireless service is that competition exists or will exist between providers and that this competition will obviate the need for regulation by government. In general, the Public Staff stated that it agrees with this view and endorses the idea of minimizing and, if possible, eliminating unnecessary regulatory requirements.

However, since some aspects of regulation are mandated by statute (for example, the requirement that contracts with affiliated entities be filed with the Commission and the requirement of prior approval of mergers and acquisitions), the Public Staff recommended that the General Assembly be requested to modify the definition of public utility to exclude wireless service providers.

The Public Staff offered the following further recommendations:

1. In the case of requirements imposed at the discretion of the Commission such as annual reports, the Public Staff recommends that the Commission waive such requirements.

2. The Public Staff recommends that the Commission initiate a proceeding pursuant to G.S. 62-134(h) and (i), request comments, and, if appropriate, schedule hearings with a view to determining whether detariffing of the services of providers of wireless communications services is in the public interest.

3. The Public Staff recommends that the Commission defer to other bodies with respect to complaints about all wireless service providers as it has already done in the case of cellular telephone providers.

4. The Public Staff recommends that mobile and paging services provided by local exchange companies be regarded as deregulated and that revenues and expenses for these services be treated "below the line."

5. The Public Staff recommends that the Commission solicit additional comments from all interested parties. In particular, if there is any substantial question as to the degree and nature of the preemption of the Commission's authority, the opinion of the Attorney General should be requested.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission agrees with the thrust of the Public Staff's motion concerning clarification of the Commission's jurisdiction over mobile carriers with a view toward greater deregulation for what is essentially a highly competitive industry--which, moreover, is one characterized by kaleidoscopic change which any regulatory body would be hard put to accommodate.

There are at least three convincing reasons for deregulation of mobile carriers:

1. By preempting rate and entry regulation, the federal government has "ripped the heart" out of our regulatory authority. The Commission is left with the leavings, the rationales for which have been significantly undercut.

2. By preemption, the federal government has made the policy decision that the marketplace is more efficient and beneficial to consumers than regulation. There is and continues to be an explosive growth in mobile technology offerings--e.g., PCS complements and may substitute in some

respects for the existing cellular network. This implies that the marketplace will provide remedies to dissatisfied customers--i.e., consumers can shop for better price and service and can leave one carrier and to another if unhappy. Mobile services are not treated as "natural monopolies" in need of regulation to prevent exploitation of consumers.

3. The preemption of entry regulation renders comprehensive regulation of mobile service utilities impossible since the utilities need no longer be certified. The Commission will thus have no way of knowing in a comprehensive way who all the mobile service providers are and no significant leverage over the utilities to force them to do what the Commission wants them to do. In other words, what regulation remains will be for all practical purposes voluntary, and those utilities that do comply will be relatively disadvantaged as opposed to those that do not.

The legal problem the Commission faces is that the federal preemption--unlike the preemption of property transportation in trucking--is less than sweeping. The federal preemption purports to preempt rate and entry regulation but explicitly leaves residual regulatory authority as to other terms and conditions to the states. But, in having "ripped the heart" out of the Commission's regulatory authority, the federal government has rendered the remainder of the authority both marginal and questionable.

The regulatory requirements about which the Public Staff has recommendations fall into the following categories:

1. Purely discretionary with the Commission.

   a. Annual reports
   b. Complaints
   c. Accounting status of LEC paging

2. Discretionary with the Commission after legal process.

   a. Detariffing

3. Not discretionary with the Commission. Requires statutory change.

   a. Affiliated contracts
   b. Mergers and acquisitions
   c. Regulatory fee

After careful consideration, the Commission concludes that the following actions should be taken:

1. All wireless communications providers currently under regulation by the Commission as to terms and conditions other than rates and entry, including cellular resellers, are to be relieved of those regulatory requirements that are purely discretionary with the Commission. Accordingly, wireless communications providers will no longer be required to file annual reports. The Commission will defer to others regarding complaints against wireless communications providers, and mobile and paging services provided by LECs will be regarded as deregulated and associated revenues and expenses will be treated below the line. Since

detariffing under G.S. 62-134(h) and (i) would be an extended process, the Commission will not immediately seek detariffing under those provisions pending action by the General Assembly. Action by the General Assembly would render the need for further action by the Commission moot.

2. The Commission states its intent to support legislation in the 1995 Session of the General Assembly which will deregulate all wireless communications providers.

3. The Commission should solicit the comments from wireless communications providers, especially RCCs and cellular resellers, to determine their views regarding further deregulation. Judging from a previous round of comments, it would appear that most of the regulated community supports deregulation. However, the Commission believes it is important to have a more timely statement of the views and support of the regulated community before legislation is introduced.

IT IS, THEREFORE, ORDERED as follows:

1. That all wireless communications providers currently regulated by the Commission as to terms and conditions other than rates and entry shall no longer be required to file annual reports with the Commission pursuant to G.S. 62-36.

2. That the Commission shall defer to other bodies regarding complaints against such wireless communications providers.

3. That mobile and paging services provided by LECs shall be regarded as deregulated and associated expenses and revenues shall be treated "below the line."

4. That any party to this docket or Docket No. P-100, Sub 114, desiring to comment on the proposed further deregulation supported by the Commission do so by no later than Friday, January 6, 1995. Reply comments are due no later than Tuesday, January 17, 1995.

5. That the Public Staff be requested to propose language that would accomplish the necessary statutory changes to deregulate wireless service providers no later than Friday, January 6, 1995. Other parties may also submit proposed language by that date.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 127

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of MEBTEL, Inc., for Revision of Commission Rule R9-4(d)	)	ORDER AMENDING RULE R9-4(d)

BY THE COMMISSION: On February 10, 1994, MEBTEL Inc. (formerly Mebane Home Telephone Company) petitioned the Commission for revision of Commission Rule R9-4(d) to replace outdated terminology and to revise the standard of eligibility for application of that rule. Specifically, MEBTEL requested that the Commission revise Rule R9-4(d) to provide that any telephone utility with up to 12,500 total access lines (instead of 4,000 total stations in service as the rule presently provides) may either submit cost data regarding new or changed rates or adopt a rate already filed by another local exchange company in North Carolina. The current Rule R9-4(d) reads as follows:

> (d) Cost Study Data. -- Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with total stations in service in excess of 4,000. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.
>
> Any telephone utility with less than 4,000 total stations in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.
>
> Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

In its Petition, MEBTEL stated that it believed that the purpose for which Rule R9-4 was apparently drafted is no longer being served. MEBTEL suggested that by revising this rule to utilize an access line standard and increasing the company size criteria to a point that will spare small local exchange companies (LECs) the expense of preparing cost studies, the Commission can effectively streamline a small facet of the regulatory process in a fashion which benefits the small LECs, their customers and the regulatory authorities.

MEBTEL stated that, without the requested revision of Rule R9-4(d), small LECs will face customer demand for increased service offerings while continuing to be burdened by the demands of supplying cost data each time a new service feature or option is offered. As an example, MEBTEL stated it will be installing a new switch in the near future which will allow the Company to offer a number of new service features and options to its customers. MEBTEL's consultant, Arthur Anderson & Company, has informed MEBTEL that the cost of preparing the cost study for providing just one of the service options, Centrex, will be

between $40,000 and $50,000. MEBTEL stated the cost savings which it would realize if it could adopt rates already approved by this Commission for other LECs for new features and options would benefit both the Company and its customers.

MEBTEL requested that the Commission revise its Rule R9-4(d) to provide as follows:

On February 23, 1994, an Order was issued making all LECs regulated by this Commission, the Public Staff, and the Attorney General parties to this docket and requiring all parties desiring to comment on MEBTEL's petition to do so no later than Friday, March 25, 1994.

On March 15, 1994, the Carolina Utility Customers Association, Inc. (CUCA) requested an order permitting it to intervene and participate in this proceeding.

Comments were received from: Ellerbe Telephone Company (Ellerbe); GTE South Incorporated and Contel of North Carolina d/b/a GTE North Carolina (GTE); Lexington Telephone Company (Lexington); North State Telephone Company (North State); Randolph Telephone Company (Randolph) and AT&T Communications of the Southern States, Inc. (AT&T).

The Public Staff, Attorney General and CUCA did not file comments.

Summary of Comments

Ellerbe/Randolph.: Supports MEBTEL's Petition.

GTE. Believes that the intent of MEBTEL's proposed changes are clearly in the public interest but encourages the Commission to view the changes to Rule R9-4(d) in the context of all LECs within North Carolina, not just those companies that have under 12,500 access lines. Also, GTE suggested that the intent of Rule R9-4(d) can be developed in order to differentiate between cost studies for new products and cost studies for existing products while recognizing the dynamics of the technological evolution and its impact on the regulatory process. GTE submitted a proposed Rule R9-4(d) which incorporated its suggestions.

Lexington. Supports MEBTEL's request but believes the total access line standard of eligibility in Rule R9-4(d) should be increased to 40,000 access lines, a mid-point difference between the access line count of the largest and smallest independently-owned commercial telephone companies in North Carolina. Lexington believes that this change would return Rule R9-4(d) to its original intent of sparing small local exchange companies the enormous expenses of submitting full cost data for each new or changed tariff rate.

North State. Recommends the Commission offer relaxation of the tariffing requirements as requested by MEBTEL and further explore the possibilities of developing a similar form of relief for certain new and advanced services for all LECs. The Commission should have the authority to grant approval of "streamlined" tariff filings to expedite new services and/or permit the LECs to meet critical time frames in competitive situations.

AT&T. Stated it does not oppose modifying the Rule to apply the exemption to LECs whose access lines do not exceed 12,500, provided this change does not extend the exemption to companies not covered under the existing "4,000 stations" standard. Moreover, if a LEC is a subsidiary or affiliate of a holding company that has other subsidiaries or affiliates operating in North Carolina, then the total access lines of all such subsidiaries or affiliates should be counted in determining whether the 12,500 threshold has been exceeded. AT&T stated that this procedure assures that the exemption is limited in its application to "small" LECs. In the event the Commission allows a LEC to exercise the option under the Rule to adopt a cost-supported rate of another LEC (other than for access lines, basic local service rates and other non-cost based rates), the adopting LEC should be required to provide the range of rates other LECs charge for the service and an explanation of why a particular rate was chosen instead of the others. According to AT&T, this requirement achieves two important goals. First, it supports the smaller LECs' objective of avoiding the expense of developing specific full cost data, and second, the Commission assures itself and North Carolina consumers that a sound rationale has been employed by every LEC prior to submitting a request for new or changed rates.

On April 7, 1994 Reply Comments of MEBTEL were filed in response to comments filed by AT&T. MEBTEL contended that access rates are not at issue in this docket and that the linkage AT&T proposed between reduced access rates and the availability of the streamlined regulatory exemption which MEBTEL seeks for small companies is totally inappropriate. MEBTEL also pointed that as a practical matter all of the small LECs who would be entitled to the optional exemption contemplated by MEBTEL's proposed revision of Rule R9-4 do not have cost based access rates. The small LECs either concur in an average schedule tariff for access rates or their access rates are residually priced based on depooling.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Rule R9-4 is the Commission Rule under which telephone companies operating in North Carolina file telephone tariffs and maps. Rule 9-4(d) is the subsection of that Rule which addresses cost study data. MEBTEL's Petition requested only two changes to the Rule: 1) that the current language of "total stations" be changed to "access lines," and, 2) that the "4,000 stations in service" be changed to "12,500 access lines.

After careful consideration of the filings in this docket, the Commission believes that MEBTEL's proposed changes in Rule R9-4(d) have merit. The "station count" language is certainly outdated; and, given that this Rule was adopted in the 1970s, the standard of eligibility for application of that rule is also unrealistic. MEBTEL is very convincing in its Petition that such changes would be in both the company's and the customers' best interests.

The Commission further agrees with MEBTEL that companies with access lines of 12,500 or less is the appropriate standard. The Commission disagrees with Lexington's proposed "40,000" access line number because a company with 40,000 access lines should not be considered a "small" company in this context.

Moreover, the Commission does not believe it would be appropriate at this time to promulgate an "expansion" of the Rule suggested by GTE, North State and AT&T.

The Commission therefore believes that Rule R9-4(d) should be amended essentially as proposed by MEBTEL in Rule R9-4(d) as MEBTEL has proposed.

IT IS, THEREFORE, ORDERED that Commission Rule R9-4(d) be amended to read as follows:

> (d) Cost Study Data. -- Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with more than 12,500 access lines. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.
>
> Any telephone utility with 12,500 or fewer access lines in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.
>
> Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of G.S. 62-110.3 - An Act to Require a Water or Sewer Utility Company to Post a Bond--Rulemaking Proceeding	)	ORDER PROMULGATING RULE CHANGES AND FORMS FOR WATER OR SEWER BONDS SECURED BY NONPERPETUAL IRREVOCABLE LETTERS OF CREDIT OR NONPERPETUAL COMMERCIAL SURETY BONDS

BY THE COMMISSION: By Orders recently entered in Docket Nos. W-1044, W-1046, and W-503, Sub 5, the Commission has approved the use of irrevocable letters of credit and commercial surety bonds of nonperpetual duration as security for water and/or sewer bonds filed by public utilities pursuant to G.S. 62-110.3 and Commission Rules R7-37 and R10-24 subject to certain guidelines, terms and conditions which the Commission has adopted and specified through Orders. That being the case and in order to conform our rules, the Commission hereby promulgates and adopts the amendments to Commission Rules R7-37 and R10-24 set forth below and the Bond Forms attached to this Order as Appendices A and B for use by water and/or sewer public utilities in North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R7-37 and R10-24 be, and the same are hereby, amended effective the date of this Order by renumbering sections (e)(4) in both rules as (e)(5) and inserting a new section (e)(4) in both rules as follows:

(e)(4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

2. That Rules R7-37(d) and R10-24(d) be, and the same are hereby, amended effective the date of this Order to read as follows:

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

3. That the Bond Form attached hereto as Appendix A shall be utilized by water and/or sewer public utilities filing a bond pursuant to G.S. 62-110.3 and Rules R7-37 and R10-24 accompanied and secured by a nonperpetual irrevocable letter of credit.

4. That the Bond Form attached hereto as Appendix B shall be utilized by water and/or sewer public utilities filing a bond pursuant to G.S. 62-110.3 and Rules R7-37 and R10-24 accompanied and secured by a nonperpetual commercial surety bond issued by a corporate surety.

5. That the Chief Clerk shall mail a copy of this Order to each water and sewer public utility certificated in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

APPENDIX A

(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY IRREVOCABLE LETTER OF CREDIT OF NONPERPETUAL DURATION)

BOND

_____ of _____,
(Name of Utility) (City)
_____, as Principal, is bound to the State of North
(State)
Carolina in the sum of _____
_____ Dollars ($_____) and for which payment to be made, the Principal by this bond binds _____ and _____ successors
(himself)(itself) (his)(its)
and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility

_____
(describe utility)
_____ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in G.S. § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal has delivered to the Commission an Irrevocable Letter of Credit from _____
(Name of Bank)
with an endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Irrevocable Letter of Credit is not to be renewed upon its expiration, the Bank shall, at least 60 days prior to the expiration date of the Irrevocable Letter of Credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510 and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936,

that the Irrevocable Letter of Credit will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Irrevocable Letter of Credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Irrevocable Letter of Credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Irrevocable Letter of Credit shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(e) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the _____ day of _____ 19___.

_____
(Principal)

By:_____

APPENDIX B

(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY COMMERCIAL SURETY BOND OF NONPERPETUAL DURATION ISSUED BY CORPORATE SURETY)

BOND

_____ of _____, _____,
(Name of Utility) (City) (State)
as Principal, and _____, a corporation created and existing under
(Name of Surety)
the laws of _____, as Surety (hereinafter called "Surety"), are
(State)
bound to the State of North Carolina in the sum of _____ Dollars ($_____) and for which payment to be made, the Principal and Surety by this bond bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility

_____
(Describe utility)
_____ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510 and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936 that the Surety Bond will not

be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program; and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(e) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, for an initial _____ year term, and shall be automatically renewed for
(No. of Years)
additional _____ year terms, unless the obligations of the principal
(No. of Years)
under this bond are expressly released by the Commission in writing.

NOW, THEREFORE, the Principal and Surety consent to the conditions of this bond and agree to be bound by them.

This the _____ day of _____, 19___.

_____
(Principal)

BY: _____

_____
(Corporate Surety)

BY: _____

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of G.S. 62-110.3 - An Act to Require a Water or Sewer Utility Company to Post a Bond and Rule R7-37(a), (f), (g) and (h) and R10-24(a), (f), (g) and (h) -- Rules Giving Applicants a Reasonable Period of Time after the Initial Grant of a Franchise to a Water or Sewer Utility Company, Not to Exceed 60 Days, Within Which to Satisfy the Bond Requirements	ORDER INSTITUTING RULE CHANGE

BY THE COMMISSION: On September 2, 1987, the North Carolina Utilities Commission (NCUC) promulgated Rules R7-37 and R10-24. Each of these Rules contained identical subparagraphs (a) and (f). Subparagraph (a) of Rule R7-37 and Rule 10-24 states:

> (a) Except as provided in paragraph (f) and (g), before a temporary operating authority or a certificate of convenience and necessity is granted to a water or sewer utility company, the company must furnish a bond to the Commission as required by G. S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the Rules herein.

The Commission finds good cause to enter this Order amending the above-referenced portion of Rules R7-37(a) and R10-24(a) which make reference to subparagraph (f) and by doing so bring these Rules into compliance with G. S. 62-110.3.

A conflict existed between G. S. 62-110.3 and Rules R7-37(f) and R10-24(f) which necessitated this change. G. S. 62-110.3 requires that an applicant for a water or sewer utility company seeking a franchise furnish a bond secured with sufficient surety at the time the franchise is granted. The above-referenced Commission Rules, however, gave the applicant a reasonable time within which to furnish a bond with the period not to exceed 60 days. The Commission Rules are more expansive than the statute and therefore not in compliance therewith. Since subparagraph (a) of Commission Rules R7-37 and R10-24 parallels subparagraph (f) and (g) of these Rules, it is necessary to amend subparagraph (a).

Amended Rules R7-37(a) and R10-24(a) are attached as Appendix A.

The Commission finds good cause to enter this Order rescinding subparagraph (f) of Commission Rules R7-37 and R10-24 effective immediately. Subparagraph (g) will now become subparagraph (f) and subparagraph (h) will now become subparagraph (g).

The changes in Rules R7-37(f), (g) and (h) and R10-24(f), (g) and (h) are attached as Appendix B.

The Commission believes the changes in these Rules will enable the Rules to comport with the requirements of G. S. 62-110.3.

IT IS, THEREFORE, ORDERED as follows:

1. That the amendments to Rules R7-37 and R10-24 herein attached as Appendices A and B should be, and hereby are, effective for all applications for water and sewer franchises filed on and after the date of this Order.

2. That the attached Rules along with their amendments by this Order shall be made a part of the Rules and Regulations of the North Carolina Utilities Commission.

3. That the Chief Clerk shall mail a copy of this Order to each water and sewer public utility certificated in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of August 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. W-100, SUB 5

Rule R7-37(a) and Rule R10-24(a)

> Except as provided in paragraph (g), before a temporary operating authority or certificate of convenience and necessity is granted to a water or sewer utility company, the company must furnish a bond to the Commission as required by G. S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force and conformity to the rules herein.

APPENDIX B

DOCKET NO. W-100, SUB 5

Rules R7-37(f), (g) and (h) and R10-24(f), (g) and (h)

(f) Rescinded.

~~(g)~~(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either

(1) it applies for a franchise, or

(2) the Commission asserts a jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it

may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

~~(h)~~(g) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of G.S. 62-110.3 - An Act to Require a Water or Sewer Utility Company to Post a Bond and Rule R7-37(a), (f), (g) and (h) and R10-24(a), (f), (g) and (h) -- Rules Giving Applicants a Reasonable Period of Time after the Initial Grant of a Franchise to a Water or Sewer Utility Company, Not to Exceed 60 Days, Within Which to Satisfy the Bond Requirements	ERRATA ORDER

BY THE COMMISSION: On August 31, 1994, the Commission issued an Order in the above-captioned matter.

The Commission has learned that the word "and" as it appears in the last sentence of Rule R7-37(a) and Rule R10-24(a) in attached Appendix A should read "in". Also, "a" as it appears in Rules R7-37(f)(2) and R10-24(f)(2) should be omitted. The Commission issues this Order correcting that error.

IT IS, THEREFORE, ORDERED that Appendix A and Appendix B, attached hereto, replaces Appendix A and Appendix B, attached to the Order issued on August 31, 1994.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of September 1994.

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

APPENDIX A

DOCKET NO. W-100, SUB 5

Rule R7-37(a) and Rule R10-24(a)

Except as provided in paragraph (g), before a temporary operating authority or certificate of convenience and necessity is granted to a water or sewer utility company, the company must furnish a bond to the Commission as required by G. S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

APPENDIX B

DOCKET NO. W-100, SUB 5

Rules R7-37(f), (g) and (h) and R10-24(f),(g) and (h)

(f) Rescinded.

~~(g)~~(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either

(1) it applies for a franchise, or

(2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

~~(h)~~(g) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

DOCKET NO. W-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by the Public Staff for a Modification to the Rules and Regulations Governing the Filing and Conduct of General Rate Cases for Large Water and Sewer Companies	ORDER AMENDING RULES AND ESTABLISHING NUMBER OF COPIES TO BE FILED

BY THE COMMISSION: On May 14, 1991, in this docket, a Hearing Examiner issued a "Recommended Order Adopting Revisions to North Carolina Utilities Commission Rules and Regulations" wherein, the NCUC Form W-1 Rate Case Information Report was adopted and it was required that all water and sewer companies with annual revenues equal to or greater than $750,000, file a completed NCUC Form W-1 with all rate case applications. That Recommended Order was silent as to the number of copies of the NCUC Form W-1 that should be filed with the Chief Clerk at the time of filing rate case applications. The Commission is of the opinion that it is appropriate to establish guidelines in this regard.

For the water and sewer utilities subject to the NCUC Form W-1 filing requirements, 25 sets of information should be filed with the Chief Clerk's office at the time of a general rate case filing. The contents of each set provided should be as follows:

Sets 1-6: Application, Exhibits and all NCUC Form W-1 Data Items

Sets 7-10: Application, Exhibits and all NCUC Form W-1 Data Items excluding Item No. 13

Sets 11-25: Application and Exhibits only

Further, the Commission is of the opinion that its present Rule R1-5(g) Exception 2 relating to the number of copies to be filed by water and sewer utilities should be amended to read as follows:

Rule R1-5(g) Exception 2.

For filings by Class A and B water and sewer utilities for rate increases or transfers, an original plus twenty four (24) copies shall be provided to the Commission. For all other filings by Class A and B water and sewer utilities, an original plus five (5) copies shall be provided to the Commission.

For filings by Class C water and sewer utilities for rate increases or transfers, an original plus six (6) copies shall be provided to the Commission. For all other filings by Class C water and sewer utilities, an original plus five (5) copies shall be provided to the Commission.

Additionally, the Commission is of the opinion that its present Rule R1-17(b)(12) is also in need of revision. Presently, Rule R1-17(b)(12) is worded such that only water and sewer companies with annual revenues equal to or greater than $2 million are required to file the NCUC Form W-1 Rate Case Information Report. Rule R1-17(b)(12) was last revised by Commission Order issued on September 4, 1991, in this docket, in order to reflect, in part, the Commission's decision to phase-in the Commission requirement that the NCUC Form W-1 be included with general rate case applications by water and sewer utilities having annual revenues equal to or greater than $750,000. For the phase-in of the NCUC Form W-1 data filing requirement, the Commission adopted the following schedule:

Water and Sewer Companies with Annual Revenues	Implementation Date
1. Equal to or greater than $2,000,000	January 1, 1992
2. Equal to or greater than $1,500,000 but less than $2,000,000	July 1, 1992
3. Equal to or greater than $750,000 but less than $1,500,000	January 1, 1993

In order to reflect the completion of that phase-in, it is appropriate to revise the current Rule R1-17(b)(12) to find that $750,000 or more in annual revenues is now the determining level in having water and sewer utilities file NCUC Form W-1.

In Docket No. W-100, Sub 18, on June 1, 1992, the Commission amended Rules R7-35 and R10-21, such that the Commission adopted the Uniform System of Accounts (USOAs) for water and sewer utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners. The USOAs, so adopted, classifies the water and sewer utilities into three classes such that Class A water and sewer utilities are those utilities with annual operating revenues of $750,000 or more.

Based upon the foregoing, the Commission finds that it is appropriate to amend Rule R1-17(b)(12) to read as follows:

Rule R1-17(b)(12)

All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:

For Class A and B Electric Utilities:
(a) NCUC Form E-1, Rate Case Information Report Telephone Companies

For Class A and B Telephone Utilities:
(b) NCUC Form P-1, Rate Case Information Report - Telephone Companies

For Class A and B Natural Gas Utilities:
(c) NCUC Form G-1, Rate Case Information Report - Natural Gas Companies

For Class A Water and Sewer Utilities:
(d) NCUC Form W-1, Rate Case Information Report - Water and Sewer Companies

The Commission finds that the changes addressed herein are not controversial and such changes are appropriate to reflect the needs of the Commission and the findings of prior Commission orders.

IT IS, THEREFORE, ORDERED as follows:

1. That the number of sets of the rate case application and exhibits and the NCUC Form W-1, to be filed be, and is hereby, ordered to be 25.

2. That the number of copies of the rate case application and exhibits and each NCUC Form W-1 data response item and the organization of each set of information shall be as follows:

Sets 1-6: Application, Exhibits and all NCUC Form W-1 Data Items

Sets 7-10: Application, Exhibits and all NCUC Form W-1 Data Items excluding Item No. 13

Sets 11-25: Application and Exhibits only

3. That Rules R1-5 and R1-17 be, and are hereby, amended as follows.

Rule R1-5. Pleadings, generally.

Delete the wording at R1-5(g) Exception 2 and replace with the following:

Rule R1-5(g) Exception 2

For filings by Class A and B water and sewer utilities for rate increases or transfers, an original plus twenty four (24) copies shall be provided to the Commission. For all other filings by Class A and B water and sewer utilities, an original plus five (5) copies shall be provided to the Commission.

For filings by Class C water and sewer utilities for rate increases or transfers, an original plus six (6) copies shall be provided to the Commission. For all other filings by Class C water and sewer utilities, an original plus five (5) copies shall be provided to the Commission.

Rule R1-17. Filing of increased rates; application for authority to adjust rates.

Delete the wording at R1-17(b)(12) and replace with the following:

Rule R1-17(b)(12)

All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:

For Class A and B Electric Utilities:
(a) NCUC Form E-1, Rate Case Information Report - Telephone Companies

For Class A and B Telephone Utilities:
(b) NCUC Form P-1, Rate Case Information Report - Telephone Companies

For Class A and B Natural Gas Utilities:
(c) NCUC Form G-1, Rate Case Information Report - Natural Gas Companies

For Class A Water and Sewer Utilities:
(d) NCUC Form W-1, Rate Case Information Report - Water and Sewer Companies

4. That a copy of this Order shall be served upon each water and sewer utility regulated by this Commission, the Public Staff, the Attorney General, and any other intervenor who is a party in this docket.

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

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

DOCKET NO. W-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition by the Public Staff for a Modification to the Rules and Regulations Governing the Filing and Conduct of General Rate Cases for Large Water and Sewer Companies) ERRATA ORDER

BY THE CHAIRMAN: On February 22, 1994, in this docket, the Commission issued an Order amending certain portions of Commission Rules R1-5 and R1-17. It has come to the attention of the Commission that the wording approved therein for Rule R1-17(b)(12) contained an inadvertent error. Specifically, in that Rule, the following phrase was included:

"For Class A and B Electric Utilities:
(a) NCUC Form E-1, Rate Case Information Report - Telephone Companies".

The word "Telephone" included in the foregoing phrase is inappropriate and should have been "Electric".

Based upon the foregoing, the Commission finds that it is appropriate to correct Rule R1-17(b)(12) to read as follows:

Rule R1-17(b)(12)

All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:

For Class A and B Electric Utilities:
(a) NCUC Form E-1, Rate Case Information Report - Electric Companies

For Class A and B Telephone Utilities:
(b) NCUC Form P-1, Rate Case Information Report - Telephone Companies

For Class A and B Natural Gas Utilities:
(c) NCUC Form G-1, Rate Case Information Report - Natural Gas Companies

For Class A Water and Sewer Utilities:
(d) NCUC Form W-1, Rate Case Information Report - Water and Sewer Companies

The Commission finds that the correction addressed herein is not controversial and such change is appropriate to reflect the needs of the Commission and the findings of prior Commission orders.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of July 1994.

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

DOCKET NO. W-100, Sub 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Audits and Analyses of the 1992 Annual Reports of Mid South Water Systems, Inc., Surry Water Company, Inc., H.C. Huffman Water Systems, Inc., Old South Lane Water System, Inc., and Lincoln Water Works, Inc.	)	ORDER SUSPENDING INVESTIGATION, DECLARING MORATORIUM, AND REQUESTING PUBLIC STAFF ASSISTANCE IN MONITORING FINANCIAL STATUS

BY THE COMMISSION: On May 24, 1993, the Commission issued an Order requesting the assistance of the Public Staff in an investigation of the financial fitness of Mid South Water Systems, Inc. (Mid South or Company) and its

affiliated companies. Parenthetically, it is noted that the aforesaid affiliations arise either as a result of a wholly-owned parent-subsidiary relationship or as a result of common ownership. Collectively, Mid South and its affiliated companies are hereafter referred to as the Mid South Group or the Companies.

The subject investigation was undertaken as a result of the Commission's continuing concern regarding the financial condition and financial viability of Mid South which initially arose during the Commission's review of applications filed by the Company for franchises to serve various phases of the Bradfield Farms and Britley Subdivisions in Docket No. W-720, Subs 96 and 108.

The Commission's concern as to the soundness of Mid South's financial condition was further heightened upon review of Surry Water Company, Inc.'s (Surry's) application for a franchise to serve the Bishops Ridge Subdivision in Docket No. W-314, Sub 26. Surry, like Mid South, is wholly-owned by Carroll and Mary Weber.

Because of the absence of a showing of financial fitness, the Commission (1) revoked Mid South's temporary operating authority in Bradfield Farms Phases III, IV, and V; (2) subsequently, after further hearing in Docket No. 720, Subs 96 and 108, revoked Mid South's franchise to serve Phase II of the Bradfield Farms Subdivision; and (3) denied Surry's application for a franchise to serve the Bishops Ridge Subdivision.

Carroll and Mary Weber subsequently formed another wholly-owned corporation called Forsyth Water Company, Inc., which filed an application, in Docket No. W-1027, for a franchise to serve the Bishops Ridge Subdivision. That application was denied due to the applicants failure to make a showing of financial fitness.

The Commission's rationale in support of its findings and conclusions concerning the matters highlighted hereinabove are set forth in Orders issued in the aforesaid dockets. Such rationale need not be repeated here. The Commission does, however, hereby take judicial notice of the entire records of those proceedings.

Due to the magnitude of its concern regarding the financial fitness of the utilities owned by the Webers, the Commission requested that the Public Staff investigate and evaluate the current financial condition of the Companies. As a minimum the Public Staff was requested to address the following:

(1) whether the Companies' 1992 annual reports fairly present the financial positions and the results of operations of the Companies,

(2) whether the Companies were complying with Commission rules, practices, and procedures concerning gross-up of contributions in aid of construction (CIAC),

(3) whether the Companies have potential CIAC income tax liabilities and if so the magnitude of such liabilities,

(4) whether the Companies were financially fit, and

(5) whether the Companies' pledging of assets without first having obtained Commission approval jeopardized the future provision of public utility services and whether the Companies and/or the Webers, the Companies' exclusive shareholders, should be fined for having so pledged public utility assets.

The Public Staff was also requested to investigate and make an assessment of the personal financial fitness of the Webers.

In a pleading filed on August 24, 1993, the Public Staff inquired as to whether an evaluation of the Companies on a consolidated basis, including nonutility business segments and unregulated companies, would be acceptable to the Commission. The Public Staff indicated that the necessity to use the consolidated financial statements of the Mid South Group as the basis for its report arose from the Public Staff's inability to determine the adequacy and reasonableness of the allocations of joint cost among the various companies and between the regulated companies' regulated and unregulated business activities. By Order issued on September 15, 1993, the Commission, among other things, ruled that it would accept an assessment of the Mid South Group on a consolidated basis rather than on an individual company basis for the sole purpose of assessing the overall financial fitness of the Companies.

On March 3, 1994, the Public Staff filed its report. Essentially, it appears that the report is based on the Public Staff's examination of the 1992 annual reports of the utilities in the Mid South Group, examination of the unaudited consolidated financial statements of Mid South for the calendar years 1991 and 1992, audit of Mid South's books and records, and examination of certain workpapers of the independent accountants who compiled the 1991, 1992, and 1993 consolidated financial statements. Additionally, the Public Staff stated in its report that it had "also made a cursory review of the unaudited consolidated financial statements for the calendar year 1993." In summary, the Public Staff concluded:

(1) that there were several problems with the annual reports of the Companies and with certain accounting techniques which were being employed. However, after noting certain exceptions, the Public Staff concluded that the 1992 consolidated financial statements of the Mid South Group, except for the exceptions noted, were reasonable representations of the financial position of the Companies at December 31, 1992, and the results of operations for the year then ended,

(2) that the Companies are not in compliance with the Commission's rules and practices with respect to gross-up of CIAC,

(3) that the Companies have a potential CIAC income tax liability unrelated to the Bradfield Farms or Silverton systems. While the Public Staff quantified that liability, it noted that the Companies incurred the liability under contracts with developers which at the time were not subject to the Commission's mandatory gross-up requirement,

(4) that the Companies no longer exhibit symptoms of financial distress,

(5) that, based on the Companies' 1993 consolidated financial statements, the Companies are financially fit, and

(6) that the pledging of assets without first having obtained Commission approval has not jeopardized the future provision of public utility services and that no fines should be levied as a result of the assets having been so pledged.

In a pleading filed on April 6, 1994, the Public Staff requested that it be relieved of any further obligation regarding investigation of the personal financial fitness of the Webers. Due to its general finding of financial fitness with respect to the Mid South Group, as set forth in its report, the Public Staff does not believe that an investigation of the Webers' personal financial fitness is in the public interest.

On March 15, 1994, Mid South filed its response to the Public Staff's audit report. Mid South, in view of what it characterized as the "very favorable conclusions" reached by the Public Staff, requested that the Commission:

(1) approve the conclusion of financial fitness reached by the Public Staff,

(2) terminate the instant investigation including any further personal financial investigation of the Webers individually, and

(3) approve franchises or at least grant temporary operating authority with respect to four applications currently pending before the Commission in Docket No. W-720, Sub 117; Docket No. W-1027; Docket No. W-720, Sub 100; and Docket No. W-278, Sub 2.

Conclusion

In summary, the Public Staff has concluded in its report to the Commission that on a consolidated basis Mid South and its affiliates are financially fit. The Public Staff stated that it had reached that conclusion based on the Companies' 1993 consolidated financial statements and notwithstanding the fact that the Webers personally have a substantial loan outstanding which is associated with the purchase of Surry.

The Commission finds it significant and therefore notes that the Public Staff's position that the Companies are financially fit is stated unequivocally and unambiguously. Further, the Commission wishes to acknowledge that in ruling on this matter it has placed great weight on the Public Staff's strong conviction and assertion in that regard. Indeed, it is the Public Staff's assurance of financial fitness that has led the Commission to its decision to suspend its investigation of the financial fitness of the Companies as set forth herein. However, the Commission has not reached that decision without reservation.

Based on representations made by the Public Staff in its report, one might conclude that on a consolidated basis the Companies are financially fit. At the very least, it would appear that the Mid South Group's financial status has dramatically improved in 1993 as compared to earlier years, if one accepts the premise on which the Public Staff bases its conclusion. However, it is difficult

for the Commission to conclude without reservation that the Companies are financially fit; particularly in view of (1) the uncertainty that has surrounded the financial condition of Mid South and certain of its affiliates in recent years, including questions relating to the credibleness of the Companies' financial statements which to some degree continues to be an ongoing concern; (2) the potential CIAC income tax liability with which the Companies are now confronted; and (3) the fact that the Public Staff's conclusion of financial fitness turns on the credibleness of unaudited financial statements of which it has made only a "cursory review".

Nevertheless, in spite of considerable reservation and based upon the Public Staff's conclusion that the Companies are financially fit, the Commission finds and concludes that it should (1) suspend its investigation into the financial fitness of Mid South and the Webers; (2) provisionally find the Companies to be financially fit pending further review and further Order of the Commission; and (3) allow this docket to remain open and request that the Public Staff monitor the financial condition of the Mid South Companies on an ongoing basis and report its findings to the Commission in that regard as circumstances may require but in no event no less often than annually.

Further, with regard to applications now pending before the Commission whereby Mid South or an affiliate is seeking a new franchise(s) or the transfer of an existing franchise(s), the Commission finds and concludes that such matters should be allowed to go forward as expeditiously as possible. So as to facilitate that process, the Commission finds and concludes that the Public Staff should be requested to place all such matters, without regard to their current status, on the agenda for the Commission's regularly scheduled Monday morning conference as soon as reasonably possible but in no event later than May 16, 1994. In presenting the foregoing matters as well as all future matters concerning the Companies to the Commission, the Commission finds and concludes that the Public Staff should be requested to specifically address how any such matter presented, with financial implications, may affect the financial viability of the Applicant and the Mid South consolidated companies, and the Public Staff should be requested to specifically state its recommendation as to how the Commission should proceed with respect to the disposition of each matter presented.

Finally, because of deficiencies that continue to exist with respect to the Companies accounting and financial reporting practices as identified by the Public Staff in its report, the Companies' potential CIAC income tax liability, and in view of the financial uncertainty that has surrounded the Companies in the recent past, including concern relating to the credibleness of their financial statements, the Commission finds and concludes that a moratorium should be placed on the granting of additional franchises to Mid South or to a Mid South affiliate pending further Order of the Commission. However, in order to give appropriate notice of the institution of the aforesaid moratorium to affected parties thereby allowing for its effect to be incorporated into the planning process, pending applications for franchises filed with the Commission on or before the issuance date of the Commission's instant decision will be excluded from said moratorium.

In setting forth its rationale in support of the findings and conclusion reached herein, the Commission has been less specific than it might otherwise have been due to the fact that the Public Staff's report, the Companies' response

to that report, and certain other information and data considered germane by the Commission in reaching its decision in these matters were filed or otherwise provided under proprietary cover or under terms of a confidentially agreement(s). While the Commission firmly believes that the discussion of the facts and circumstances underpinning its instant decision as presented herein more than adequately justifies and supports the action it has taken, the Commission hereby advises the parties that should they agree to release the Commission from the aforesaid conditions of confidentiality and should they so request the Commission will address the details underlying its decision as reflected herein with greater specificity.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's investigation into the financial fitness of Mid South Water Systems, Inc. and its affiliated companies shall be, and hereby is, suspended, including any further investigation into the personal financial fitness of Mr. and Mrs. Weber; provided, however, that this docket shall remain open pending further action by the Commission.

2. That the Public Staff shall be, and hereby is, requested to monitor the financial condition(s) of the Companies on an ongoing basis and to report its findings to the Commission as circumstances may require but in no event no less often than annually. In conjunction with its oversight in that regard, the Public Staff is requested to audit the Companies' 1993 annual reports, filed pursuant to Commission Rule, and to report its findings to the Commission in its 1994 report on the Companies overall financial condition(s) as heretofore requested. The Public Staff is requested to file its annual report concerning the Companies' overall financial condition(s) on or before September 30 of each year.

3. That applications now before the Commission whereby Mid South or an affiliate is seeking a new franchise(s) or the transfer of an existing franchise(s), specifically Docket No. W-720, Sub 117, Docket No. W-1027, Docket No. W-720, Sub 100, and Docket No. W-278, Sub 2, shall move forward toward resolution as expeditiously as possible.

4. That the Public Staff shall be, and hereby is, requested to place the matters set forth in Ordering Paragraph No. 3 above, without regard to their current status, on the agenda for the Commission's regularly scheduled Monday morning conference as soon as reasonably possible but in no event later than May 16, 1994.

5. That with respect to all matters coming before the Commission concerning Mid South or an affiliate, including those matters here under review, the Public Staff shall be, and hereby is, requested to specifically address how any matter with financial implications may affect the financial viability of the Applicant and the Mid South Group. Further, the Public Staff is requested to specifically state its recommendation as to how the Commission should proceed with respect to the disposition of each matter presented.

6. That a moratorium shall be, and hereby is, placed on the granting of additional franchises to Mid South or to a Mid South affiliate pending further Order of the Commission. Applications for franchises filed with the Commission on or before the issuance date of the Commission's instant decision shall be, and hereby are, excluded from said moratorium.

7. That the Commission will consider lifting the aforesaid moratorium (a) upon a showing by Mid South and its affiliated companies that their books, records, and financial reports have been brought into compliance with generally accepted accounting principles and the rules and regulations of this Commission and that those records and reports will be maintained in conformity with said requirements on a continuing basis and (b) upon a showing by Mid South and its affiliated companies that their financial viability can reasonably be expected to consistently continue indefinitely.

8. That Mid South and its affiliated companies shall hereafter comply in full with the provisions of G.S. 62-160 regarding permission to pledge assets and that future violations of said statute may result in fines and/or other penalties.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of May 1994.

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

Commissioner Charles H. Hughes dissenting in part and concurring in part

COMMISSIONER CHARLES H. HUGHES, DISSENTING IN PART AND CONCURRING IN PART. I respectfully dissent from the Decision of the Majority (1) to the extent that the Decision suspends the Commission's investigation of the financial fitness of Mid South and its affiliates, including any further investigation into the personal financial fitness of the Webers, (2) to the extent that the Majority's Decision provisionally finds the Companies to be financially fit, and (3) to the extent that the Majority's Decision allows matters in certain other dockets, which essentially have been held in abeyance pending resolution of matters here under review, to go forward. I would have proceeded with the investigation of the personal financial fitness of the Webers; I would not have found the Companies to be financially fit, provisionally or otherwise; and I would have continued to hold the aforementioned matters in abeyance pending final resolution of all concerns pertaining to the financial fitness of the Companies and the Webers.

This Commission, as indicated in the Majority's Decision, has for several years had great concern regarding the financial fitness of the public utilities comprising the Mid South Group. That concern has been unambiguously and unequivocally articulated in numerous Commission Orders. Indeed, the Majority, in fact, in its subject Decision has continued to express significant misgivings concerning the Companies' financial fitness, and justifiably so.

For example, the Majority states in its Decision that it will consider lifting the moratorium it has placed on the granting of additional franchises to Mid South or to a Mid South affiliate "...(a) upon a showing by Mid South and its affiliated companies that their books, records, and financial reports have been

brought into compliance with generally accepted accounting principles and the rules and regulations of this Commission and that those records and reports will be maintained in conformity with said requirements on a continuing basis and (b) upon a showing by Mid South and its affiliated companies that their financial viability can reasonably be expected to consistently continue indefinitely."

Thus, in essence, the Majority acknowledges that the Companies are not in compliance with the General Statutes and Commission Rules. However, the Majority has indicated that it will overlook the Companies' infractions in those regards with respect to applications for franchises now pending before the Commission, since such applications have been specifically excluded from the Majority's moratorium. As previously stated, I would not have done so.

G.S. 62-35 gives the Commission specific discretionary authority to establish a system of accounts for utilities to follow and G.S. 62-36 confers upon the Commission the authority to establish annual reporting requirements for regulated public utilities. Commission Rule R7-35 and Commission Rule R10-21, respectively, prescribe specific systems of accounts for water and sewer utilities to follow. Commission Rule R7-3(b) and Commission Rule R10-3(b), respectively, prescribe certain annual reporting requirements for water and sewer companies. Clearly, the Companies continue to remain in violation of those Statutes and Rules.

Furthermore, I cannot overlook other findings of the Majority such as its findings that the Companies are still not in compliance with the Commission's rules and practices with respect to gross-up of CIAC and that the Companies have a potential CIAC income tax liability. Further, I believe that the Majority's forgiveness of the Companies' having pledged assets without first having obtained Commission approval, with no fine for having done so, sets a terrible precedent.

Finally, I am concerned that the Majority is placing great weight on the fact that the Public Staff's financial fitness recommendation is stated unequivocally and unambiguously; particularly in view of the fact that the Public Staff's conclusion of financial fitness turns on the credibleness of unaudited financial statements of which it has made only a "cursory review" and which have not been prepared in accordance with generally accepted accounting principles and the rules and regulations of this Commission.

As long as the foregoing conditions continue to exist, I would grant no further franchises to Mid South or to a Mid South affiliate. In my view, the modest improvement in the Companies' financial posture(s) as attested to by the Public Staff in its report in no way warrants or justifies the action taken by the Majority.

I concur in and fully support the other findings and conclusions reached by the Commission.

Commissioner Charles H. Hughes

DOCKET NO. W-100, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking to Revise Certain Rules and Regulations Related to Water and Sewer Utilities	))))	ORDER AMENDING RULES R1-15(1), R7-7, R7-10, R7-12, R7-13, R10-7, AND R10-10

BY THE COMMISSION: The Commission is of the opinion that certain of its rules and regulations related to the water and sewer industry should be revised and updated. The changes are not controversial and, in the most part, are to reflect changes that have previously occurred in the industry.

IT IS, THEREFORE, ORDERED that the following rules and regulations of the Commission are amended as shown below effective the date of this Order.

Rule R1-15. Investigation and suspension proceedings.

(1) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas, water, or sewer service shall notify its customers proposed to be affected by such increase of such filing within 30 days of such filing, which notice shall state that the Commission shall set and shall conduct a trial or hearing with respect to such filing or application within six months of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the Commission.

Rule R7-7. Adequacy of Facilities.

All water production, treatment, storage, and distribution facilities shall comply with the rules of the North Carolina Department of Environment, Health and Natural Resources and the rules of other state and local governmental agencies governing public water systems.

Rule R7-10. Cross Connections.

No physical connections between the distribution system of a public potable water supply and that of any other water supply shall be permitted unless such other water supply is of safe, sanitary quality and has been approved by the North Carolina Department of Environment, Health and Natural Resources and other state or local governmental agencies with rules pertaining to cross connection.

Rule R7-12. Quality of water.

(a) Every water utility shall comply with the rules of the North Carolina Department of Environment, Health and Natural Resources and the rules of other state and local governmental agencies governing purity of water, testing of water, operation of filter plant, and such other lawful rules as those agencies prescribe.

(b) All water being supplied by water utilities subject to the jurisdiction of the North Carolina Utilities Commission is required, as a minimum, to meet the standards of water quality as set forth in the United States Safe Drinking Water Act enacted in 1974 and as amended in 1986; provided, that upon application in writing to the Commission and approval of the Commission in writing, a water utility may have a specified deviation or tolerance from the mineral content requirements of said United States Safe Drinking Water Act enacted in 1974 and as amended in 1986, based upon regional water characteristics or conditions and upon the economic feasibility of providing treatment to the water or of locating alternate sources of water.

Rule R7-13. Pressure requirements.

Each water utility shall maintain an adequate pressure for its distribution system as required by the North Carolina Department of Environment, Health and Natural Resources and any other state or local governmental agencies with rules pertaining to pressure requirements.

Rule R10-7. Adequacy of facilities.

All public sewer utilities shall comply with the rules of the North Carolina Department of Environment, Health and Natural Resources and the rules of other state and local governmental agencies in the design, construction, operation, and maintenance of its sewer facilities and in the collection, treatment and discharge of the sewage being treated.

Rule R10-10. (Rescind)

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

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Mrs. Delora Dennis, Route 2, Box 478, Brevard, North Carolina, 28712 and Other Customers of Haywood Electric Membership Corporation, Complainants v. Duke Power Company and Haywood Electric Membership Corporation, Respondents and Thomas W. McGohey and Other Customers Of Haywood Electric Membership Corporation, 505 Connestee Trail, Brevard, North Carolina 28712, v. Duke Power Company and Haywood Electric Membership Corporation, Respondents and Carmeletta Moses, Route 68, Box 326 Tuckasegee, North Carolina 28783, Complainant v. Duke Power Company and Haywood Electric Membership Corporation, Respondents	ORDER PROVIDING FURTHER TIME TO RESOLVE CUSTOMER COMPLAINTS AND REQUIRING ADDITIONAL PROGRESS REPORTS

HEARD IN: Brevard College Auditorium, Brevard, North Carolina on October 28 and 29, 1993

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

APPEARANCES:

FOR HAYWOOD ELECTRIC MEMBERSHIP CORPORATION:

Jerry W. Amos, Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 26000, Greensboro, North Carolina 27420

FOR N.C. ELECTRIC MEMBERSHIP CORPORATION:

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

FOR DUKE POWER COMPANY:

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

FOR NANTAHALA POWER & LIGHT COMPANY:

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

FOR DELORA DENNIS, THOMAS MCGOHEY, ET AL:

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

FOR THE USING AND CONSUMING PUBLIC:

Victoria O. Hauser, Staff Attorney, PUBLIC STAFF-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 30, 1990, a complaint was filed against Haywood Electric Membership Corporation (Haywood EMC) by Delora Dennis and approximately 640 other Haywood customers alleging they were receiving inadequate service. On September 12, 1990, Thomas McGohey and approximately 229 other Haywood customers filed a similar complaint against Haywood EMC. In January 1991, Carmeletta Moses filed a similar complaint against Haywood, and on February 20, 1991, Forrest Cole and approximately 60 other Haywood customers filed a similar complaint against Haywood. Although the complaints concerned the service of Haywood, the Commission also served the complaints on Duke Power Company and Nantahala Power & Light Company as additional Respondents since the Complainants were seeking service from Duke or Nantahala.

On October 5, 1992, the Commission issued its Order Reassigning Electric Service for M-B Industries Plants, Providing Time To Resolve Customer Complaints Pursuant to Revised Work Plan, and Requiring Progress Reports. Highlights of the Order are:

(1) The October 5 Order concluded that certain customer service practices of Haywood were arbitrary and discriminatory; that the weight of evidence pointed to a widespread voltage level problem; that some Haywood customers experience excessive outages; and that the primary fault for the Haywood outages lies with Haywood and not with its suppliers. The Commission cited the similarity of geography, weather, etc. across the service territories of Haywood, Duke, Nantahala and Carolina Power & Light Company (CP&L) in the area, and the lack of complaints from customers of Duke, Nantahala and CP&L versus the many complaints from customers of Haywood.

(2) The October 5 Order concluded that Haywood EMC is experiencing difficulties inherent in its decision years ago to obtain sources of supply at multiple distribution level delivery points in difficult terrain instead of obtaining a strong transmission level supply. Such a configuration allowed Haywood to avoid the expense of building a strong internal transmission system but resulted in a less reliable system.

(3) The October 5 Order concluded that Haywood should be given a reasonable amount of time to implement the changes it proposed to make, including new management and a revised 1991-1993 work plan. The Order concluded that the new management of Haywood is committed to resolving the problems, and it observed that the effectiveness of the new management would depend greatly upon the support it receives from the Haywood Board of Directors and upon the willingness of the Board to fund the needed improvements.

(4) The October 5 Order concluded that the proceeding should remain open for at least two years in order to monitor the effectiveness of Haywood's two-year improvement program, and that the Commission should schedule another public hearing after approximately one year in order to receive more testimony and evidence as to the effectiveness of Haywood's efforts to resolve the customer complaints.

(5) The October 5 Order concluded that responsibility for electric service to M-B Industries plants served by Haywood EMC should be transferred from Haywood to Duke Power. It stated that transferral of the M-B Industries plants would relieve the load on Haywood's troubled Quebec substation; and it would make clear to Haywood, and to Haywood's Board of Directors, the seriousness with which the Commission views the service problems that have been occurring, and the Commission's determination to press for a resolution of the service problems throughout the Haywood service areas.

On December 4, 1992, the Public Staff, Haywood EMC and NCEMC appealed the October 5 Order to the North Carolina Court of Appeals. On April 8, 1993, the Commission issued its Order Approving Duke Power Company's Service Proposal to transfer electric service to M-B Industries from Haywood to Duke. On May 7, 1993, Haywood EMC appealed the April 8 Order to the North Carolina Court of Appeals. All appeals of the October 5, 1992, and the April 8, 1993, Orders are still pending.

On July 12, 1993, Duke notified the Commission that Duke began serving M-B Industries on June 26, 1993.

On September 21, 1993, the Commission issued its Order Scheduling Further Hearing in Brevard, North Carolina, on October 28-29, 1993, to receive testimony from Haywood and its customers as to the effectiveness of Haywood's improvement program for addressing and resolving customer complaints. Both Complainants and the Public Staff requested a continuance of the hearing and Haywood opposed a continuance. On October 12, 1993, the Commission issued its Order Denying Motions for Continuance.

The matter came on for public hearing at the time and place appointed. The following customers residing in the service area subject to this complaint testified against Haywood: Odena J. Miller, Ronald Reid, Michael Daniel Owen, William Dennis, Joseph Gerardi, Mark Morrow, William Burrell, and Don Stinchcomb as well as the named Complainants, Delora Dennis and Thomas W. McGohey. Ed Morrow and Richard Smith, who are not customers, and Larry C. Bible, who is a discharged employee of Haywood, also testified against Haywood at the request of the Complainants. The following customer residing in the service area subject to this complaint testified in favor of Haywood: William Reid.

Haywood presented the testimony of E. L. Ayers, Executive Vice President and General Manager of Haywood, and Dr. William H. Oglesby, a member of Haywood's Board of Directors. In addition, the following customers residing in Buncombe and Haywood Counties also testified in favor of Haywood: Julian P. Myrick, Kenneth E. Thomas, Bob Sherman, Richard Alexander, Kenneth Eugene Kinsley, Max O. Cogburn, and Mrs. W.W. Case.

Based upon the evidence adduced at the hearings, the arguments of counsel, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Haywood is a duly constituted electric membership corporation in the State of North Carolina established pursuant to Chapter 117 of the General Statutes of North Carolina. It provides electric service to portions of Buncombe, Haywood, Jackson, Macon, and Transylvania Counties, with the bulk of its service being provided in Haywood and Transylvania Counties.

2. Haywood is subject to the jurisdiction of the North Carolina Utilities Commission under G.S. 62-110.2(d)(2) which gives the Commission the authority to reassign electric service territory from one provider to another upon a finding that service to a consumer by the electric supplier which is providing the service to that consumer's premises is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to that consumer are unreasonably discriminatory.

3. Duke, Nantahala, and CP&L are engaged in the generation, transmission, and distribution of electric power to the public for compensation in North Carolina. They are public utilities as defined by G.S. 62-3(23)(a)(1) and are electric suppliers as defined by G.S. 62-110.2(a)(3). The Commission has jurisdiction over the extension of electric power service by these utilities to meet the reasonable needs of the electric consumers on the facts of this case and has jurisdiction over the subject matter of the complaints.

4. The Complainants are Haywood member-owners who reside in Transylvania County, North Carolina. As Haywood member-owners, the Complainants have standing under G.S. 62-110.2(d)(2) to seek reassignment to another electric supplier in the event that the service which they receive from Haywood is inadequate or undependable or that Haywood's rates, conditions of service or service regulations, as applied to the Complainants, are unreasonably discriminatory.

5. This proceeding is before the Commission on petition of certain customers of Haywood for reassignment to other electric suppliers on the grounds that the electric service they receive from Haywood is inadequate and undependable and that the conditions of service and service regulations as applied to them are unreasonably discriminatory.

6. Haywood has made some improvements in its customer service and in providing that service on a uniform basis.

7. Haywood has made some improvements in the voltage levels provided to Complainants. However, residents of some areas continue to receive voltage levels that are outside the voltage standards set by Haywood itself as well as the standards of the Rural Electrification Authority (REA) and this Commission.

8. Haywood has made some improvements in its outage record, including improvements in its line clearing procedures and improvements in its ability to mitigate the impact of lightning strikes.

9. Haywood has instituted new management and added professional engineering expertise to its staff.

10. Haywood has received approval from REA for a 1991-93 Construction Work Plan which contains further actions that will "improve its reliability of service to members through the use of sound engineering and economical judgements."

11. In the past, the service provided in Buncombe and Haywood Counties was superior to the service provided in Transylvania County to the point that it reached the level of discrimination.

12. The difficulties that Haywood has experienced, and is continuing to experience to a lesser degree, in providing adequate and dependable electrical service to all consumers in the complaint area, are not the fault of Duke Power Company or Nantahala Power & Light Company.

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

These findings are basically jurisdictional and informational in nature and essentially non-controversial.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 - 12

The testimony of the various witnesses who appeared at the October 1993 hearing may be summarized as follows:

Odena Miller of Lake Toxaway testified that on July 3, 1993, her television went out due to a power surge. She testified that she contacted Wilma Corbin at Haywood who in turn got in touch with Haywood's liability insurance carrier. She further testified that the insurance carrier had called her at the request of Haywood but that she had not yet been paid for any damages. She also testified that her lights have gotten bright and then dimmed during the last year or more "half a dozen times, not real often."

Ed Morrow, manager of M-B Industries and a resident of Brevard, testified that he came to the hearing at the request of Delora Dennis to make a statement. He testified that electric service from M-B Industries was transferred from Haywood to Duke on June 25, 1993, and that neither he nor M-B Industries is presently a customer of Haywood. Witness Morrow testified that, although Haywood's service had improved in the aftermath of the October 5, 1992, Order, he would grade its improvement as moving from an "F" to a "D." He said that in the months before switching its electric service to Duke, Mitchell-Bissette had had two brief outages and experienced other problems which disrupted its manufacturing processes regularly. Since switching to Duke, M-B Industries had "not had a spike, an outage, a problem with harmonics."

Ronald Reid of Lake Toxaway testified that on July 3, 1993, his refrigerator and freezer were making noises and his voltage meter read 80 to 87 volts for a period of 25 minutes. He testified that on July 5, 1993, his lights dimmed and the voltage meter read 32 to 40 volts for a period of 32 minutes. He also testified that although both Wilma Corbin at Haywood and Haywood's insurance carrier had informed his mother-in-law that she would be paid for any damaged food, she had not been paid as of the date of the hearing. Witness Reid further complained that he still has blips where the digital timers in clocks, VCR, microwave and other appliances blink. He testified that his transformer was replaced in July, but contends that he still has problems. He said that although he had tried to report situations when he had low voltage, he never could get a call through. He said that after the July 1993, outage, he went to the campground where one of the camps' AC and DC converters was burnt out and observed that the SCR's were burnt out in it and that regulator circuits were bad. He testified that these AC and DC regulators should not be operated at less than 90 volts.

Michale Daniel Owen of Rosman testified that he had suffered from the same problems experienced by M-B Industries but had not been reassigned to another electric supplier. Witness Owen said that the conditions at the May 21-22, 1991, hearing had not changed in the past year. He contended that his lights still go dim, brighten or flicker, and that although Haywood ran another line into his house it didn't help.

Julian P. Myrick of Clyde testified that he has been a developer of a subdivision known as Hurricane Ridge Limited for 21 years, and that in the 21 years on Haywood's system, he has never had a complaint from a homeowner against Haywood. He stated that Haywood's response time has always been above reproach, that the homeowners are completely satisfied with the service of Haywood, and that he does not believe that any homeowner in his subdivision would ever want to change from Haywood's service. He testified that one Friday night before Christmas, his transformer blew, and that at midnight, when the temperature was 11 degrees above zero, Haywood's employees installed a new transformer. He said

that he has never had low voltage or burned out appliances, and that he would give Haywood an "A" rating for service.

Larry C. Bible of Waynesville testified that he had been asked to testify by the Public Staff and Delora Dennis. He stated that he was terminated from Haywood on October 28, 1992, for refusing to do maintenance on a live 7,200 volt primary pole that, among other things, serves the Highway Patrol and Rescue Squad, or to assist another lineman in the work. He testified that he refused to do the work because he believed it was unsafe and, when he worked with Duke, "B" linemen were not allowed to work on hot primary lines off the pole. On cross-examination, witness Bible testified that he had been reprimanded for insubordination on one earlier occasion when he refused to climb a tree under circumstances where he had no tree climbing experience, and where the tree was quite large and was going to be side trimmed. He testified that the practice in which he refused to engage was considered inappropriate for even Class "A" linemen employed by Duke. He testified that "the tree was not quite all of the issue at the time, and I told him that he could either move me to another crew, he could fire me, or he could get my present foreman off of my back."

William Dennis, the husband of Complainant Delora Dennis, of Brevard testified that since the last hearing a primary line dropped in front of his house and caught the woods on fire. He said that there was also a voltage variation on April 11 from 104 to 126. He also said that he had low voltage on July 3, 4, and 5 of this year.

Richard Smith of Susquehanna in Connestee Falls is a realtor who works in Transylvania County. He is not a customer of Haywood. He testified that in his opinion being a customer of Haywood impedes your ability to sell property.

Kenneth E. Thomas of Canton testified that he has been employed with Haywood for 12 years and was a member for approximately 9.5 years. He stated that he is an electrical contractor holding the highest classified license you can hold in the unlimited classification. He testified that Haywood's employees took great pride in their work, that their morale had improved dramatically in recent years, and that they understood that good service involved more than making sure that the lights were on. He said that Haywood's lineman were well trained in the construction and maintenance of power lines, that he would put any of Haywood's crews or service men up against any power company in the Southeast, and that the work performed by Haywood employees is good quality because of a continued emphasis upon service quality by the Cooperative's management. He also said that Haywood employees out-performed those of neighboring investor owned utility companies during recent snow storms. Witness Thomas testified that Haywood's employees had always worked "hot" lines when appropriate, that a lot of the lines are worked hot off the pole because they cannot be reached by buckets, and that such a practice was neither unsafe nor unusual. He denied that the practice of working "hot" primary lines had been instituted in recent years and claimed that Haywood employees had engaged in this practice as early as 1985.

Joseph Gerardi of Connestee Falls Subdivision in Transylvania County testified that he had problems with frequent power "blinks" in his house requiring him to reset his digital clocks, microwave, VCR, and clock-radio. He said that he runs a small investment business from his home and relies upon a telephone message device in order to remain in touch with his clients. He said

that on many occasions, he lost messages when he went out of town because of deficiencies in Haywood's service. Witness Gerardi testified that he lost all of his messages and redirects when he was away from home for a ten-day period in November 1992; that he lost all of his messages and redirects during a month-long absence in January 1993; and that he lost his "outgoing messages'" and his "redirects" during an absence which lasted from July 1, 1993, through July 14, 1993. He said that he lost the memory in his computer during a "power drop" on June 1, 1993, that in August 1993, his programmable phone was damaged as the result of what he believed to be a power surge; and that a power outage lasting approximately one hour occurred on October 19, 1993. Witness Gerardi testified that many of the homes in Connestee Falls have smoke alarms attached to the power system, and he described instances when the smoke alarms went off as the result of power surges or similar occurrences.

Bob Sherman of Canton testified that he was concerned that if some customers were moved to Duke, the remaining customers would pay higher bills. He stated that his service over the last ten years, including the last year and a half, has been exceptional. He said that the only times he has lost power in the past ten years were by acts of nature, and that during the storm of the century, he did not lose power. He said that he has several computers, a satellite dish, modems, microwave and electronic thermostat; and he has not lost power in the past year nor has he experienced any outage, brownout or surge. He stated that computer magazines discuss surge protectors for different parts of the country. He also questioned if people have looked at the wiring in their homes. He said he was told to wire his house with separate lines for his computers, which he did, and he has not had any problems.

Richard Thomas Alexander of the LaCruso community in Haywood County testified that he serves as Haywood's liaison with members of the LaCruso Development Association, and that the service which he had received from Haywood had always been good. He said that the only outages which he could recall in recent years had occurred during a severe electrical storm in July 1993, and after an error by a bulldozer operator approximately six weeks before the hearing. Witness Alexander stated that he had observed an improvement in the attitude of the management and the servicemen who are really "breaking their butts" to come and do service.

William Reid of Transylvania County testified that he was a high school history teacher with considerable interest in the history of the rural electrification movement. He claimed to have experienced four power outages within recent months, and he seemed to blame most, if not all, of them on Duke. Witness Reid said he has a "modest amount of electronic equipment," and he recommended simply taping a piece of paper over the digital clock on VCRs in order to avoid annoyance from the flashing lights which follow "blips" or "blinks" in electric service. He said that his VCR blinks once in a while and that he knows of this blinking because at night there is a less annoying glow behind the piece of paper that he folds over the digital clock on his VCR. He testified that the fact that digital equipment did not perform well in Haywood's territory had more to do with the equipment's inadequate design than any deficiency in the quality of Haywood's service.

Mark E. Morrow of Lake Toxaway is the son of Ed Morrow, the manager of Mitchell-Bissette Industries. Mark E. Morrow testified that maybe four or five times a month the digital clock in his bedroom blinks at night. He also said that on one occasion, an electric ceiling fan in his residence had continued to operate even after he turned off the power switch controlling its operations. Witness Morrow testified that he had not noticed any material improvement in the quality of his electric service during the past year.

Kenneth Eugene Kinsley of Candler in Buncombe County testified that he came to compliment Haywood for the service they have given him. He said he had not experienced any significant outages in the last year even though there had been a significant snowfall there, and that his daughter only lost power for 15 minutes.

Max O. Cogburn of Candler in Buncombe County testified that the service he has always received has been excellent and had been good for the last year. He testified that he had only lost service for approximately five hours during the March 1993, blizzard; and that his three sons, who live in Asheville and receive power from CP&L, were without power for several days.

William Burrell of Sapphire is a customer of Haywood who operates a trout farm in the vicinity of his residence. He testified that, since the March 1993, storm, he had set his clocks many times because they were off although he had not kept track of when the power was off. He said that on July 3, 1993, he noticed that the water for his pump had stopped running, ascertained that his lights and other electric equipment seemed to be operating properly, attempted to call Haywood, and learned that the three-phase power was out. He said that approximately one hour later, the rest of the power went out. He said that ultimately the main breaker on his three-phase power had gotten so hot that you couldn't handle it with your hand, that both breakers ultimately burned out, and that the 30 horse-power pump which he used to pump water to his trout burned up. Witness Burrell testified that he lost more than $200,000.00 worth of fish as a result of this outage. He testified that there had not been any material improvement in the quality of Haywood's service in the past year and that he had not received compensation for the loss of his trout.

W. W. Case of Candler in Buncombe County testified that she had not lost any frozen food, had not suffered from cold, and had not experienced damage to any of her appliances. She described the service which she received from Haywood as being as good as any electric company could provide.

Don Stinchcomb of the Connestee Falls community in Transylvania County testified that he had noticed some improvement in the quality of Haywood's service, although the extent of this improvement was a "relative" matter. He said that although he had not counted as many "blips" in more recent times as he had in 1991, such "blips" continued to occur. He said he was not satisfied with the quality of Haywood's service compared to what he was paying for it.

Thomas W. McGohey of the Connestee Falls community in Transylvania County testified that Haywood's service was slightly better but not significantly better than the time before. He said that although he did not keep a dossier on every blip or every time that service goes out, such events had occurred on a number of occasions in the past year. He said that the extent to which he experienced

"blips" at his residence varied. Generally speaking, some period of time would pass with no "blips;" then there would be a period when such "blips" occurred fairly frequently. Witness McGohey also described certain difficulties which he had experienced with his bill after his meter was changed. He said that he objected to both Haywood's rates and its service quality, that he had been active in seeking support for his efforts to obtain redress for the deficiencies in Haywood's service and rates, and that he believed that Haywood's board should sell the entire cooperative to Duke or some other electric supplier.

Delora Dennis of Brevard in Transylvania County testified that she has continued to experience "blinks' and outages at her residence since May 21-22, 1991. She described an occasion on April 11, 1992, when her voltage fell to 104 and then shot back up to 126. She said that on another occasion the primary line in front of her house fell down after Haywood had done work on that line and that the line remained on the ground in a "live" condition for some time. Witness Dennis also described deficiencies in the service which Haywood provided to her mother and to a beauty parlor which she patronized. She testified that she had been active in stimulating public interest in her efforts to obtain reassignment to a different service supplier, that she did not like Haywood's rates, and that the entire Cooperative should be sold.

Dr. William H. Oglesby, a member of Haywood's Board of Directors, testified that as a result of his dissatisfaction with Haywood's service in 1991, he decided to run for election on Haywood's Board of Directors. He testified that Tom McGohey and Delora Dennis took out a half-page newspaper advertisement to support his nomination and election. He said that after he was elected, he telephoned Tom McGohey to invite him to a Board meeting and was told that Mr. McGohey didn't want to have anything to do with the Board. He said that he also telephoned Delora Dennis who told him that he just didn't understand that the Complainants don't care how much Haywood improves service or reduces rates, the Complainants want to abolish Haywood. He testified that Haywood has made a number of changes to improve its service and that in his opinion, the majority of Haywood's members are very happy about these changes.

E. L. Ayers, Executive Vice President and General Manager of Haywood, described Haywood's service area, provided a procedural background for these proceedings, described the service problems he encountered upon coming to Haywood and narrated the action taken by Haywood to address those problems. He testified that he does not believe Duke Power Company or anyone else can do a better job of serving Haywood's customers.

In addition to the testimony of witnesses, the parties offered briefs and proposed orders summarizing the positions of the parties as follows:

Haywood EMC maintained that it is now a different company from the one that received the original complaints; that it has recently elected six new board members out of the nine total; and that it has employed a new General Manager, a new registered engineer to manage engineering requirements, and a new person whose expertise is in communications and customer relations. Haywood pointed out that it has adopted standardized service rules to eliminate discrimination among customers; it has improved customer relations and communications by means of surveys, questionnaires and follow-up letters; it has conducted customer relations seminars for its employees; and it has replaced those employees who

were causes of poor customer relations. Haywood also pointed out that it has improved right-of-way clearance, installed additional lightning protection on its system, replaced all inadequately sized transformers and service lines, and has taken steps to obtain improved power quality from its suppliers. Haywood still maintains that a greater number of its outage hours were due to suppliers' outages than to its own distribution outages (although the largest number of outage hours since the last hearing in April 1992 was due to the March 1993 "Storm of the Century"). Haywood contends that Duke Power Company assures it that Duke is not currently pursuing the purchase of any portion of the Haywood system and that Duke knows of no circumstances that would cause it to pursue such an interest.

Haywood EMC urged the Commission to dismiss the complaints against it.

Complainants maintained that Haywood's service to its customers in Buncombe and Haywood Counties has been exemplary, but that Haywood's service to its customers in Transylvania County continues to experience problems. Complainants cited Haywood manager Ayers' own assessment at the April 1992 hearing that Haywood was essentially two different cooperatives; one focused on the Waynesville District and one focused on the Lake Toxaway District. They cited Ayers' testimony that the Waynesville District was supplied from the transmission system of CP&L while the Lake Toxaway District was supplied from the distribution systems of Nantahala and Duke. Complainants contend that Haywood refuses to disclose its membership list to existing members (thereby inhibiting members from campaigning for election to the Board), that the Board refused complainants access to the Board's minutes for the previous two years, that no member could attend a Board meeting without advance approval, that no more than three members could attend any Board meeting, and that there is only one Board member from Transylvania County although one third of the customers live there.

Complainants also maintain that Haywood has failed to make satisfactory progress on its 1991-1993 Work Plan by failing to even begin work until after the Commission's October 5, 1992, Order was issued, and that the work would not be complete until January 1995.

Complainants urge the Commission to reassign the Transylvania service area of Haywood EMC from Haywood to Duke.

Duke Power continues to maintain that it provides an adequate level of service to the Haywood EMC delivery points of North Carolina Electric Membership Cooperatives (NCEMC). (NCEMC is Duke's customer; not Haywood.) Duke points out: (1) that Haywood's three deliveries from Duke are distribution deliveries and not direct transmission deliveries (per NCEMC's choice); (2) that distribution deliveries are generally less reliable than transmission deliveries; (3) that Haywood delivery point No. 1 is served by a 44 KV distribution line from the Rosman Distribution Substation that also serves five other Duke customers; (4) that Haywood delivery point No. 2 is served by a separate 12 KV distribution line from the same Rosman Distribution Substation; (5) that Haywood delivery point No. 3 is served by a 12 KV distribution line from Tuckers Creek Distribution Substation at a point 7.7 miles from the substation, and that the line also serves more than 2,000 other Duke customers; (6) that since the last hearing (April 1992), there were essentially no outages on Haywood deliveries Nos. 1 and 2, and that the majority of the outages on Haywood delivery No. 3 (Connestee

area) were related to the March 1993 "blizzard of the century" snow storm; and (7) that Duke will soon begin serving Haywood delivery No. 3 from its new Rich Mountain Substation which is closer to the Connestee area. Duke indicated that pursuant to the Catawba Interconnection Agreement, Duke will consider adding transmission level deliveries to Haywood upon request by NCEMC should NCEMC ever desire to do so.

Duke urged the Commission to deny the complaints regarding Duke Power.

The Public Staff maintains that Haywood has made some improvements in its customer service and in the voltage levels provided to Complainants although some customers continue to receive inadequate voltage levels. It also cited improvements in the outage record and in line clearing and lightning protection. The Public Staff also maintains that the outages experienced by Haywood are not the responsibility of Duke or Nantahala.

The Public Staff recommended that the Commission find Haywood's service to be improved but not yet adequate for all customers; that at least one more public hearing should be held approximately one year later in order to further monitor Haywood's progress; and that the quarterly progress reports by Haywood should continue.

DISCUSSION

In its October 5, 1992, Order, the Commission focused on several main areas in determining that the electric service provided by Haywood to the Complainants and to the earlier public witnesses was inadequate, undependable, and that the conditions of that service were discriminatory. Having reviewed the evidence before it currently, the Commission is of the opinion that improvements have been made in each of the areas, and that Haywood needs to continue to improve in certain areas in order to provide all the Complainants and public witnesses with adequate and dependable service.

In the area of customer service, new rules and regulations have been enacted that appear to address the question of uniformity, as testified to by witness Ayres. However, the most telling proof of improvement in this area is the lack of extensive testimony by public witnesses similar to that received by this Commission in earlier hearings. It appears that Haywood is taking seriously the need to treat all customers in a similar fashion. There was also much less customer testimony reporting failure by Haywood to respond to customer complaints.

There is some evidence of improvement in voltage patterns, both from the voltage readings provided by Haywood and testimony by some of the customers that their service had in fact improved somewhat. The Commission did not, for the most part, hear a litany of electric equipment and household appliances that had been destroyed by excessive or inadequate voltage. However, some customers continued to testify of losing equipment, and several continued to report excessive blips and blinks.

It is the voltage patterns that cause the greatest concern to this Commission, and in which it finds evidence of continuing inadequate service in some areas. The January 5, 1993, Haywood report showed that 74 out of the 153

(48%) monthly maximum average voltage readings were over 126 volts, which is the Haywood maximum permissible residential voltage level. The April 5, 1993, report showed that 29 out of the 51 (57%) monthly maximum average voltage readings were over the 126 volt level. The July 5, 1993, report showed that 13 out of 39 were over the 126 volt level.

Further, Haywood continued, in September 1993, to report some voltage readings higher than the maximum allowable under its standards as well as the standards of REA and this Commission. The declining pattern of these excess voltages is indicative of real efforts to improve, but the continuing presence of the excess voltages indicates a need to make further improvements. It is the opinion of this Commission that Haywood should continue to report its voltage readings to the Commission on a quarterly basis for at least the next twelve month period, and that both the customers and the Company should have an opportunity to come before this Commission at the end of that time to discuss results and actual experience. As to power outages, the lack of extensive customer complaints is sufficient to support a finding of improvement. Haywood has begun improvements in its line clearing procedures and in its ability to mitigate the impact of lightning strikes.

The issue of suppliers' outages was dealt with in some detail in the October 5, 1992, Order. The Commission has not seen evidence since that time which persuades it that service to Haywood from its suppliers was unreasonable. While in no way diminishing any supplier's obligation to provide adequate service, the Commission does expect Haywood to build upon the actions taken by Haywood's suppliers during the past year that have resulted in upgraded facilities used to supply Haywood.

As to the Construction Work Plan, the Commission notes that its importance as set forth in the earlier Order stands, and concludes that the Company should appear before this Commission approximately one year from the date of this Order to report on its implementation. Haywood has received approval from REA for a 1991-93 Construction Work Plan which contains further actions that will "improve its reliability of service to members through the use of sound engineering and economical judgements."

An issue which arose at the October 28-29, 1993, hearing was the extent to which the quality of Haywood's service in Buncombe and Haywood Counties differs from that rendered in Transylvania County. The witnesses who testified before the Commission at the May 21-22, 1991, hearing concerning the quality of Haywood's service were nearly all residents of Transylvania County. The testimony given by these witnesses repeatedly described frequent outages, voltage surges, "blips" or "blinks," and other similar problems. The public witness testimony at the October 28-29, 1993, hearing was both similar to and different from the testimony at the May 21-22, 1991, hearing. To a considerable extent, the level of each witness' satisfaction with Haywood's service depended upon that witness' place of residence.

A number of Buncombe and Haywood County residents described Haywood's service in glowing terms. The witnesses who lived in Buncombe and Haywood Counties seemed to experience relatively few outages, voltage surges, "blinks," and other similar problems and were highly complimentary of the efforts made by Haywood employees to provide proper electric service. The testimony from

Transylvania County residents concerning the quality of Haywood's service stood in stark contrast to the testimony of these Buncombe and Haywood County residents. The complaints recited by Transylvania County residents was similar, if not identical to, the testimony which the Commission heard at the May 21-22, 1991, hearing. Thus, the record evidence establishes a dramatic difference between the quality of Haywood's service in Buncombe and Haywood Counties and the quality of Haywood's service in Transylvania County.

According to witness McGohey, Mr. Ayers admitted that Haywood had discriminated against Transylvania County shortly after becoming Haywood's general manager. At the April 20, 1992, hearing, witness Ayers testified that, at the time of his employment, Haywood was essentially two different cooperatives, one focused on the Waynesville District and the other focused on the Lake Toxaway District. The record establishes that Haywood had eliminated many of the customer service practices which led to complaints voiced during the May 21-22, 1991, hearing; had adopted revised service regulations intended to reduce employee discretion; and had made personnel changes intended to alleviate customer distrust of the Cooperative's employees in the Lake Toxaway District office. In addition, witness Ayers testified that Haywood had attempted to strengthen the supervision which the employees at the Lake Toxaway District office received from the central office in Waynesville. While many of these changes were welcome, they have not necessarily eliminated the continued disparity between the quality of service rendered to Haywood's member-owners in Buncombe and Haywood Counties and those in Transylvania County.

At the October 28-29, 1993, hearing, Haywood made some effort to explain this disparity. Witness Ayers testified that the power supplied to the Waynesville District was provided by CP&L at transmission voltages while the power delivered in the Lake Toxaway District was provided by Duke and Nantahala at distribution voltages. Witness Ayers described power delivered at distribution voltages as more "risky" than power delivered at the transmission level.

Certain information elicited during the cross-examination of witnesses Oglesby and Ayers is troubling to the Commission. Witness Oglesby admitted that the Cooperative was considering a change in its policy of refusing to disclose its membership list to existing member-owners. Complainants question how someone could effectively campaign for election to the Board of Directors without access to this membership list. Witness Oglesby testified that the Board had refused a request by Complainants for access to Haywood's minutes over a two-year period. He admitted that a member-owner could not attend a Board meeting without obtaining permission to do so in advance and that no more than three member-owners could attend any single meeting. Apparently, Haywood had never investigated whether larger sites were available to its Board; instead, its management stressed that there was no demand by the Cooperative's member-owners to attend Board meetings. Finally, there is only one Board member from Transylvania County even though approximately one-third of the Cooperative's members live there; and the Board had not acted on a recent proposal to increase Transylvania County's representation to a level more consistent with the number of member-owners residing there.

CONCLUSIONS

The Commission therefore concludes that service provided by Haywood EMC has improved, but that it has not improved to the extent necessary before this Commission can cease its oversight duties. Further, since the main source of information as to Haywood's failures in the area of service is from its customers, at least one more public hearing should take place in Brevard approximately one year after the date of this Order.

The Commission concludes that Haywood should continue to submit quarterly reports in this docket for at least one year after the date of this Order, and that a public hearing should be held at the end of that period for the purpose of taking testimony from the Company regarding its completion of the Construction Work Plan as well as service improvements, and to take testimony from Haywood and from the public regarding the adequacy of service provided by Haywood.

IT IS, THEREFORE, ORDERED as follows:

1. That a final decision on the complaints in this proceeding shall be deferred in order to provide Haywood EMC further opportunity to resolve its customer complaints. Haywood is hereby directed to continue to file with the Commission written progress reports describing the status of improvements to facilities and customer services of the Haywood system, and the status of customer response to the improvements. The progress reports shall be filed every three months until terminated by this Commission. Copies of the reports shall be served upon the Public Staff and any other party of record.

2. That future three-month progress reports shall include, in addition to those matters specified in this and previous Orders herein, discussions addressing the issue raised by Complainants regarding the Haywood Board of Directors' rules, and particularly the matter of there being only one director from the Transylvania County area.

3. That by further Order of the Commission in this docket, a public hearing shall be scheduled in Brevard approximately one year after the date of this Order to receive testimony from Haywood and from Haywood's customers regarding the Construction Work Plan and service improvements as well as other issues raised herein.

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

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. EC-51(T), SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Skiview Condominium Association, Complainant v. Mountain Electric Cooperative, Inc., Respondent	RECOMMENDED ORDER DENYING COMPLAINT

HEARD IN: Commission Hearing Room 2115, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 20-21, 1993

BEFORE: Commissioner Laurence A. Cobb, presiding; and Commissioners William W. Redman and Ralph A. Hunt

APPEARANCES:

For The Complainant:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269
Appearing for: Skiview Condominium Association

For The Respondent:

Robert F. Page and Marian R. Hill, Crisp, Davis, Page, Currin & Nichols, LLP, Suite 400, 4011 Westchase Boulevard, Raleigh, North Carolina 27607-3944
Appearing for: Mountain Electric Cooperative, Inc.

For The Intervenor:

Thomas K. Austin, Associate General Counsel, North Carolina Electric Membership Corporation, Post Office Box 27306, Raleigh, North Carolina 27611-7306
Appearing for: North Carolina Electric Membership Corporation

For The Public Staff:

A.W. Turner, Jr., Staff Attorney, Public Staff - N.C. Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
Appearing for: The Using and Consuming Public

BY THE COMMISSION: This matter was instituted with the filing of a complaint on February 16, 1993, by Skiview Condominium Association, Ernest C.

Bourne, President (Skiview)[1], against Mountain Electric Cooperative, Inc. (Mountain Electric). Skiview's complaint alleged that Mountain Electric has acquired a parcel of land contiguous to the Skiview condominium property for the purpose of constructing an electrical substation and that the individual condominium property owners (referred to for convenience as Complainants) will be severely and permanently damaged if the substation is constructed.

On April 14, 1993, Mountain Electric filed its answer to the complaint, together with a motion to dismiss asserting that the Commission lacks jurisdiction over the subject matter of the complaint. In its answer, Mountain Electric generally admitted that it intends to construct the substation but denies the allegations of improper conduct contained in the complaint. Also on April 14, 1993, North Carolina Electric Membership Corporation (NCEMC) filed a petition to intervene and a motion to dismiss the complaint for lack of jurisdiction. On June 11, 1993, the Commission issued an Order which denied the motions to dismiss, allowed NCEMC to intervene, and scheduled a hearing in this matter for August 12, 1993.

On July 9, 1993, Mountain Electric filed a motion to continue the hearing. Thereafter, on July 15, 1993, the Commission issued an Order continuing the hearing to a date to be announced.

On July 14, 1993, Skiview moved the Commission to enjoin Mountain Electric from constructing the substation pending final hearing and determination of this matter. In its motion, Skiview alleged that the Complainants have already suffered irreparable harm by the clearing of the land in question and will suffer further irreparable harm if Mountain Electric is allowed to proceed with construction. On July 23, 1993, Mountain Electric filed its response. On August 2, 1993, Skiview filed a reply. On August 27, 1993, Mountain Electric filed a rejoinder. On September 7, 1993, the Commission issued an Order denying Skiview's motion for injunctive relief and rescheduling the hearing in this matter for October 13, 1993. The hearing was subsequently rescheduled to the time and place cited above.

At the hearing, Skiview first presented the testimony of Complainants Richard H. Cook, Joseph R. Hendrick, III, James Labon McCoy, Jr. and Phillip J. Walker. Skiview subsequently tendered Complainant Ernest C. Bourne and engineer Gary W. Mullis as witnesses on its behalf. The Complainants were all members of Skiview and owners of condominium units. Witness Bourne is the current president of Skiview. Witness Mullis is the consulting engineer for Skiview.

Mountain Electric called eleven witnesses. The first four witnesses were Fred Pfohl, Mayor of the Town of Beech Mountain; Roger E. Bullock, Chairperson of the Beech Mountain Planning Board; Alfred W. Greene, Town Manager of the Town of Beech Mountain; and Vernon T. Holland, a real estate broker and contractor in the Town of Beech Mountain, who had previously served as the Town's original Mayor. Mountain Electric also offered the testimony of Dr. Philip Cole,

[1]The Commission allowed a motion to recognize that the official name of the association is Ski Slope I Condominium Association; however, consistent with the practice of the parties and all of the witnesses, the Commission will continue to use the name Skiview throughout this Order.

Professor and Chairman of the Department of Epidemiology, School of Public Health of the University of Alabama at Birmingham. Next, Mountain Electric offered the testimony of Stephen G. Whitley, Vice President of Transmission for the Tennessee Valley Authority (TVA); W. Steven Pitt, a civil engineer in the Siting and Environmental Design Department of TVA's Transmission and Engineering Construction organization; W. Allen Miller, a landscape architect in the Siting and Environmental Design Department of TVA; and M. David Bennett, an electrical engineer employed by TVA. Finally, Mountain Electric offered the testimony of Joseph A. Thacker, III, Director of Engineering and Operations for Mountain Electric, and Leland L. Smith, P.E., a consulting engineer retained by Mountain Electric.

Skiview then offered the testimony of witness Mullis in rebuttal, and the record was closed.

Based upon the foregoing, the testimony and exhibits presented at the hearing and the Commission's entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Skiview is an unincorporated association consisting of the owners of the six residential condominium units located at Beech Mountain, North Carolina and known as Skiview Condominiums. Five unit owners testified in these proceedings. All of such owners are permanent residents of Charlotte, North Carolina and occupy their units at Skiview primarily during vacation, holiday and weekend periods.

2. Respondent Mountain Electric is a non-profit, rural electric membership cooperative, which owns and operates an electric transmission and distribution system in northwest North Carolina and northeast Tennessee. Mountain Electric was organized and incorporated in Tennessee in March, 1941, and was subsequently licensed to operate in North Carolina as a foreign corporation. Mountain Electric's headquarters are located in Mountain City, Tennessee, and it has a district office in Newland, North Carolina. Mountain Electric presently serves approximately 25,600 customers, of whom 54% reside in North Carolina. Mountain Electric's service territory in North Carolina includes portions of Avery, Burke, McDowell and Watauga Counties, including the Town of Beech Mountain.

3. TVA is a corporate agency and instrumentality of the United States of America, created by the TVA Act of 1933. TVA presently supplies power to Mountain Electric under a contract dated May 8, 1985, as amended.

4. Mountain Electric has recognized the need to bring more electric power to Beech Mountain for many years. An earlier proposal led to a complaint proceeding before the Commission. Although the Commission ultimately decided that complaint in favor of Mountain Electric in January 1991, developments compelled Mountain Electric to abandon that proposal and evaluate other options.

5. Since 1991, TVA and Mountain Electric have been engaged in a joint project to construct a new transmission line and substation intended to bring additional electric power to Mountain Electric's service territory in and around Beech Mountain. According to present plans, TVA will construct a 5.75 mile, 161-

kV transmission line from a tap point in the existing TVA Elizabethton-Cranberry transmission line up to a substation to be located in the Beech Mountain area. Mountain Electric will construct the substation and related facilities to receive the transmission line power from TVA and distribute it to Mountain Electric's customers in Beech Mountain. Mountain Electric proposes to construct the substation on land adjacent to the Skiview Condominiums.

6. There is a critical need for the proposed transmission line and substation project in order to assure an adequate and reliable supply of electric power to Beech Mountain. Skiview does not challenge the need for the project.

7. Skiview contends that the substation should be located on a site other than the one proposed by Mountain Electric. Complainants' objections relate to the visual and economic impact of the substation on their condominium units and electromagnetic field (EMF) exposure.

8. Mountain Electric purchased the proposed site for $150,000 in May 1992 without resort to eminent domain proceedings.

9. Mountain Electric has had a new substation on Beech Mountain in its long-range plans for several years and was already familiar with available sites when it agreed to the joint project with TVA. Mountain Electric tentatively selected the proposed site and compared it with seven alternative sites that were potentially available using certain criteria.

10. Mountain Electric used reasonable and objective criteria in comparing the proposed site with other alternative sites, and Mountain Electric acted reasonably in applying the criteria. The proposed site meets the criteria best. In addition, the proposed site is supported by the Planning Board and Town Council of Beech Mountain.

11. Of the alternative sites reviewed, two are deemed unacceptable by both sides. The remaining five sites are not as good as the site proposed by Mountain Electric. The alternative site recommended by Skiview has disadvantages relating to cost, acquisition, size, terrain, shielding, and accessibility.

12. It has not been proven in this case that the EMFs which will be emitted by the proposed substation will cause a negative impact on public health and safety in the surrounding community. Construction of the TVA/Mountain Electric project will actually reduce the present level of distribution power EMFs in and around Beech Mountain.

13. The proposed site is reasonable and Mountain Electric acted reasonably in selecting it, taking into account environmental and community impacts, reasonable alternative sites, cost, and Mountain Electric's ability to serve its load efficiently.

14. Skiview has failed to carry its burden of proof. Based upon the evidence presented, Mountain Electric's selection of its proposed substation site was not an abuse of discretion or arbitrary or capricious. Mountain Electric should be allowed to proceed with the construction of the substation on its proposed site.

SUMMARY OF EVIDENCE

Four Skiview condominium owners testified as a panel--Cook, Hendrick, McCoy, and Walker. They live in Charlotte. Generally, they testified that the lot beside the Skiview building was wooded and provided a wind break. They did not learn of Mountain Electric's plan to build a substation there until January 1993 after trees were cut (without a permit). Mountain Electric gave them no notice. The proposed substation will destroy their view, create noise, and hurt the value of their property. One said that recent studies tend to indicate some health risk associated with electromagnetic field (EMF) exposures.

Bourne, also from Charlotte, owns one of the condominiums and is president of the condominium association. He heard about the substation in January 1993, and he contacted Mountain Electric in February 1993. He was told that the decision had been made. He was not allowed to appear before the Coop's Board, but he wrote a letter. The association filed this complaint on February 16, 1993. He criticized Mountain Electric's attitude. He thinks that there has been an effort to "put it close to those boys from down there in Charlotte and they won't even know it. . . " Mountain Electric and TVA made a presentation in 1992, but the notice intended for Skiview was mailed to First Union Bank.

Gary Mullis, an engineer, was retained by Skiview to review the site selection process and to evaluate alternative sites. He did not question the site selection criteria used by Mountain Electric, but he said that other criteria--such as the use of adjacent property--should have been considered. Further, he would have weighed some criteria differently, such as the need to be near the load center and the size of lot required. He felt that Mountain Electric selected the present site before looking at other sites and that this biased their process. The present site's most obvious disadvantage is the adjacent residential use. He considered Sites A through G. He recommended a terraced site combining alternative Sites D and E; this includes part of the ski resort parking lot.

Four people from the Town of Beech Mountain testified as a panel--Mayor Pfohl, Planning Board Chairman Bullock, Town Manager Greene, and real estate agent Holland. The Town has had random outages and needs additional power, the Town supports Mountain Electric's current plan, the Planning Board met three times in June, July and August 1992 to consider the matter and made its own review, the Board passed a resolution endorsing the current plan, and the Town Council met in August 1992 and approved the plan. The current plan affects fewer people than the alternatives, and EMF exposure would be intermittent since no full-time residents are close by. Bullock testified that it was fortuitous, but not planned, that the substation will be near parttime residents. The Town decided not to pursue Mountain Electric's tree cutting violation when it pledged future landscaping at the site. The condominium market in Beech Mountain is generally depressed, and the Skiview condominiums "don't have a view." Mountain Electric bought the present site in May 1992.

Dr. Cole testified that there is no demonstrated relationship between EMFs and cancer and that the proposed substation poses no threat of cancer.

Four TVA people testified as a panel--Whitley, Pitt, Miller, and Bennett. Mountain Electric purchases its electricity from TVA. In April 1991 Mountain

Electric sent TVA a study documenting service problems and proposing two ways to improve reliability. They agreed on a plan calling for TVA to construct a new transmission line to a new substation to be built by Mountain Electric, all to go in service before the winter of 1994-95. Pitt selected the route for the transmission line. The April 1991 study included a map with 2 possible substation sites identified. Pitt understood that Mountain Electric was thinking about buying the present site, and he determined that he could get the transmission line to it. The transmission line will end at a tower on the corner of the Skiview property. For a while, TVA considered building the substation itself, and Pitt headed a team that reevaluated the substation site in February 1993. They concluded that the present site is the best site. An open meeting on the proposed transmission line was held in September 1992. Courthouse records showed Skiview as owned by First Union and an invitation was sent to the bank. Bennett testified that the overall EMF levels on the Mountain Electric distribution line will decrease when the new project is completed.

Mountain Electric employee Thacker and consulting engineer Smith testified as a panel. Thacker testified to the need for the project. Mountain Electric was already familiar with available sites and the present site was "tentatively selected in our first look." Mountain Electric then "compared that site to [seven] others that were potentially available." Mountain Electric's criteria "did not require a detailed analysis of specific reasons" for selecting or eliminating specific sites. Their general criteria were: (1) proximity to existing distribution feeders, (2) proximity to the load center, (3) suitable access by distribution circuits, (4) suitable access for transmission facilities, (5) a nearby all-weather highway, (6) enough room for the substation and fencing and landscaping, (7) commercial availability and proper zoning, and (8) lowest ownership costs. He described the problems with each of the alternative sites. Thacker testified that the present site "just meets all the criteria just as well as we could ever imagine." The consulting engineer was retained in June 1992 to evaluate the tentative site selected by Mountain Electric against other possible sites. His criteria included visual impairment, the load center, accessibility by vehicles, accessibility to transmission, size and terrain, construction difficulties, overall construction costs, and purchase costs. Smith testified that the substation will require at least 100 feet by 225 feet and that the present site is the only one that is available near the load center and large enough. He rejected Mullis' proposed combination site on grounds of costs, necessity for condemnation, two-level terrain, difficulty to shield, and inaccessibility when ski traffic is heavy.

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

The evidence for Finding of Fact No. 1 consists of the verified complaint, as well as the testimony presented by Complainants Cook, Hendrick, McCoy, Walker and Bourne. The evidence for Finding of Fact No. 2 is contained in the verified answer, as well as the testimony of Respondent witness Thacker. The evidence for Finding of Fact No. 3 is contained in the testimony of TVA witness Whitley.

Each of the foregoing findings of fact was, essentially, uncontested and uncontroversial. As to Finding of Fact No. 1, witness Bourne testified that the official name of the association is Ski Slope 1 Condominium Association; however, consistent with the practice of the parties and all of the witnesses, the Commission shall continue to use the name Skiview throughout this Order.

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

The evidence for these findings of fact is contained in the testimony of Mountain Electric witness Thacker and TVA witnesses Whitley and Pitt.

Mountain Electric has been planning new facilities for Beech Mountain for many years. An earlier proposal had to be abandoned following the Solomon Horney complaint proceeding before the Commission. In April 1991, Mountain Electric prepared a study that recommended the present joint project. Briefly stated, TVA proposes to build a transmission line which will originate at a tap point on its existing Elizabethton-Cranberry 161-kV transmission line and will terminate at a substation to be constructed by Mountain Electric at Beech Mountain. Mountain Electric's responsibility is to locate and construct the substation facility in order to receive the transmission-grade power from TVA, transform it and distribute it to the various service points in and around Beech Mountain, including the ski facilities at the Beech Mountain Resort. The type and size of the facilities planned by TVA and Mountain Electric are largely uncontroverted. The position of the Complainants is that the substation should not be constructed on a lot adjacent to their condominiums.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The primary evidence for this finding of fact is contained in the testimony of Mountain Electric witness Thacker and TVA witness Whitley. Additional evidence was presented by the testimony of Skiview witnesses Bourne and Mullis. Further evidence for this finding is contained in the statement made by counsel on behalf of Complainants to the effect "we do not make any issue as to whether Beech Mountain needs electricity."

Mountain Electric has been planning for many years to bring an additional source of electric power to the load center located at Beech Mountain. Presently, Mountain Electric is providing service to Beech Mountain through a pair of 13-kV distribution circuits which originate in its Banner Elk substation. Due to the growing electric loads around Banner Elk, as well as those on Beech Mountain, the Banner Elk substation is nearing an overload condition. In addition, the primary Mountain Electric substation, Cranberry, from which service is provided to the Banner Elk substation is also nearing the limits of its capacity.

For these reasons, a new source of power and a new distribution substation at Beech Mountain are needed in the near-term future. Such new facilities would not only provide continued assurance of adequate and reliable electric service to Beech Mountain, but also relieve the overloaded conditions now existing at Mountain Electric's Banner Elk and Cranberry substations. The Complainants' objection is not to the need for the facilities. Therefore, the Commission concludes that there is a demonstrated critical need for the new electric facilities which TVA and Mountain Electric propose to construct to serve Beech Mountain.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony of Skiview witnesses Bourne, Cook, Hendricks, McCoy and Walker and witnesses Holland, Thacker and Smith.

In addition to his testimony on EMFs, which will be summarized later, Complainant Walker expressed his concern that the "publicity given to the EMFs issue may well adversely affect the value of our condominium units." Witness Cook stated that his primary concern over the Mountain Electric/TVA project was that the "humming and other noises associated with the operation of a substation will reduce the ability of the condominium owners to enjoy their property in the manner in which they have become accustomed." Witness Hendrick testified that he uses his Skiview condominium regularly during the ski season and occasionally during other times of the year. He expressed concerns related to "humming and other noises." Witness Hendrick stated that these factors would impair his ability to enjoy his condominium unit and might also "substantially decrease its resale value." Witness McCoy testified that his use of the Beech Mountain condominium has declined considerably. Indeed, he testified that he has made some efforts to sell his condominium. His concerns with regard to noise and resale value were essentially the same. Witness Bourne testified that the proposed substation would have a detrimental impact on the view from the condominium and, therefore, would adversely affect the property value. These assertions were significantly challenged in the testimony of Beech Mountain witness Holland who testified that there are many condominium units for sale in Beech Mountain, that they have a low resale value, and that the Skiview condominiums "don't have a view."

Witness Thacker and witness Smith testified that one of the reasons for selecting the proposed site was that it is large enough to allow for landscaping and screening to minimize the visual impact of the substation on the surrounding community. Locating the substation in the Beech Mountain Resort parking lots, as proposed by Skiview witness Mullis, would make visual screening a virtual impossibility. A substation in the parking lots would have a greater visual impact on the owners of the Beech Tower Condominiums, which has many more units than Skiview.

The Commission concludes that the Complainants' objections relate to the visual and economic impact of the substation on their condominium units and EMF exposure (which will be addressed later). The standard to be applied in this case, however, is the same standard stated by the Commission in the Solomon Horney complaint proceeding with respect to siting a transmission line.

> As it has done in numerous prior cases, the Commission concludes that the "abuse of discretion" standard is applicable in this proceeding. [Citations omitted.] The Commission further notes that the "arbitrary and capricious" standard is applicable to transmission line locations in eminent domain proceedings. [Citation omitted.] The Commission hereby reaffirms the standard announced in the cases described above. Federal Courts have concluded that a federal agency,

in applying the "arbitrary and capricious" standard in environmental matters, must take a "hard look" at the environmental consequences of the proposed action and at any reasonable alternatives thereto. [Citations omitted.]

In the Camp Gwynn case, after reviewing the applicable authorities, including the Kirkman case and the Environmental Policy Act, the Commission found and concluded:

> The abuse of discretion standard is applicable to this proceeding. The Commission must take a "hard look" and determine whether or not Duke acted arbitrarily and unreasonably in locating and siting the proposed transmission line in question, taking into account the environmental consequences of the proposed line and any reasonable alternative routes, the cost associated therewith, and the ability of Duke to efficiently serve its load.

81st Report of North Carolina Utilities Commission Orders and Decisions 123, 138 (1991). The burden of proof is on Skiview. G.S. 62-75.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-10

The evidence for these findings of fact is found in the testimony of Mountain Electric witnesses Thacker and Smith, TVA witnesses Whitley, Pitt and Miller, Beech Mountain witnesses Pfohl and Bullock, and Skiview witness Mullis.

Witness Thacker testified that Mountain Electric has been planning for new facilities at Beech Mountain for many years and was already familiar with available sites when it agreed to the joint project with TVA. As noted by witnesses Thacker and Smith, once Mountain Electric tentatively selected its proposed substation site, it then determined through general comparisons and a review of applicable criteria that none of the other available sites met the criteria as well as the proposed site. The criteria which witness Thacker mentioned include the following: (1) close proximity to distribution feeder circuit intersections, (2) location close to the present and future load center, (3) suitable right-of-way availability and access to the site by distribution circuits, (4) suitable right-of-way and access to the site for transmission facilities, (5) proximity to an all-weather highway and accessibility by heavy equipment under all weather conditions, (6) size sufficient to accommodate the substation facilities, necessary safety fencing and additional area for landscaping and environmental concerns, (7) commercial availability and proper zoning, and (8) lowest ownership cost with due consideration to the other criteria.

Witness Thacker, a professional engineer, further testified that the site adjacent to the Skiview condominiums meets the criteria better than any of the alternate sites. This view was shared by witness Leland Smith, consulting engineer for Mountain Electric. In addition, TVA witness Pitt stated that at one point during the negotiations over this project, it appeared that TVA might ultimately be responsible for constructing the substation as well as the transmission line. During that time, witness Pitt and other TVA employees made

a substation site investigation around Beech Mountain. They concluded that the proposed substation site already purchased by Mountain Electric was better than any of the alternative sites.

Skiview witness Mullis criticized Mountain Electric for tentatively selecting a site before determining the merits of other sites. However, witness Mullis also testified that he does not question the appropriateness of the criteria used by Mountain Electric (although he would have included other factors as well and would have weighed some criteria differently) and witness Mullis conceded that selection of an appropriate substation site "is not an exact science." He testified that a site selection process "is as much a matter of art and economics as science and engineering."

Having considered this testimony, the Commission concludes that Mountain Electric used reasonable and objective criteria and applied the criteria properly. The proposed site clearly meets the criteria best, and we find no evidence that Mountain Electric's tentative selection of the proposed site prejudiced its comparison of the proposed site with alternative sites. The Commission concludes that Mountain Electric did not act arbitrarily or capriciously or in abuse of its discretion in choosing the proposed site.

Witness Bullock testified that the Town was actively involved with TVA and Mountain Electric in the siting of the new electric facilities. The Planning Board conducted approximately four meetings, most of which were open to the public and advertised, in which citizen input was actively solicited for the location of these new facilities. In addition, members of the Planning Board actually viewed the proposed substation site, as well as most of the alternative sites, with Mountain Electric and TVA representatives. The Planning Board unanimously recommended to the Town Council that the Council endorse the transmission line corridor route and the substation site proposed by TVA and Mountain Electric. At a meeting conducted on August 11, 1992, the Town Council unanimously approved the resolution regarding the location of these electric facilities passed by the Planning Board.

Based on the foregoing, the Commission concludes that both TVA and the Town of Beech Mountain have endorsed the substation site proposed by Mountain Electric as the best available site. We find no convincing evidence that Mountain Electric or the Town used the selection process to "put it close to those boys from down there in Charlotte," as charged by witness Bourne. Witness Bullock testified that it was not planned for the substation to be built near parttime residents, and the Commission accepts this testimony.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The primary evidence for this finding of fact is contained in the testimony of Skiview witness Mullis and Mountain Electric witnesses Thacker and Smith. Limited evidence on this subject was presented by Skiview witnesses Bourne, Cooper, Hendrick, McCoy and Walker, as well as TVA witness Pitt and Beech Mountain witnesses Bullock and Holland.

The relevant testimony of witnesses Bourne, Cook, Hendrick, McCoy and Walker was presented from a lay point of view. None of these witnesses are experts in engineering or substation site location matters. Each of these witnesses

testified, in substance, that the area adjacent to Skiview condominiums is "residential" in nature and that the proposed substation should be located in a more "commercial" area. In contrast to these opinions, Beech Mountain witness Bullock testified that the entire area in question, including the proposed Mountain Electric substation site and the Skiview condominium units themselves, is zoned for commercial use. When asked specifically how the property is zoned, witness Cook acknowledged that it is zoned commercial.

The testimony of the engineering witnesses was to the effect that some seven alternative substation sites were considered. These sites were described in the testimony as Sites A, B, C, D, E, F and G. Skiview witness Mullis agreed with the Mountain Electric witnesses that Site A appears to be "too small" and that Site C can be appropriately eliminated from consideration. Based on the substation design which he recommended, using a "smaller footprint," witness Mullis contended that Sites B, D, E, F and G would be reasonable, from an engineering point of view, for the substation. In witness Mullis' opinion, the "best site" for the substation is a "terraced site" which combines elements of Site D and Site E.

Mountain Electric Witness Thacker stated that Site B (also referred to as the Water Tank Site) is unsuitable because it is inadequately sized, contains a sixty-foot road easement located across the middle of the developable portion of the site and is located approximately 1,900 feet from the load center. Witness Smith agreed and, in addition, stated that "the site is adjacent to a steep and heavily wooded area and, thus, lacks reasonable accessibility for line routing."

Witness Thacker stated that Site D (the Beech Mountain Resort parking lots) was rejected due to problems with traffic congestion, blocking access to Beech Mountain Resort's maintenance buildings and to the Volunteer Fire Department, difficulties in minimizing the visual impact of the substation and problems with ready access to the substation site during the peak ski season. Witness Smith generally agreed with the reasoning expressed by witness Thacker concerning the unsuitability of Site D. In addition, witness Smith stated that use of any of the upper level parking lots would be impractical because the width would be too narrow when the requirement for reasonable road access is considered.

With regard to Site E (the Volunteer Fire Department Site), witness Thacker stated that the site was ultimately rejected due to considerations of inadequate space, negative economic impact and the fact that it would block direct road access to Beech Mountain Resort's maintenance building. Once again, witness Smith concurred with witness Thacker and, in addition, stated that there would be additional expenses involved in relocating the Volunteer Fire Department building and that there would be insufficient room on the site for visual shielding or transmission access.

With regard to Site F (the Rope Tow Site), witness Thacker stated that the difficulties inherent in trying to use this site include difficulty of land acquisition, limited site access, undesirable location, inadequate size, undesirable costs, undesirable accessibility and probable lack of availability. Witness Smith once again concurred and, in addition, stated that the site is not level and would be too small for proper grading, in addition to which it is located too far from the load center, requiring additional lines to be built at a significant cost.

Finally, with regard to the last alternative site, Site G (the Resort Entrance Site), witness Thacker stated that the site was rejected due to inadequate size and the fact that it already contains a small building which would have to be moved. Witness Smith concurred and, in addition, stated that this site is located 1,100 feet away from the load center.

Both witness Thacker and witness Smith testified that the proposed combination of Site D and Site E, as recommended by Skiview witness Mullis, would be inappropriate because such a combined site would suffer from the individual impairments listed by them for Site D and Site E respectively, and, in addition, because the combination of these sites would likely require the substation to be constructed on two different levels which would be difficult. Alternatively, if the two sites could be joined and leveled, extensive blasting could be required. For these reasons, witnesses Thacker and Smith rejected the substation site recommended by Skiview witness Mullis.

TVA witness Pitt stated that, in the course of his work assignment, he reviewed four alternative substation sites. These were (1) the site proposed by Mountain Electric adjacent to the Skiview condominiums, (2) the Parking Lot Sites, referred to as Site D, (3) the Volunteer Fire Department Site, referred to as Site E, and (4) the Resort Entrance Site, referred to as Site G. Witness Pitt concluded that none of the alternative sites meet the reasonable engineering criteria for a substation as well as the site which Mountain Electric has already purchased. He listed many of the same reasons -- size, distance from the load center, accessibility for transmission line routing, accessibility for service and repair, etc. -- previously given by witnesses Thacker and Smith. Witness Pitt also concluded that the "best site" recommended by witness Mullis should not be used because of factors including size, accessibility, ingress and egress of heavy equipment, visual screening and proximity to the Beech Tower Condominiums (which have many more units than Skiview).

In addition to these matters, witnesses Thacker, Smith and Pitt each criticized the proposed "smaller footprint" substation design described by Skiview witness Mullis in his testimony. Witness Thacker testified to the importance of locating the substation near the load center in order to avoid the capital cost of additional circuit lines to connect a remote substation site with the load center.

Based on the foregoing, the Commission concludes that the alternative substation site recommended by Skiview has several disadvantages in terms of its suitability as a substation site. Considering the five alternative sites which were not ruled out by Skiview witness Mullis, the Commission concludes that no one is as good as the site proposed by Mountain Electric.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is contained in the testimony of Mountain Electric witness Dr. Cole, TVA witness Bennett and Skiview witness Walker. The primary testimony relied upon by the Commission for this finding is that of Dr. Cole, a recognized national expert in the field of epidemiology, concentrating on the impact of exposure to electromagnetic fields (EMFs) on human health.

In its original complaint the Complainants contended that the EMFs which would be emitted at the proposed substation would pose a threat to public health and safety. At the hearing of this matter, Skiview offered no credible evidence in support of this proposition. Skiview offered the testimony of Complainant Dr. Walker, one of the condominium owners and a physician practicing in Charlotte, specializing in nephrology (the diagnosis and treatment of kidney disease). Dr. Walker claimed no particular expertise in the field of epidemiology. Instead, he based his testimony on EMFs solely on his review of some, but not nearly all, of the relevant studies in the field. Dr. Walker conceded that "existing studies are inconclusive" and that, at best, more recent studies only "tend to indicate that there may be some health risks associated with EMF exposure." Dr. Walker's ultimate conclusion was that "the recent publicity given to the EMF issue may very well adversely affect the value of our condominium unit."

In contrast, Dr. Cole testified as a recognized expert in the field of epidemiology. Dr. Cole described epidemiology as the "scientific observation of human beings in their everyday environments for the purpose of identifying the environmental causes of their diseases." Dr. Cole discussed the approximately 70 epidemiologic studies which have been published containing data on EMFs and cancer. Based upon his review of, and participation in, relevant studies, Dr. Cole concluded that "the epidemiologic reports fail to demonstrate any strong or consistent pattern of association between power frequency electric and/or magnetic fields and cancer." He also concluded that "to date, there is no demonstrated relationship between power frequency fields and cancer in human beings." With specific regard to the proposed TVA/Mountain Electric project, Dr. Cole stated that "the proposed project poses no threat of cancer to persons in its vicinity."

The Commission concludes that no evidence was presented in this case that a causal relationship exists between EMFs and cancer in human beings. Pending the results of further studies, the Commission agrees with Dr. Cole that no causative link has been demonstrated.

To the extent that fear of EMFs may be a source of concern, witness Bennett testified that he studied the level of EMFs which would exist in the Beech Mountain area both before and after completion of the proposed TVA/Mountain Electric project. Bennett's Exhibit No. C indicates that milliGauss (mG) levels around the existing Mountain Electric distribution lines coming up from the Banner Elk Substation will decline from a level now in excess of 50 mG to a level below 5 mG once the proposed project is completed. Witness Bennett concluded that "overall magnetic field levels associated with the existing Mountain Electric distribution line will decrease dramatically because of the reduced current." The Commission so concludes. While witness Bennett stated that no program for accurately modeling EMF levels around an electric substation is currently available, "magnetic field levels immediately outside a substation fence are generally quite low when compared to those in the vicinity of a transmission line."

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13-14

As stated earlier, the burden of proof is upon Skiview to demonstrate that Mountain Electric acted "arbitrarily, capriciously or in abuse of its discretion" in siting its proposed electric facility. This is a difficult burden of proof.

It is not enough for the Complainants to testify that there will be some impact on their property. It is not enough for the Complainants to speculate that there must be "some property somewhere" that would be a better site. In applying this standard, the Commission must take into account environmental consequences, reasonable (not speculative) alternative sites, cost, and the utility's ability to serve its load. Among other conclusions that we have already drawn in this Order, the Commission concludes that Skiview has not shown a health risk, that the proposed site is large enough to accommodate landscaping and screening, that no reasonable alternative site is as good as the proposed site, that Mountain Electric has already acquired the proposed site, that the proposed site is near the load center (which will eliminate the need and cost of constructing additional lines to connect a remote substation site with the load center), and that there is a critical need for this project to proceed in order for Mountain Electric to assure an adequate and reliable supply of electricity to Beech Mountain.

The Commission concludes that Skiview has not met the burden of proof to show that Mountain Electric acted arbitrarily, capriciously or in abuse of its discretion in siting the proposed substation. The Commission finally concludes that the complaint in this matter should be denied and the docket closed.

IT IS, THEREFORE, ORDERED that the complaint in this docket should be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of April 1994.

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

Commissioner Ralph A. Hunt dissents.

DOCKET NO. E-2, SUB 658

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges Pursuant to G.S. § 62-133.2 and NCUC Rule R8-55)	)	ORDER APPROVING A NET FUEL CHARGE DECREASE

HEARD: Tuesday, August 2, 1994, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding, and Commissioners Judy Hunt and Ralph A. Hunt

APPEARANCES:

For the Applicant:

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

For the Public Staff:

Paul Lassiter, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

Jo Anne Sanford, Special Deputy Attorney General and Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For the Carolina Industrial Group for Fair Utility Rates:

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

For the Carolina Utility Customers Association, Inc.:

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

BY THE COMMISSION: G. S. § 62-133.2 and Rule R8-55 of the North Carolina Utilities Commission's (Commission) Rules of Practice and Procedure require the Commission to conduct annual public hearings in order to review changes in Carolina Power & Light Company's (CP&L or Company) cost of fuel and the fuel component of purchased power. This public hearing is to be held on the first

Tuesday of August of each year. Rule R8-55 requires CP&L to file a variety of information regarding its fuel cost and fuel component of purchased power in the form of testimony and exhibits at least 60 days prior to each such annual hearing.

On June 3, 1994, CP&L filed its application for a change in rates based solely on the cost of fuel in accordance with the provisions of G. S. § 62-133.2 and Commission Rule R8-55 along with the testimony and exhibits of witness John L. Harris. In its application, CP&L proposed an increment of 0.029¢/kWh (0.030¢/kWh including gross receipts tax) to the base fuel factor of 1.276¢/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537. The Company recommended a fuel factor of 1.305¢/kWh. In its application, the Company also requested an increment of 0.024¢/kWh (0.025¢/kWh including gross receipts tax) for the Experience Modification Factor (EMF) to collect approximately $7.0 million of unrecovered fuel revenues experienced during the period April 1, 1993 to March 31, 1994. The Company proposed that the EMF rider be in effect for a fixed 12-month period. The net effect of the changes recommended by the Company would result in no change in the customer's bill.

On June 7, 1994, the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed a petition to intervene. The petition was granted by the Commission on June 13, 1994. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e). The Commission notes the appearance of the Attorney General in this proceeding pursuant to G. S. § 62-20.

On June 9, 1994, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice.

On June 17, 1994, Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene in the proceeding. The Commission granted CUCA's petition on June 20, 1994.

On July 13, 1994, the Public Staff made an oral motion for a seven-day extension of time to file testimony and exhibits. CP&L did not oppose the requested extension of time. On July 14, 1994, the Commission granted the request.

On July 25, 1994, the Public Staff filed a Joint Stipulation of Carolina Power & Light Company, the Public Staff, the Attorney General, CIGFUR-II and CUCA (hereafter Joint Stipulation) that resolved all issues among the parties (a copy of which is attached hereto as Appendix A), the affidavits of Michael C. Maness, Thomas S. Lam and Russell C. Brown, and a Report on the Forced Outage Assessment of the H. B. Robinson Plant, Unit No. 2 prepared by R. C. Brown and Associates.

On July 28, 1994, the Company filed the affidavits of publication showing that public notice had been given as required by Rule R8-55(f) and the Commission's Order.

The hearing was held as scheduled on August 2, 1994, at 10:00 a.m. At the beginning of the hearing, CP&L and the Public Staff advised the Commission of the Joint Stipulation reached between CP&L, the Public Staff, the Attorney General, CIGFUR-II and CUCA. The Attorney General, CUCA and CIGFUR-II affirmed their agreement with the Stipulation and the provisions contained within.

The Commission received into evidence CP&L's application, the written testimony and exhibits of CP&L witness Harris, the Joint Stipulation, the affidavits filed by Public Staff witnesses Maness, Lam, and Brown, and Report on the Robinson investigation filed by the Public Staff. Based on the Stipulation, the Commission excused all witnesses from direct cross examination.

CP&L and the Public Staff filed a joint proposed order on August 18, 1994.

Based upon the Company's verified application, the testimony and exhibits received into evidence at the hearing and the record as a whole, the Commission now makes the following:

FINDINGS OF FACT

1. Carolina Power & Light Company is duly organized as a public utility under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. CP&L is engaged in the business of generating, transmitting, and selling electric power to the public of North Carolina. CP&L is lawfully before this Commission based upon its application filed pursuant to G. S. § 62-133.2.

2. The test period for purposes of this proceeding is the 12-month period ended March 31, 1994.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The proper fuel factor for this proceeding is 1.305¢/kWh, excluding gross receipts tax.

5. The Company's filed North Carolina test period jurisdictional fuel expense undercollection is $7,029,588.

6. The appropriate amount of undercollection to recover in this proceeding is $1,229,588.

7. The Company's Experience Modification Factor (EMF) is an increment of .004¢/kWh (including gross receipts tax the factor is .004¢/kWh). The adjusted North Carolina jurisdictional test year sales are 28,863,479,490 kWh.

8. With the exception of CP&L's operation of its Robinson Nuclear Unit, the Company's operation of its base load fossil plants and nuclear plants was reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Finding of Fact No. 1 is essentially informational, procedural, and jurisdictional in nature and is not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G. S. § 62-133.2 sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel

charge adjustment proceeding for a historical 12-month period. Rule R8-55(b) prescribes the 12 months ending March 31 as the test period for CP&L. All prefiled exhibits and testimony submitted by the Company in support of its application utilized the 12 months ended March 31, 1994, as the test year for purposes of this proceeding.

The test period proposed by the Company was not challenged by any party and the Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended March 31, 1994, adjusted for weather normalization, customer growth, generation mix, and normalization of SEPA and NCEMPA transactions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding can be found in the Company's application and the monthly fuel reports on file with this Commission. Commission Rule R8-52(b) requires each utility to file a Fuel Procurement Practice Report at least once every 10 years, as well as each time the utility's fuel procurement practices change. In its application, the Company indicated that the procedures relevant to the Company's procurement of fossil and nuclear fuels were filed in the Fuel Procurement Practices Report which was updated in May 1994 and filed in Docket No. E-100, Sub 47. In addition, the Company files monthly reports as to the Company's fuel costs pursuant to Rule R8-52(a) under its present procurement practices. No party offered any testimony contesting the Company's fuel procurement and power purchasing practices.

The Commission concludes that CP&L's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding can be found in the workpapers of Company witness Harris and the Joint Stipulation.

In accordance with Items (d)(3) and (d)(4) of Rule R8-55, the Company calculated a fuel factor of 1.404¢/kWh using the latest North American Electric Reliability Council (NERC) Equipment Availability Report 1988-1992 five-year capacity factors and the same methodology used in past fuel cases to compute fuel expense. The workpapers included in Harris' exhibits show kWh normalizations for customer growth and weather at both meter and generation levels were done in the same manner as past cases. Normalization adjustments were also made for SEPA deliveries and hydro generation. Again, the unit prices used for coal, nuclear, internal combustion turbines, purchases and sales were also calculated in a manner consistent with past cases. The NERC five-year nuclear capacity factors used in the fuel factor calculation for Brunswick Unit Nos. 1 and 2, both boiling water reactors (BWRs), were normalized at 58.93% and the capacity factors of the Robinson and Harris Units, both pressurized water reactors (PWRs), were normalized at 69.96%. The Company's normalization calculations resulted in a system nuclear capacity factor of 64.48% and produced a fuel factor of 1.404¢/kWh based on a system fuel expense of $638,968,192 and normalized system meter sales of 45,516,792 MWHs.

Although Rule R8-55 supported the calculation of a 1.404¢/kWh fuel factor, the Company requested a factor of 1.305¢/kWh. Witness Harris stated that the lower factor was closer to projected expense during the time these rates will be in effect. The lower factor was also agreed to by the parties in the Joint Stipulation. Since Rule R8-55 would support a factor of 1.404¢/kWh and the parties have agreed to a lower factor, the Commission, pursuant to past practice which has allowed lower fuel factors below the values calculated using NERC averages, hereby approves the factor requested by the Company.

Based on the evidence of record, the Commission concludes that a fuel factor of 1.305¢/kWh as agreed to by the parties is appropriate in this proceeding. This factor is .029¢/kWh higher than the base fuel factor of 1.276¢/kWh approved in CP&L's last general rate case, Docket E-2, Sub 537.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 & 6

The evidence supporting this finding can be found in the testimony of Company witness Harris, the Joint Stipulation, the affidavits of Public Staff witnesses Lam, Brown, and Maness, and the Report on the Robinson outage prepared by R. C. Brown and Associates.

The underrecovery of $7 million is a product of a number of factors including unusual weather, deviations from test year sales, fuel prices, nuclear performance, and the inclusion of certain fuel costs associated with power purchases from a cogenerator. In its prefiled testimony, the Company acknowledged that its actual test year nuclear system capacity factor of 60.58% was below the weighted NERC five-year (1988-1992) average capacity factor of 64.48%. Pursuant to the provisions of Rule R8-55(i), this created a rebuttable presumption that the fuel expense associated with this failure to perform at the national average was imprudently incurred and should be disallowed. The Company explained in its testimony that the reason it failed to perform at the national average was a five-and-half month outage experienced by the Company's Brunswick Nuclear Unit No. 1 which was caused by the need to repair certain cracks in the fuel core shroud inside the reactor vessel. General Electric Corporation, the contractor that constructed the Brunswick Plant, had notified owners of BWRs, such as Brunswick, in 1990 that cracks had been discovered in the shroud of a European BWR. During a standard refueling of Brunswick Unit No. 1 in July of 1993, CP&L inspected the unit's shroud and discovered cracks similar to those found in the European BWR that required repair prior to returning the unit to service.

In the Company's quarterly reports regarding the Brunswick Plant filed in Docket No. E-2, Sub 626, the Company explained in detail the analyses and inspections it performed on the shroud and the engineering and repair of the shroud. In these reports, the Company explained that subsequent to the discovery of the cracks in the Brunswick Unit No. 1's shroud, other U.S. BWR's discovered shroud cracking and that this phenomenon is a generic issue that will have to be addressed by all U.S. BWR owners. The Commission takes judicial notice of these quarterly reports filed in Docket No. E-2, Sub 626.

As further evidence that shroud cracking is an industry problem, beyond the reasonable control of the BWR owners, CP&L witness Harris explained that in April of 1994, General Electric issued another notice which identified shroud cracking

as an industry problem, advising that such cracking had been discovered in several other BWR shrouds and describing the steps General Electric was taking to address this problem.

In the Joint Stipulation signed by all parties to this proceeding, it was agreed that the Brunswick Unit No. 1 shroud outage was beyond the reasonable control of the Company and, therefore, the Company should be allowed to recover the fuel expense associated with this outage. The Commission, based upon witness Harris' testimony, the reports filed in Docket No. E-2, Sub 626 and the Joint Stipulation, agrees that this outage was not caused by Company mismanagement and that the Company should be allowed to recover all of the fuel expense associated with it.

While all the parties to this proceeding agreed that the Brunswick Unit No. 1 shroud outage was beyond the Company's control, the Public Staff questioned the reasonableness of certain outage time experienced by the Company's Robinson Nuclear Unit. The Public Staff believed that portions of the Unit's outage time from November 17, 1993 through March 21, 1994 could have been avoided. The Public Staff hired a nuclear consultant to investigate and evaluate the reasonableness of this outage time. As a result of this investigation, the Public Staff concluded that approximately 41.5 days of outage time was imprudently incurred and, therefore, the associated fuel expense should be disallowed. Following the completion of the Public Staff's investigation, it met with the Company to discuss these findings. The Company challenged and disputed the Public Staff's consultant's report and asserted that none of the outage time and none of the test year fuel expense associated therewith could be attributed to the Company's unreasonable costs. Following extensive negotiations, as part of the Joint Stipulation, all parties to this proceeding agreed to settle this issue by reducing CP&L's test year underrecovery by $3.5 million.

The Company and Public Staff also differed on the amount of recovery through the fuel clause of the fuel expense associated with one cogenerator, Stone Container Corporation. In the Company's most recent general rate case (Docket No. E-2, Sub 537), adjusted nonfuel test year expenses included an estimate of the total annualized avoided capacity and energy charges to be paid by CP&L to Stone Container, based on the level of capacity available from the cogeneration facility at that time (approximately 29 megawatts (MW)). Thus, the nonfuel portion of rates was set to provide for the recovery of the total annual payment made to Stone Container, including inherently any portion of that payment which would compensate Stone Container for its actual burned fuel costs. Consistent with this approach, no actual burned fuel costs related to Stone Container were included in the calculation of the fuel portion of base rates. The burned fuel costs were included in the nonfuel, rather than the fuel, portion of base rates because it was not possible at that time for CP&L to isolate Stone Container's actual burned fuel costs for the general rate case test year.

Since recovery of all of CP&L's Stone Container-related cogeneration expenses related to the 29 MW of capacity, including compensation for actual burned fuel costs, was provided for in the nonfuel portion of base rates set in the Sub 537 general rate case, it would not be appropriate to also provide recovery in fuel rates of the actual burned fuel costs related to the 29 MW of capacity by including said costs in subsequent fuel case underrecovery calculations. Since the Sub 537 general rate case, the amount of capacity

available from the Stone Container facility has increased significantly, from about 29 MW to approximately 70 MW. Because of this significant increase, it is reasonable to include in the underrecovery calculation actual burned fuel costs over and above those related to the 29 MW.

CP&L and the Public Staff disagreed on the method used to determine the actual burned fuel cost included in nonfuel rates. The Public Staff calculated a value of $2.5 million for the fuel cost while the Company calculated $2.1 million. As part of the Joint Stipulation in this case, the Public Staff and CP&L have agreed as a compromise to an adjustment for Stone Container in this proceeding of $2,300,000. The Public Staff and CP&L have also agreed to work together to seek to determine the appropriate methodology to use for this adjustment prior to CP&L's next fuel proceeding.

The total adjustments to the EMF in this proceeding for the Robinson outage and Stone Container fuel expense total $5.8 million for N.C. retail jurisdiction. This amount is agreed to in the Joint Stipulation and will be deducted from the Company's proposed EMF recovery. The Commission determines that the proper amount of EMF recovery in this case is $1,229,588.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding can be found in the direct testimony and exhibits of Company witness Harris and the Joint Stipulation.

G. S. § 62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period...in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case..."

In its application and testimony, the Company proposed an EMF increment factor of 0.024¢/kWh (0.025¢/kWh with gross receipts tax) to recover $7,029,588 million of unrecovered fuel expense. This factor was determined by dividing the unrecovered amount by N.C. retail adjusted kWhs of 28,863,479,490. CP&L asked that this factor remain in rates for a 12-month period.

For the reasons set forth in Findings of Fact Nos. 5-6 and based on the testimony and exhibits of CP&L witness Harris and the provisions of the Joint Stipulation, the Commission concludes that the EMF increment of 0.004¢/kWh (0.004¢/kWh with gross receipts tax) is appropriate for use in this proceeding. This factor was determined by dividing the $1.2 million underrecovery allowed by adjusted N.C. retail kWh sales. The EMF increment shall remain in effect for a fixed 12-month period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding can be found in the Company's application, the testimony of CP&L witness Harris, the affidavits of Public Staff witnesses Lam and Brown, and the Report on the Robinson outage prepared by R. C. Brown and Associates.

The Company files with this Commission monthly Fuel Reports and Base Load Power Plant Performance Reports. These reports were filed in Docket No. E-2, Sub 639, for calendar year 1993 and Docket No. E-2, Sub 655, for calendar year 1994. Information obtained from these reports indicates that CP&L's test period nuclear capacity factor was 60.58 percent.

As mentioned earlier, Company witness Harris explained that Brunswick Unit No. 1 experienced a five and one-half month outage due to the repair of the reactor core shroud as discussed in Findings of Fact Nos. 5 and 6. Witness Harris stated that had this outage not occurred, the system capacity factor would have been 68.81% which exceeds the NERC five-year average. Since the shroud cracking was beyond the control of the Company, this outage time should not be considered in computing the three-year Brunswick Plant performance test agreed to by the parties in the Company's 1993 fuel case, Docket E-2, Sub 644.

The Commission hereby concludes that the performance of the Company's base load fossil steam units and nuclear units, with the exception of Robinson as discussed in Findings of Fact Nos. 5 & 6, was reasonable and prudent during the test period.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1994, CP&L shall adjust the base fuel factor in its North Carolina retail rates by an amount equal to a 0.029¢/kWh increment (0.030¢/kWh including gross receipts tax) from the base fuel factor approved in Docket No. E-2, Sub 537. Said increment shall remain in effect until changed by a subsequent Order of this Commission in a general rate case or fuel case.

2. That CP&L shall establish an EMF Rider as described herein to reflect an increment of 0.004¢/kWh (0.004¢/kWh including gross receipts tax). The EMF is to remain in effect for a 12-month period beginning September 15, 1994.

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustment approved herein not later than five (5) working days from the date of this Order.

4. That the Joint Stipulation Agreement included as Appendix A signed by CP&L, the Public Staff, the Attorney General, CUCA and CIGFUR-II is approved by this Commission.

5. That CP&L shall notify its North Carolina retail customers of the fuel adjustments approved herein by including the Notice to Customers of Net Rate Decrease attached as Appendix B as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 658

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Carolina Power & Light Company For Authority to Adjust Its Electric Rates and Charges Pursuant to N.C.G.S. §62-133.2 and NCUC Rule R8-55	JOINT STIPULATION OF CAROLINA POWER & LIGHT COMPANY, THE PUBLIC STAFF, THE ATTORNEY GENERAL, CIGFUR-II AND CUCA

1. Carolina Power & Light Company ("the Company") filed an Application with the Commission on June 3, 1994 in this proceeding to adjust its rates and charges pursuant to N.C. Gen. Stat. § 62-133.2 and North Carolina Utilities Commission Rule R8-55. That Application was supported by the prefiled Direct Testimony and Exhibits of Dr. John L. Harris, Manager - Forecasting and Revenue Requirements for the Company.

2. In its Application, the Company requested a base fuel factor of 1.305¢ per kWh and an experience modification factor (EMF) of 0.024¢ per kWh which produced a net factor of 1.329¢ per kWh (excluding gross receipts tax) to become effective September 15, 1994. The EMF is based upon a fuel cost underrecovery of $7,029,588 for the test year ending March 31, 1994 in the Company's N.C. retail jurisdiction. The $7 million dollar fuel cost underrecovery is a product of a number of factors, including: unusual weather; deviations from test year sales;

fuel prices and nuclear performance; and the inclusion of certain fuel costs associated with power purchases made by the Company from a cogenerator.

3. In its prefiled Direct Testimony, the Company acknowledged that its actual test year nuclear capacity factor of 60.58% was below the weighted North American Electric Reliability Council ("NERC") five year (1988-1992) average capacity factor of 64.48%. Pursuant to the provisions of North Carolina Utilities Commission Rule R8-55(i) this created a rebuttable presumption that the fuel expense associated with this failure to perform at the national average, was imprudently incurred and should be disallowed. The Company explained in its testimony that the reason it failed to perform at the national average was a five and a half month outage experienced by the Company's Brunswick Nuclear Unit No. 1, which was caused by the need to repair certain cracks in the fuel core shroud inside the reactor vessel. General Electric Corporation had notified owners of boiling water reactors (BWRs), such as Brunswick, in 1990 that cracks had been discovered in the shroud of a European BWR. During the refueling of Brunswick Unit No. 1 in July of 1993, CP&L inspected the unit shroud and discovered similar cracks that required repair prior to returning the unit to service. In April of 1994, General Electric issued another notice which identified shroud cracking as an industry problem, advising that such cracking had been discovered in additional BWR shrouds and describing the steps General Electric was taking to address this problem. The Company asserted that but for this problem which was beyond its control, the Company's test year nuclear performance would have been approximately 68.81% which exceeds the 1988-1992 NERC average by 4.33 percentage points.

4. The Public Staff agrees that the Brunswick Unit No. 1 shroud outage was beyond the Company's control and, therefore, the Company should be allowed to recover the fuel expense associated with this outage. The Public Staff, however, does not believe that all of the outage time experienced by the Company's Robinson 2 Nuclear Unit during the test period was prudently incurred. The Public Staff believes that portions of the Unit's outage time from November 17, 1993 through March 21, 1994 could have been avoided. As a result, the Public Staff hired a nuclear consultant to investigate and evaluate the reasonableness of this outage time. The Public Staff's investigation of the Robinson 2 outages included extensive data gathering and document review, and interviewing numerous Company personnel both in Raleigh and at the plant site. In his report, the consultant concludes that approximately 41.5 days of outage time was imprudently incurred and, therefore, the associated fuel expense should be disallowed. Upon the completion of the consultant's report, the Public Staff met with the Company to discuss the consultant's findings. The Company challenged and disputed the consultant's findings and asserted that none of the outage and none of the test year fuel expense could be attributed to the Company's unreasonable actions. Following extensive negotiations the parties agreed to settle the issue of the Robinson 2 outage time by the Company reducing its test year underrecovery by $3.5 million.

5. The Public Staff also questioned the inclusion in the calculation of CP&L's fuel cost underrecovery of certain fuel costs associated with the Company's power purchases from Stone Container Corporation's cogeneration facility. The Public Staff asserted that the Company was inappropriately attempting to recover certain of these purchased power costs through the fuel factor. The Public Staff calculated this amount to be approximately $2.5 million for the test

period. The Company agrees that certain of these costs were inappropriately included as test year fuel costs. but believes that the dollar amount in question is approximately $2.1 million. Thus far. the Public Staff and the Company have been unable to agree on the methodology to be used to determine the amount of Stone Container cogeneration costs that should be removed from the test year fuel expense. Thus they have agreed to settle this matter for the purposes of this fuel proceeding for $2.3 million and will work to determine the appropriate methodology prior to the next fuel proceeding.

6. After the Company and the Public Staff agreed to the above described settlements. they discussed these issues with the other parties to this proceeding and invited them to join in support of the Stipulation. The Attorney General of the State of North Carolina ("the Attorney General"), the Carolina Industrial Group for Fair Utility Rates II ("CIGFUR-II") and the Carolina Utility Customer's Association, Inc. ("CUCA") decided to join this Stipulation. the terms of which are set forth herein.

7. The Company, the Public Staff, the Attorney General, CIGFUR and CUCA agree that this proceeding shall be resolved pursuant to the following terms, subject to Commission approval:

a. The Company will forego recovery of $5.8 million of the underrecovered fuel expense for the test year ended March 31, 1994. This change will reduce the EMF increment from the current EMF of 0.020¢ per kwh to 0.004¢ per kwh (excluding gross receipts tax). $3.5 million of the $5.8 million reduction in CP&L's test year underrecovery is associated with the settlement of the Robinson

Nuclear outage and the remaining $2.3 million is associated with the Stone Container fuel cost issue.

b. The base fuel factor appropriate for this proceeding is 1.305¢ per kwh (excluding gross receipts tax) which in conjunction with the 0.004¢ per kwh EMF produces a net fuel factor of 1.309¢ per kwh.

c. The resolution of the issues in this proceeding covers all events, issues, and circumstances related to the outage experienced by the Robinson Nuclear Unit from November 17, 1993 through March 21, 1994.

d. By entering into this settlement, the Company does not admit to having acted imprudently in any way regarding the Robinson outage. This is simply a compromise settlement that promotes rate stability and avoids the cost and burdens of litigation, all of which are laudable objectives that can be achieved in this proceeding through voluntary resolution.

8. Because of this Stipulation, the Company will not present the prefiled testimony of Dr. Harris at the hearing of this matter. If the Stipulation is not approved by the North Carolina Utilities Commission, for any reason, the parties agree that Dr. Harris' testimony may thereafter be presented by the Company.

9. The signing parties agree that if, for any reason, the North Carolina Utilities Commission does not approve the Stipulation fully, this Stipulation will thereafter be null and void. In that event, any signing party shall have the right to litigate this case fully without regard to anything contained in this Stipulation, and any signing party shall have the right to petition the Commission to reopen the proceeding to accept additional evidence without

opposition by the other signing parties. Absent the North Carolina Utilities Commission's failure or refusal to approve this Stipulation fully, this Stipulation shall remain in effect and be binding on the Public Staff, the Attorney General, CUCA, CIGFUR II and the Company.

10. The parties recognize and agree that this Stipulation has no precedential value other than establishing terms for the final resolution of this proceeding. The parties further recognize and agree that this Stipulation shall not control or limit the positions they may assert in future proceedings, except as set forth in paragraph 7 of the Stipulation. Except as specifically provided in this Stipulation, fuel expenses incurred by the Company during the test period ending March 31, 1994 shall be fully recoverable by the Company subject to the applicable provisions of the North Carolina General Statutes and applicable Commission Rules and Regulations. The parties agree that they will not advocate any disallowance of fuel expenses or the foregoing of unrecovered fuel expenses other than is agreed to herein.

Respectfully submitted this 25th day of July, 1994

CAROLINA POWER & LIGHT COMPANY

By: Len S. Anthony
Len S. Anthony
Associate General Counsel

PUBLIC STAFF,
NORTH CAROLINA UTILITIES COMMISSION

By: Paul L. Lassiter
Paul L. Lassiter
Staff Attorney

THE ATTORNEY GENERAL OF
THE STATE OF NORTH CAROLINA

By: Jo Anne Sanford

CAROLINA INDUSTRIAL GROUP FOR
FAIR UTILITY RATES II

By: Ralph McDonald
Ralph McDonald

CAROLINA UTILITY CUSTOMER ASSOCIATION

By: Sam J. Ervin, IV pc
Sam J. Ervin, IV

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX B

DOCKET NO. E-2, SUB 658

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. § 62-133.2 and NCUC Rule R8-55	)	NOTICE TO CUSTOMERS OF NET RATE DECREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on September 6, 1994, after public hearings, approving a fuel charge decrease of approximately $6.1 million in the rates and charges paid by the retail customers of Carolina Power & Light Company in North Carolina. The net rate decrease will be effective for service rendered on and after September 15, 1994. The rate decrease was ordered by the Commission after review of CP&L's fuel expense during the 12-month test period ended March 31, 1994, and represents changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission Order will result in a monthly net rate decrease of 21 cents for a typical residential customer using 1,000 kWhs per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. E-7, Sub 540

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities	)	ORDER APPROVING NET FUEL CHARGE RATE INCREASE

HEARD: Tuesday, May 3, 1994, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Chairman Ralph A. Hunt and Commissioner Charles H. Hughes

APPEARANCES:

For Duke Power Company:

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

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

J. Mark Payne, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

BY THE COMMISSION: On March 4, 1994, Duke Power Company (Duke or the Company) filed an application pursuant to G.S. 62-133.2 and NCUC Rule R8-55 relating to fuel charge adjustments for electric utilities. In its application, Duke proposed a fuel factor of 1.0969¢/kWh (including nuclear fuel disposal costs and excluding gross receipts tax), which is a decrease of .0063¢/kWh from the base fuel factor of 1.1032¢/kWh set in the Company's last general rate case proceeding, Docket No. E-7, Sub 487. The Company further adjusted the proposed factor by two decrement proposals for the Experience Modification Factor (EMF) and EMF interest. These proposed factors excluding gross receipts taxes are .0681¢/kWh and .0102¢/kWh, respectively, and result in a recommended net fuel factor of 1.0186¢/kWh.

On March 10, 1994, the Commission issued an Order Scheduling Hearing and Requiring Public Notice and establishing certain filing dates.

The Attorney General and the Carolina Utility Customers Association, Inc. (CUCA), each filed timely notices to intervene, and those interventions were allowed by the Commission. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

The case came on for hearing as ordered on May 3, 1994. The parties stipulated into the record the testimony and exhibits of Candace A. Paton, Manager, Regulatory Accounting, Rates and Regulatory Affairs Department of Duke Power Company and the affidavit of Thomas S. Lam, Engineer, Electric Division of the Public Staff. No other party presented witnesses and no public witnesses appeared at the hearing.

Based upon the Company's verified application, the testimony and exhibits received into evidence at the hearing and the record as a whole, the Commission makes the following

FINDINGS OF FACT

1. Duke Power Company is a duly organized corporation existing under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission as a public utility. Duke is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina. Duke is lawfully before this Commission based upon its application filed pursuant to G.S. 62-133.2.

2. The test period for purposes of this proceeding is the twelve month period ended December 31, 1993.

3. Duke's fuel procurement and power purchasing practices during the test period were reasonable and prudent.

4. The test period per book system sales are 73,246,143 mWh.

5. The test period per book system generation is 80,672,499 mWh and is broken down by type as follows:

	mWh.
Coal	34,096,852
Oil & Gas	42,666
Light Off	-
Nuclear	34,390,215
Hydro	1,970,244
Net Pumped Storage	(387,621)
Purchased Power	665,582
Interchange Purchases	436,125
Catawba Contract Purchases	8,810,403
Catawba Interconnection Agreements	604,270
Interchange	43,763
Total Generation	80,672,499

6. The system normalized nuclear capacity factor which is reasonable for use in this proceeding is 75% and its associated generation is 33,364,102 mWh.

7. The adjusted test period sales of 69,872,635 mWh consists of test period system sales of 73,246,143 mWh which are increased by 373,528 mWh for customer growth, and reduced by 1,881,286 mWh associated with weather normalization, and 1,865,750 mWh associated with the adjustment for Catawba retained generation.

8. The adjusted test period system generation for use in this proceeding is 77,099,354 mWh and is broken down by type as follows:

	mWh
Coal	34,700,343
Oil & Gas	23,944
Light Off	-
Nuclear	33,364,102
Hydro	1,731,400
Net Pumped Storage	(490,826)
Purchased Power	665,582
Interchange Purchases	436,125
Catawba Contract Purchases	6,668,684
Total Generation	77,099,354

9. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $15.51/mWh.
B. The oil and gas fuel price is $70.21/mWh.
C. The appropriate Light Off fuel expense is $3,902,000.
D. The nuclear fuel price is $5.67/mWh.
E. The purchased power fuel price is $13.99/mWh.
F. The interchange fuel price is $22.81/mWh.
G. The Catawba Contract Purchase fuel price is $5.91/mWh.

10. The adjusted test period system fuel expense for use in this proceeding is $749,402,000.

11. The proper fuel factor for this proceeding is 1.0725¢/kWh, excluding gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense overcollection was $29,872,000. The adjusted North Carolina jurisdictional test year sales are 43,848,255 mWh.

13. The Company's Experience Modification Factor (EMF) is a decrement of .0681¢/kWh, excluding gross receipts tax.

14. Interest expenses associated with the overcollection of test period fuel revenues amount to $4,481,000, based upon a 10% annual interest rate.

15. The EMF interest decrement is .0102¢/kWh, excluding gross receipts tax.

16. The final fuel factor is 0.9942¢/kWh, excluding gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending December 31 as the test period for Duke. The Company's filing was based on the 12 months ended December 31, 1993.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every 10 years and each time the utility's fuel procurement practices change. The Company's fuel procurement practices were filed with the Commission in Docket No. E-100, Sub 47, and remained in effect during the 12 months ended December 31, 1993. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes that these practices were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence for these findings of fact is found in the testimony of Company witness Paton.

Company witness Paton testified that the test period per books system sales were 73,246,143 mWh and test period per book system generation was 80,672,499 mWh. Public Staff witness Lam in his affidavit accepted these levels of test period per book system sales and generation for use in the fuel computation. The test period per book generation is broken down by type as follows:

	mWh
Coal	34,096,852
Oil & Gas	42,666
Light Off	
Nuclear	34,390,215
Hydro	1,970,244
Net Pumped Storage	(387,621)
Purchased Power	665,582
Interchange Purchases	436,125
Catawba Contract Purchases	8,810,403
Catawba Interconnection Agreements	604,270
Interchange	43,763
Total Generation	80,672,499

Witness Paton testified that Duke achieved a system nuclear capacity factor of 78% for the test period. Witness Paton normalized the system nuclear capacity factor to a level of 75%, which is an average of the actual 78% test year performance and the 72% capacity factor used to determine the

base fuel rate in the Company's last general rate case proceeding, Docket No. E-7, Sub 487. The most recent (1988-1992) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 69.96%. Public Staff witness Lam supported the use of the 75% nuclear capacity factor proposed by the Company. No other party contested the use of a 75% nuclear capacity factor in this proceeding.

Based upon the agreement of the Company and the Public Staff as to the appropriate numbers, and noting the absence of evidence presented to the contrary, the Commission concludes that the level of per book sales and generation are reasonable and appropriate for use in this proceeding.

Based upon the past nuclear performance of the Duke system and national data, the Commission believes that Duke's nuclear performance during the test year should be normalized. The Commission concludes that the 75% nuclear capacity factor and its associated generation of 33,364,102 mWh, proposed by Duke and accepted by the Public Staff, is reasonable and appropriate for determining the appropriate fuel costs in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of Company witness Paton.

Witness Paton decreased total per book test period sales by 3,373,508 mWh. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 373,528 mWh, and negative 1,881,286 mWh, and 1,865,750 mWh, respectively. The level of Catawba retained generation is associated with the Company's normalized system nuclear capacity factor of 75%.

The Public Staff accepted witness Paton's adjustment for customer growth, weather normalization and Catawba retained generation.

The Commission concludes that the adjustments for customer growth of 373,528 mWh, and weather normalization of a negative 1,881,286 mWh, and Catawba retained generation of a negative 1,865,750 mWh as presented by the Company and reviewed and accepted by the Public Staff, are reasonable and appropriate for use in this proceeding. Therefore, the Commission concludes that the per book test period system sales of 73,246,143 mWh should be decreased by 3,373,508 resulting in an adjusted test period sales level of 69,872,635 mWh which is both reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Company witness Paton.

Witness Paton made an adjustment of a negative 3,573,145 mWh to per book generation, for adjustments relating to weather normalization, customer growth and Catawba retained generation, based on a 75% normalized system nuclear capacity factor and, therefore, calculated an adjusted generation level of 77,099,354 mWh.

Witness Lam reviewed and accepted witness Paton's adjusted generation level of 77,099,354 mWh.

The Commission concludes, after finding Duke's and the Public Staff's recommended normalized system nuclear capacity factor of 75% reasonable and appropriate in Finding of Fact No. 6 and adjustments to sales for customer growth, weather and Catawba retained generation reasonable and appropriate in Finding of Fact No. 7, that the Duke and Public Staff adjustment to per book system generation of a negative 3,573,145 mWh and the resulting adjusted test period generation level of 77,099,354 mWh are both reasonable and appropriate for use in this proceeding. Total generation is broken down by type as follows:

	mWh
Coal	34,700,343
Oil & Gas	23,944
Light Off	-
Nuclear	33,364,102
Hydro	1,731,400
Net Pumped Storage	(490,826)
Purchased Power	665,582
Interchange Purchases	436,125
Catawba Contract Purchases	6,668,684
Total Generation	77,099,354

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-15

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Paton and the affidavit of Public Staff witness Lam.

Witness Paton's testimony recommended fuel prices as follows: (1) coal price of $16.00/mWh; (2) oil and gas price of $70.21/mWh; (3) light-off fuel expense of $3,902,000; (4) nuclear fuel price of $5.67/mWh; (5) purchased power fuel price of $13.99/mWh; (6) interchange fuel price of $22.81/mWh; and (7) Catawba Contract purchase fuel price of $5.91/mWh.

Witness Lam in his affidavit accepted Ms. Paton's recommended fuel expense and fuel prices except for the cost of coal. He recommended the use of the most recent price available for Duke's coal cost of $15.51/mWh, rather than Duke's average test year coal cost.

At the hearing, counsel for Duke stated that the parties had reached an agreement on the appropriate fuel factor to be determined in this proceeding. Without endorsing the methodology used by the Public Staff to determine its recommended fuel factor, the parties did agree to the reasonableness of the resulting fuel factor for purposes of setting rates in this proceeding.

Therefore, based on the parties' agreement, the Commission concludes that adjusted test period fuel expenses of $749,402,000 and the fuel factor of 1.0725¢/kWh, excluding gross receipts tax, as proposed by witness Lam are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .0307¢/kWh lower than the base fuel factor of 1.1032¢/kWh set in the Company's last general rate case, Docket No. E-7, Sub 487.

North Carolina General Statute 62-133.2(d) provides that the Commission: "Shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period...in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case..." Further, amended Rule R8-55(c)(5) provides: "Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Both Company witness Paton and Public Staff witness Lam, in his affidavit, testified that during the test year Duke over-recovered $29,872,000 in fuel revenues and that the adjusted North Carolina jurisdictional test year sales are 43,848,255 mWh. The $29,872,000 over-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 43,848,255 mWh to arrive at an EMF decrement of .0681¢/kWh, excluding gross receipts tax. The Commission concludes that there being no controversy, the EMF decrement of .0681¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding.

Company witness Paton determined the amount of interest calculated at an annual rate of 10% applicable to the EMF decrement to be $4,481,000. This calculation was reviewed and accepted by witness Lam.

Based upon the agreement of the Company and the Public Staff as to the rate and amount of interest on the EMF decrement, and noting the absence of any evidence to the contrary, the Commission concludes that $4,481,000 is the appropriate amount of interest expense to use to determine the EMF interest decrement.

Based upon the previously approved adjusted level of North Carolina jurisdictional sales of 43,848,255 mWh and the $4,481,000 of EMF interest expense, the Commission concludes that the EMF interest decrement rider should be set at .0102¢/kWh, excluding gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Accordingly, the fuel calculation, incorporating the conclusions reached herein result in a final net fuel factor of .9942¢/kWh, excluding gross receipts tax, as shown in the following table:

Description	Adjusted Generation (mWh)	Fuel Price $/mWh	Fuel Dollars (000's)
Coal	34,700,343	15.51	$538,202
Oil and gas	23,944	70.21	1,681
Light-Off		-	3,902
Nuclear	33,364,102	5.67	189,316
Hydro	1,731,400	-	0
Net Pumped Storage	(490,826)	-	0
Purchased Power	665,582	13.99	9,310
Interchange Purchases	436,125	22.81	9,948
Catawba Contract Purchases	6,668,684	5.91	39,412
TOTAL	77,099,354		791,771
Less:			
Intersystem Sales	(2,657,331)		(42,369)
Line Loss	(4,569,388)		0
System MWH Sales	69,872,635		$749,402
Fuel Factor ¢/kWh			1.0725¢
EMF ¢/kWh			(0.0681)
EMF Interest ¢/kWh			(0.0102)
FINAL FUEL FACTOR ¢/KWH			0.9942¢

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after July 1, 1994, Duke shall adjust the base fuel cost approved in Docket No. E-7, Sub 487, in its North Carolina rates by an amount equal to a .0307¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved fuel cost by decrements of .0681¢/kWh and .0102¢/kWh for the EMF and EMF interest, respectively. The EMF and EMF interest decrements are to remain in effect for a 12-month period beginning July 1, 1994.

2. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement these approved fuel charge adjustments no later than 10 days from the date of this Order.

3. That Duke shall notify its North Carolina retail customers of these fuel adjustments by including the "Notice to Customers of Net Rate Increase" attached as Appendix A as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, Sub 540

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities	)	NOTICE TO CUSTOMERS OF NET RATE INCREASE

NOTICE IS GIVEN that the North Carolina Utilities Commission entered an Order on June 23, 1994, after public hearings, approving a fuel charge net rate increase of approximately $3.6 million on an annual basis in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The net rate increase will be effective for service rendered on and after July 1, 1994. The rate increase was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1993, and represents actual changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission's Order will result in a monthly net rate increase of approximately 8¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1994.

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

DOCKET NO. E-22, SUB 348

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of Application of North Carolina Power Pursuant to N.C.G.S. § 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities	)	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD: Tuesday, November 8, 1994, at 9:30 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

BEFORE: Commissioner Allyson K. Duncan , Presiding; Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For North Carolina Power:

Frank A. Schiller, Esquire, Hunton and Williams, P.O. Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Gina Holt, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

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

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

Ralph McDonald, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

BY THE COMMISSION: N.C.G.S. § 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or "the Company") was issued by the Commission on February 26, 1993, in Docket No. E-22, Sub 333. The last order approving a fuel charge adjustment for the Company was issued on December 21, 1993, in Docket No. E-22, Sub 344.

North Carolina Power filed its fuel adjustment application and supporting testimony and exhibits in accordance with NCUC Rule R8-55 and N.C.G.S. § 62-133.2 on September 9, 1994. North Carolina Power filed testimony and exhibits for the following witnesses: Thomas H. Christian - Director, Corporate Accounting; Thomas Q. Taylor - Staff Power Analyst; and Glenn A. Pierce - Regulatory Specialist, Rate Design. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

On September 15, 1994, the Commission issued an Order Scheduling Hearing and Requiring Public Notice of this proceeding.

The Carolina Industrial Group for Fair Utility Rates (CIGFUR) filed a Petition to Intervene on September 19, 1994, which petition was granted by Order dated September 21, 1994. The Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene dated September 28, 1994, which petition was granted by Order dated October 4, 1994. The Attorney General filed a Notice of Intervention on October 10, 1994.

On October 13, 1994, the Company filed a Notice of Affidavits, which indicated that the Company would enter its testimony into the record by affidavit at the hearing in the absence of an objection from any party. No such objection was raised by any party. On October 24, 1994, the Public Staff filed an affidavit of Thomas S. Lam that recommended approval of the Company's fuel adjustment filing.

The matter came on for hearing as scheduled on Tuesday, November 8, 1994. The prefiled testimony of the Company's witnesses was stipulated into the record by affidavit. The affidavit of Public Staff witness Lam and the exhibits of all of the witnesses were admitted into evidence.

Based upon the foregoing, the prefiled testimony and affidavits of Company witnesses Christian, Taylor and Pierce and Public Staff witness Lam, and the entire record, the Commission makes the following:

FINDINGS OF FACT

1. North Carolina Power is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1994.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The fuel proceeding test period per book system sales are 64,786,828 MWh.

5. The fuel proceeding test period per book system generation is 68,946,414 MWh which includes various energy generations as follows:

	MWh
Coal	26,918,158
Combustion Turbine	2,378,291
Heavy Oil	2,940,219
Natural Gas	535
Nuclear	24,494,807
Hydro	2,620,175
Pumped Storage	(2,389,476)
Power Transactions	
NUG	9,849,779
Other	4,224,225
Sales for Resale	(2,090,310)

6. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 73.68%, which is the latest NERC five year average.

7. The adjustment to test period sales of (1,256,078) MWh results from an additional 115,047 MWh of customer growth, 231,481 MWH of additional customer usage, a decrease of 1,522,923 MWh associated with weather normalization, and a decrease of 79,683 MWh from the restatement of Non-jurisdictional ODEC sales from production level to sales level, added to fuel test period per book system sales of 64,786,828 MWh.

8. The adjusted test period system generation for use in this proceeding is 67,713,158 MWh which includes various energy generations as follows:

	MWh
Coal	27,796,481
Combustion Turbine	2,455,915
Heavy Oil	3,036,143
Natural Gas	574
Nuclear	21,750,370
Hydro	2,620,175
Pumped Storage	(2,389,476)
Power Transactions	
NUG	10,171,184
Other	4,362,065
Interruptible Sales	(2,090,310)

9. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $13.84/MWh.
B. The nuclear fuel price is $3.95/MWh.
C. The heavy oil fuel price is $22.61/MWh.
D. The natural gas price is $0/MWh.
E. The internal combustion turbine (IC) fuel price is $22.31/MWh.

F. The fuel price for other power transactions is $20.74/MWh.
G. Hydro, pumped storage, and non-utility generation (NUG) have a zero fuel price.

10. The adjusted system fuel expense for the July 1, 1993, to June 30, 1994 test period for use in this proceeding is $629,073,937.

11. The appropriate fuel factor for this proceeding is 0.990¢/kWh, excluding gross receipts tax; 1.023¢/kWh including gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense over-collection is $1,413,045. The adjusted North Carolina jurisdictional test year sales are 2,757,260 MWh.

13. Interest expense associated with the over-collection of test period fuel revenues amounts to $211,957, based upon a 10% annual interest rate.

14. The Company's Experience Modification Factor (EMF) and interest combine for a decrement of 0.059¢/kWh, excluding ross receipts tax; . /kWh including gross receipts tax.

15. The final fuel factor is .931¢/kWh, excluding gross receipts tax; .962¢/kWh, including gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

N.C.G.S. § 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for North Carolina Power. The Company's filing on September 9, 1994, was based on the 12 months ended June 30, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to North Carolina Power's procurement of fossil and nuclear fuels were filed in Docket No. E-22, Sub 335, on April 2, 1993. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes these practices were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witnesses Taylor and Pierce and the affidavit of Public Staff witness Lam.

Company witnesses Taylor and Pierce and Public Staff witness Lam testified with regard to the July 1, 1993 to June 30, 1994 test period sales, test period generation, and normalized nuclear capacity factor. Company witnesses Taylor and Pierce testified that the test period levels of sales and generation were 64,786,828 MWh and 68,946,414 MWh, respectively. The test period per book system generation includes various energy generations as follows:

	MWh
Coal	26,918,158
Combustion Turbine	2,378,291
Heavy Oil	2,940,219
Natural Gas	535
Nuclear	24,494,807
Hydro	2,620,175
Pumped Storage	(2,389,476)
Power Transactions	
NUG	9,849,779
Other	4,224,225
Sales for Resale	(2,090,310)

Public Staff witness Lam accepted the levels of sales and generation as proposed by the Company for use in his fuel computation.

Company witness Taylor testified that the Company achieved a system nuclear capacity factor of 83.2% for the July 1, 1993 to June 30, 1994 test period. Witness Taylor normalized the system nuclear capacity factor to a level of 73.68%, which is the latest North American Electric Reliability Council's (NERC) five-year nuclear capacity factor. Witness Lam agreed that the nuclear capacity factor of 83.2% as achieved by the Company should be normalized to the latest NERC five-year pressurized water reactor average of 73.68%. No other party offered testimony on the normalized nuclear capacity factor. In the absence of evidence presented to the contrary, the Commission concludes that the July 1, 1993 to June 30, 1994 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 73.68% normalized system nuclear capacity factor is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Pierce.

Witness Pierce testified that, consistent with Commission Rule R8-55(d)(2), the Company's system sales data for the 12-month period ending June 30, 1994 was adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by (1,256,078) MWh. This adjustment is the sum of adjustments for customer growth, increased usage,

and weather normalization of 115,047 MWh, 231,481 MWh and (1,522,923) MWh, respectively, and a decrease of 79,683 MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level. The Public Staff reviewed and accepted these adjustments.

Based on the foregoing evidence, the Commission concludes that the adjustments due to customer growth, increased usage, and weather normalization of 115,047 MWh, 231,481 MWh, and (1,522,923) MWh, respectively, and a decrease of 79,683 MWh from restatement of non-jurisdictional ODEC sales from production level to sales level are reasonable and appropriate adjustments for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witnesses Taylor and Pierce.

Company witness Pierce presented an adjustment to per book MWh generation for the 12-month period ended June 30, 1994, due to weather normalization, customer growth, and increased usage of 1,233,330 MWh, to arrive at witness Taylor's adjusted generation level of 67,713,158 MWh. Witness Lam reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1993, due to weather normalization, customer growth and increased usage. Witness Lam also accepted witness Taylor's generation level of 67,713,158 MWh which includes various energy generations as follows:

	MWh
Coal	27,796,481
Combustion Turbine	2,455,915
Heavy Oil	3,036,143
Natural Gas	574
Nuclear	21,750,370
Hydro	2,620,175
Pumped Storage	(2,389,476)
Power Transactions	
NUG	10,171,184
Other	4,362,065
Interruptible Sales	(2,090,310)

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of 1,233,330 MWh is reasonable and appropriate for use in this proceeding, and that the resultant adjusted fuel generation level of 67,713,158 MWh is also reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-11

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witness Taylor and the affidavit of Public Staff witness Lam.

Witness Taylor testified that the Company's proposed fuel factor is based on June 1994 fuel prices as follows: (1) coal price of $13.84/MWh; (2) nuclear fuel price of $3.95/MWh; (3) heavy oil price of $22.61/MWh; (4) natural gas price

of $0/MWh; (5) internal combustion turbine price of $22.31/MWh; (6) other power transactions price of $20.74/MWh; and (7) hydro, pumped storage, and non-utility generation at a zero fuel price. Witness Lam accepted witness Taylor's fuel prices.

In the absence of any evidence to the contrary, the Commission concludes that the fuel prices recommended by Company witness Taylor and accepted by Public Staff witness Lam are reasonable and appropriate for use in this proceeding.

The Commission concludes that adjusted fuel test period expenses of $629,073,937 and the fuel factor of 0.990¢/kWh, excluding gross receipts tax (1.023¢/kWh with gross receipts tax), is reasonable and appropriate for use in this proceeding. No party opposed this calculation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-14

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Pierce and the affidavit of Public Staff witness Lam.

North Carolina General Statute 62-133.2(d) requires the Commission to "incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period . . . in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case." Further, Rule R8-55(c)(5) provides: "Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Company witness Pierce and Public Staff witness Lam testified that the Company over-collected its fuel expense by $1,413,045 during the test year ending June 30, 1994. They calculated interest for this over-collection of $211,957 in accordance with Rule R8-55(c)(5) using a Commission approved 10% interest rate. Further, witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 2,757,260 MWh.

The Company is proposing to refund the fuel revenue over-collection and associated interest to the customers over a 12-month period beginning January 1, 1995, using the adjusted North Carolina retail sales of 2,757,260 MWh as determined by the Company and accepted by the Public Staff.

The Commission concludes that the Company's calculation of the fuel revenue over-collection and associated interest of $1,413,045 and $211,957, respectively, are appropriate for use in this proceeding and should be refunded to the customers over a 12-month period. No party opposed these calculations. This refund should be in the form of a separate EMF rider - Rider B.

The $1,413,045 over-collected fuel revenue plus the $211,951 of interest was divided by the adjusted North Carolina jurisdictional sales of 2,757,260 MWh to

arrive at the Company's proposed EMF decrement of .059¢/kWh, excluding gross receipts tax (.061¢/kWh including gross receipts tax). Public Staff witness Lam accepted this proposed EMF decrement. The Commission concludes that there being no controversy, the proposed EMF decrement of .059¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 1995, and shall expire one year from that date.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is contained in the testimony and exhibits of Company witnesses Pierce and Taylor and the affidavit of Public Staff witness Lam.

Based upon our prior findings in this proceeding the Commission finds that the final net fuel factor, including gross receipts tax, approved for usage in this case is 0.962¢/kWh.

The fuel calculation incorporating these conclusions is shown in the following table:

	Adjusted Generation (MWh)	Fuel Price $/MWh	Fuel Dollars (000's)
Coal	27,796,481	13.84	384,703
Nuclear	21,750,370	3.95	85,914
Heavy Oil	3,036,143	22.61	68,647
Natural Gas	574	-	-
Combustion Turbine	2,455,915	22.31	54,791
Hydro	2,620,175	-	
Pumped Storage	(2,389,476)	-	
Power Transactions			
NUG	10,171,184	-	
Other	4,362,065	20.74	90,469
Sales for Resale	(2,090,310)		(58,561)
System MWh Sales & Total Fuel Cost	67,713,158		629,074
Fuel Factor (¢/kWh)			.99¢

	Effective 1/1/95 (Including Gross Receipts Tax)
Base Fuel Factor ¢/kWh	1.127
EMF/Rider B ¢/kWh	(0.061)
Fuel Cost/Rider A ¢/kWh	(0.104)
FINAL FUEL FACTOR ¢/kWh	0.962

IT IS THEREFORE, ORDERED, as follows:

1. That effective beginning with usage on and after January 1, 1995, North Carolina Power shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Subs 333 and 335, by a decrement (Rider A) of .101¢/kWh (excluding gross receipts tax).

2. That an EMF Rider decrement (Rider B1) of .059¢/kWh (excluding gross receipts tax) shall be instituted and remain in effect for usage from January 1, 1995, until December 31, 1995.

3. That North Carolina Power shall notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Increase" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December 1994.

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

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 348

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Power Pursuant to N.C.G.S. § 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities	))))	NOTICE TO CUSTOMERS OF RATE INCREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 19, 1994, after public hearings, approving an approximate $1.5 million increase in the annual rates and charges paid by the retail customers of North Carolina Power in North Carolina. The rate increase will be effective beginning with the next regularly scheduled monthly billing cycle. The rate increase was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1994, and represents actual changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power during the test period.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate increase of approximately $.53 per month from the previous effective rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December 1994.

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

DOCKET NO. SP-100, Sub 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request for a Declaratory Ruling by Carolina Energy, Limited Partnership	)))	ORDER ON REQUEST FOR DECLARATORY RULING

BY THE COMMISSION: On June 2, 1994, Carolina Energy, Limited Partnership, (Carolina Energy) filed a request for a declaratory ruling setting forth its plans for the construction and operation of materials recovery facilities (MRF) to convert municipal solid waste into fuel that will be burned in a fluidized bed combustor-boiler system to produce process steam for sale only to E.I. du Pont de Nemours and Company's (DuPont) plant at Kinston, North Carolina. By its request, Carolina Energy requests that the Commission declare that its proposed activities would not render it a public utility within the meaning of Chapter 62.

Carolina Energy's request indicates that it has entered into a 26-year Resource Recovery Agreement with Pitt and Lenoir Counties and anticipates entering into additional agreements. Under these contracts, Carolina Energy will receive municipal solid waste from the counties, recycle its marketable components, process the remaining waste, and burn it as boiler fuel using a clean-burning technology. Carolina Energy's request further asserts that its use of the participating counties' solid waste will enable them to meet their landfill reduction requirements under North Carolina Senate Bill 111 and will significantly extend the life of their existing landfill sites.

The request further indicated that DuPont's Kinston plant currently generates process steam using two coal-fired boilers and a third boiler using either natural gas or oil. Process steam generated by the Carolina Energy project will be sold to DuPont and will replace a portion of the process steam currently generated by DuPont. DuPont presently owns and operates two 7.5 MW extraction type steam turbine generators that use steam to generate electricity and produce 20-pound extraction steam for DuPont's own use. According to the request the Carolina Energy project will not replace or alter DuPont's existing electric generating equipment. Further, the plant's process steam needs are significantly larger than the total process steam output of the Carolina Energy project. DuPont's Kinston plant will use on site all the process steam purchased from Carolina Energy and will not resell it to any other entity. The request further indicates that, due to a plant expansion that currently is close to completion, DuPont's electricity and natural gas needs are increasing.

The standard for determining whether a given enterprise is a public utility within the meaning of the regulatory scheme in Chapter 62 was established by the Supreme Court in State ex rel. Utilities Commission v. Simpson, 295 N.C. 519, 246 S.E.2d 753 (1978) (Simpson). The Court admonished against an abstract, formalistic definition of "public" to be thereafter universally applied and granted the Commission considerable flexibility in determining the meaning of "to or for the public." The Court held that what constitutes the "public" in a given case depends on the regulatory circumstances of that case. 295 N.C. at 524. The Simpson Court identified some of these circumstances as (1) the nature of the industry sought to be regulated, (2) the type of market served by the industry, (3) the kind of competition that naturally inheres in that market, and (4) the

effect of non-regulation or exemption from regulation of one or more persons engaged in the industry. In the final analysis, the meaning of the "public" must be such as will accomplish the "legislature's purpose and comport with its public policy." Id.

The Public Staff presented this matter to the Commission at its weekly Staff Conference on June 27, 1994. Based on the facts and representations set forth in the request and on its inspection of the energy services facilities at DuPont's Kinston plant, the Public Staff concluded that the activities described in Carolina Energy's request would not render it a public utility within the meaning of G.S. 62-3(23)(a). This conclusion was based on the following factors: (1) steam is not as common a utility function as other services and traditionally has not been regulated to the same degree; (2) Carolina Energy will sell process steam only to DuPont solely for use in DuPont's manufacturing process; (3) steam will not be used to generate electricity; (4) the project will have positive environmental impacts, including, but not limited to, a reduction in the size of existing landfills; and (5) the sale will occur pursuant to a freely bargained-for-contract between Carolina Energy and DuPont.

The Public Staff, therefore, recommended that the Commission: (1) declare that Carolina Energy's proposed activities, as described in its request, do not render it a public utility; (2) condition any declaration on the facts and representations set forth in Carolina Energy's request; (3) require Carolina Energy and/or DuPont to report any change in those facts and representations to the Commission by filing a report in this docket; and (4) state that its decision in this docket establishes no precedent and future proposed activities will be evaluated on a case-by-case basis.

Based on a careful consideration of the record in this docket, the Commission concludes that the proposed activities described in Carolina Energy's request would not render it a public utility within the meaning of G.S. 62-3(23)a. This conclusion is based on the above-discussed factors and applies only to the request that is the subject of this docket. The Commission further concludes that its declaration of non-utility status for Carolina Energy's proposed activities is conditioned on the facts and representations set forth in Carolina Energy's request. In addition, the Commission concludes that Carolina Energy and DuPont should be required to report any changes in the facts and representations contained in the request to the Commission by filing a report in this docket within 30 days of the occurrence or discovery of any such change(s) or the decision or plan to make any such change(s), whichever is earliest.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Energy's proposed activities, as described in its request, do not render it a public utility;

2. That this declaration is conditioned on the facts and representations set forth in Carolina Energy's request;

3. That Carolina Energy and DuPont are required to file reports in this docket indicating any changes in the facts and representations set forth in Carolina Energy's request to the Commission within 30 days of the occurrence or discovery of any such change(s) or the decision or plan to make any such change(s), whichever is earliest; and

4. That the Commission's decision in this docket establishes no precedent and future proposed activities will be evaluated on a case-by-case basis.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. G-37
DOCKET NO. G-5, SUB 330

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-37

In the Matter of
Application of Cardinal Pipeline Company, LLC, for a Certificate of Public Convenience and Necessity to Construct, Own, and Operate an Intrastate Pipeline and for the Establishment of Rates

Docket No. G-5, Sub 330

In the Matter of
Kathy Wyrick, 6616 High Rock Road, Brown Summit, North Carolina 27214, et al.,
Complainants

v.

Public Service Company of North Carolina, Inc.,
Respondent

ORDER GRANTING CERTIFICATE AND RULING ON COMPLAINTS

HEARD IN: Guilford County Courthouse, Greensboro, North Carolina, on June 1, 1994

BEFORE: Commissioner Laurence A. Cobb, Presiding, Chairman Ralph A. Hunt and Commissioner William W. Redman

APPEARANCES:

For Cardinal Pipeline Company, LLC:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, Post Office Box 26000, Greensboro, North Carolina 27420

For Public Service Company of North Carolina, Inc.:

Dan W. Clark, Tharrington, Smith and Hargrove, Attorneys at Law, Post Office Box 1151, Raleigh, North Carolina 27602

For the Public Staff:

Paul L. Lassiter and Gina C. Holt, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

BY THE COMMISSION: On March 23, 1994, Cardinal Pipeline Company, LLC (Cardinal or the Company) filed an application in Docket No. G-37 pursuant to G.S. 62-110 *et seq.*, G.S. § 62-130 *et seq.*, and Commission Rules R6-60 *et seq.*, requesting the Commission to grant it a certificate of public convenience and necessity authorizing it to construct, own, and operate a 24-inch diameter intrastate pipeline and associated facilities. Cardinal is a limited liability company formed under the North Carolina Limited Liability Company Act. The members of Cardinal are Public Service Company of North Carolina, Inc. (PSNC), and Piedmont Intrastate Pipeline Company (Piedmont Intrastate). Piedmont Intrastate is a wholly-owned subsidiary of Piedmont Natural Gas Company, Inc. (Piedmont).

On March 4, 1994, Kathy Wyrick, filed a complaint in Docket No. G-5, Sub 330 against PSNC relating to the route and effect on nearby properties and property owners of the proposed Cardinal pipeline. Subsequently, several other persons filed complaint letters with the Commission stating similar objections to the proposed pipeline. On March 21, 1994, the Commission issued an Order providing that all complaints would be handled in Docket No. G-5, Sub 330. PSNC filed an Motion to Dismiss and Answer in this complaint docket on April 13, 1994.

On April 20, 1994, the Commission issued its Order Scheduling Joint Hearing in Docket No. G-37 and Docket No. G-5, Sub 330.

On May 3, 1994, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in Docket No. G-37, and on May 11, 1994, the Commission issued an order granting the petition.

The hearing was held as scheduled. Cardinal presented the testimony of Jerry W. Richardson, an officer of Cardinal and Senior Vice President of Operations for PSNC, and Ray B. Killough, Senior Vice President of Operations for Piedmont. The Public Staff presented the testimony James G. Hoard, Supervisor of Natural Gas Section of the Accounting Division, and Eugene H. Curtis, Jr., Director of the Natural Gas Division. James W. Morrison testified as a public witness on behalf of Guilford County Planning and Development Department. Complainant Sue Iseley Tipton testified.

Based upon the verified application, the testimony and exhibits received into evidence at the hearing, and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

1. In its application in this docket, Cardinal is seeking (1) a certificate of public convenience and necessity to permit it to construct, own and operate a 24-inch diameter intrastate pipeline and associated facilities, (2) approval of a method of financing the facilities, a ratemaking procedure and

tariffs, and (3) a waiver of Rule R1-17 and of any other rules or regulations of the Commission to the extent necessary to provide the relief requested in the first two requests.

2. The proposed intrastate pipeline will originate at Compressor Station No. 160 of Transcontinental Gas Pipe Line Corporation (Transco) in Rockingham County, North Carolina, and ran through Northern Guilford County into Alamance County for a distance of approximately 35 miles where it will connect with facilities owned by PSNC and with facilities to be owned by Piedmont.

3. The estimated cost of construction of the proposed intrastate pipeline is $25 million with $16 million to be provided by PSNC and $9 million to be provided by Piedmont Intrastate, a wholly-owned subsidiary of Piedmont.

4. Construction of the proposed facilities is to commence in July 1994 and be completed in December 1994.

5. PSNC's transmission facilities from Transco's Dan River Meter Station in Rockingham County, North Carolina supplying its eastern region are presently operating at or very near their capacity.

6. Piedmont's transmission facilities used to provide service to Guilford, Randolph, Alamance and Davidson Counties are presently operating at or very near their capacity.

7. Cardinal will provide natural gas transportation service to PSNC and Piedmont and will provide them with additional capacity which they require to provide natural gas service to their customers in North Carolina.

8. Although it would be possible for PSNC and Piedmont to construct separate pipeline facilities to meet their respective needs, the construction, maintenance and operation of separate facilities would be more costly than the proposed intrastate pipeline to be constructed, maintained and operated by Cardinal. Thus, the proposed intrastate pipeline will result in lower rates to consumers than would be the case if PSNC and Piedmont were to construct separate facilities.

9. Upon commencement of the operations proposed, Cardinal will be a public utility within the meaning of the Public Utilities Act and will be subject to the jurisdiction of the Commission. Under G.S. § 62-110, Cardinal is required to obtain a certificate of public convenience and necessity from the Commission prior to constructing, owning or operating the intrastate natural gas pipeline proposed herein.

10. The intrastate pipeline to be constructed, owned and operated by Cardinal is in the public interest, will benefit all customers of PSNC and Piedmont, and is required by the public convenience and necessity.

11. The proposed financing arrangement and the proposed ratemaking treatment of Cardinal as contained in the application are fair and reasonable and should be approved. Cardinal will not charge either Piedmont or PSNC for its

intrastate pipeline service since these local distribution companies have made capital contributions to Cardinal and will make pro-rata reimbursements of actual Cardinal expenses.

12. The various impacts of the intrastate pipeline identified by the Guilford County Planning and Development Department have been, or will be, properly addressed by Cardinal.

13. The complaints filed by Bryan and Pauline Gross and Luther D. and Gaynelle S. McCollum have been withdrawn.

14. The complaints filed by Charlie and Pauline Cook and Richard Cook have been settled.

15. The complaints filed by Kathy Wyrick, Debbie Nelson, and Morris and Marilyn Loye have been settled.

16. The complaints of Rudy Langley and Frank Troxler should be dismissed since they did not appear at the hearing.

17. The complaint of Sue Iseley Tipton should be denied since her testimony shows no basis for granting any relief in this proceeding.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 1

Finding and Conclusion 1 is jurisdictional and was not contested by any party. It is supported by the Company's verified application and the testimony and exhibits of the Company's witnesses.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 2

The location of the proposed pipeline is shown in Exhibit 4 to the application. The location of the pipeline is also discussed in testimony of Cardinal witness Richardson and in the testimony of Public Staff witness Curtis.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NO. 3-4

The cost and construction schedules are set forth in the verified application and in the testimony of Cardinal witness Richardson and Public Staff witness Curtis. Witness Richardson testified that the estimated cost of construction is $25 million, that PSNC's portion of this cost is estimated to be $16 million, and that Piedmont Intrastate's portion of the cost is estimated to be $9 million. Witness Richardson also testified that construction can be completed in December 1994 if the Commission issues an order by July 1, 1994, granting a certificate to Cardinal.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NO. 5-8

Cardinal witness Richardson testified that PSNC's certificate service area includes the counties of Caswell, Person, Granville, Vance, Warren, Orange, Durham, Franklin, Wake, Chatham, Lee and a portion of Alamance County and that the transmission facilities used to provide service to this region are presently operating at or very near their capacity. Witness Richardson further testified

that PSNC will be unable to provide for anticipated growth in this portion of its service area without additional intrastate pipeline capacity. Cardinal witness Killough testified that Piedmont's certificated service area includes the counties of Guilford, Davidson and Randolph and a portion of Alamance County, that the transmission facilities used to provide service to these counties are presently operating at or very near their capacity, and that Piedmont will be unable to provide for anticipated growth in its service area without additional pipeline capacity. Cardinal witnesses Richardson and Killough and Public Staff witness Curtis all testified that, after considering a number of alternatives, the construction by Cardinal will provide the most cost effective means to provide the required additional capacity for both PSNC and Piedmont.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 9

This finding and conclusion is based upon the other findings and conclusions relating to the operation of the proposed pipeline. G. S. 62-3(23)a defines a public utility as a person owning or operating in this State equipment or facilities for

> 1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation.
>
> 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation.

Cardinal will provide defined services and it will receive compensation in the form of capital contributions and expenses. The Commission concludes that Cardinal will serve the public. What constitutes "the public" in a given case depends upon the regulatory circumstances of that case. State ex. rel Utilities Commission v. Simpson, 295 N.C. 519, 524 (1978). In this case, the Commission concludes that Cardinal will provide service to or for "the public" based upon the unique circumstances of its operation. These circumstances include the fact that both PSNC and Piedmont are themselves public utilities and that Cardinal's service is necessary for them to provide their public utility services.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 10

Cardinal witnesses Richardson and Killough and Public Staff witness Curtis all testified that the proposed pipeline will provide additional capacity needed by PSNC and Piedmont to provide natural gas service to their current and future customers. These witnesses also testified that the proposed pipeline is the most cost effective means of providing this needed capacity. No one offered any evidence to the contrary. Witness Richardson testified that Cardinal has no present plans to provide service to anyone other than PSNC and Piedmont. If, at some future date, Cardinal should desire to provide service to some other party, it will comply with Commission Rule R6-62, as the same may be amended or

superseded from time to time, or obtain a waiver of such rule before doing so. Based on the verified application, the testimony and exhibits of the witnesses, and the entire record in this case, the Commission concludes that the construction of the proposed pipeline is in the public interest.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 11

Cardinal witness Richardson testified that the Cardinal Pipeline facilities will be financed solely by capital contributions from Cardinal's members--PSNC and Piedmont Intrastate--and that Piedmont Intrastate's capital contributions, in turn, will be financed solely by capital contributions from Piedmont. Witness Richardson further testified that PSNC and Piedmont Intrastate have made capital contributions to Cardinal and may make additional capital contributions to Cardinal in the future and that PSNC and Piedmont Intrastate agree to contribute from time to time when requested by Cardinal an amount equal their pro-rata share of Cardinal's expenses. Neither PSNC nor Piedmont Intrastate will be required to pay any additional amounts for services provided by Cardinal unless otherwise required by a final order of the Commission. Cardinal does not at this time propose to transport gas for anyone other than PSNC and Piedmont. Copies of Cardinal's proposed tariffs are attached to the application. Witnesses Richardson and Killough testified that these tariffs do not provide for any additional charges for customer-owned gas transported by PSNC or Piedmont.

Public Staff witness Hoard testified that PSNC will reflect its share of Cardinal net investment in rate base, and the associated operating expenses, including depreciation, will be reflected as PSNC expenses. Witness Hoard further testified that Piedmont will reflect Piedmont Intrastate's share of Cardinal net investment in rate base, and the associated operating expenses, including depreciation, will be reflected as Piedmont expenses. Witness Hoard further testified that any revenue requirement issues concerning Cardinal will be addressed in the individual rate cases of PSNC and Piedmont.

No one offered any evidence to oppose the proposed method of financing or ratemaking or to oppose any provision of Cardinal's tariffs. Therefore, based on the verified application, the testimony and exhibits of the witnesses, and the unique facts of this case, the proposed method of financing and ratemaking and the proposed tariffs are found to be just and reasonable and are approved. The rates to be charged by PSNC and Piedmont to their customers, including transportation customers, will be determined in the individual rate cases of PSNC and Piedmont.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 12

Witness James Morrison testified that the Guilford County Planning and Development Department reviewed the proposed location of the Cardinal Pipeline and determined that the pipeline may impact certain natural areas and wetlands, parks, open spaces, community facilities and historic properties. Witness Morrison testified that the Guilford County Planning and Development Department did not take a position either for or against the construction and operation of the proposed pipeline.

Cardinal witness Killough testified that Cardinal had received environmental permits from the Corps of Engineers and the North Carolina Department of Environment, Health and Natural Resources which allow Cardinal to construct and operate the pipeline subject to the compliance with certain conditions. Witness Killough testified that Cardinal intends to comply with these conditions. Witness Richardson testified that the Boy Scout Camp on Brooks Lake Road is up for sale and that the present owner has not objected to the location of the pipeline. Witness Richardson testified that the pipeline will not be located on the property of Monticello Elementary School (which is currently being operated as a recreation center) but will be located on adjacent property. He testified that the pipeline will be operated under 49 Code of Federal Regulations Part 192 which requires that a pipeline located near a place of public assembly have additional strength pipe, higher test pressures and lower operating pressures. Witness Richardson testified that the pipeline will be located approximately 1 mile from the Brown Summer Elementary School. He also testified that the pipeline will be located in the close vicinity of only one of the four fire stations identified by the Guilford County Planning and Development Department and that the pipeline will pass through some tobacco fields and cattle pastures, but that the pipeline will not interfere with these areas once construction is completed. Witness Richardson testified that the pipeline will be located on the property of three historic properties identified by the Guilford County Planning and Development Department but that the pipeline will not interfere with any of the three historic properties. He testified that the pipeline had been moved closer to the Clapp Log House at the request of the owner. No one offered any evidence that the pipeline will interfere with any of the sites identified by the Guilford County Planning and Development Department.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 13

On May 11, 1994, Bryan and Pauline Gross filed a letter with the Commission asking to withdraw their complaint in Docket No. G-5, Sub 330. On May 13, 1994, Luther D. and Gaynelle S. McCollum filed a letter with the Commission asking to withdraw their complaint. By order of May 17, 1994, the Commission allowed these complaints to be withdrawn.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 14 - 15

Cardinal witness Richardson testified that the complaints filed by Charlie and Pauline Cook, Richard Cook, Kathy Wyrick, Debbie Nelson and the Loyes have been settled. None of these complainants appeared or offered any testimony at the hearing. The Commission concludes that these complaints should be dismissed.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 16

Complainants Rudy Langley and Frank Troxler did not offer any evidence at the hearing. Cardinal witness Richardson testified that Cardinal is working with these two complainants and trying to resolve their complaints. In the absence of any testimony or other evidence to support these two complaints, the Commission concludes that these complaints should be dismissed.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 17

The only complainant to testify at the hearing was Sue Iseley Tipton, who testified on behalf of her mother Sally Iseley. Witness Tipton testified that the pipeline would pass through property owned by her mother, that the land will go to her children, and that she is concerned about the effect of the pipeline on the beauty and value of the property. Witness Tipton expressed concern with the safety of the pipeline and asked that it be moved to the route of a power line on the edge of the property. She also testified that there was a pending condemnation proceeding relating to the taking of a right-of-way through the property. The Commission has no jurisdiction over the amount of money to be paid for the right-of-way across the property of witness Tipton's mother. That must be resolved in the pending condemnation proceeding. The Commission concludes that the testimony of witness Tipton does not show that Cardinal has been arbitrary or capricious in siting the pipeline and provides no basis for relief in this proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity to operate the intrastate pipeline facilities described in the application be granted to Cardinal and that this Order shall constitute the certificate;

2. That the financing arrangement and ratemaking treatment of Cardinal as described in the application and in this Order are approved;

3. That revenue requirement issues concerning Cardinal and the rates to be charged by PSNC and Piedmont to their customers, including transportation customers, will be determined in the individual rate cases of PSNC and Piedmont;

4. That the requirements of Rule R1-17 and of any other rules or regulations of the Commission are waived to the extent necessary to provide the relief granted in ordering paragraphs 1, 2 and 3 above; and

5. That the complaint filed in this docket by Sue Iseley Tipton should be denied and the other complaints dismissed.

ISSUED BY ORDER OF THE COMMISSION
This the 1st day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 327

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for an Adjustment of its Rates and Charges	)	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Statesville: July 12, 1994, at 7:00 p.m., Courtroom No. 2, Iredell County Hall of Justice, 201 Water Street, Statesville, North Carolina

Gastonia: July 13, 1994, at 7:00 p.m., Courtroom A, Gaston County Courthouse, 151 South Street, Gastonia, North Carolina

Asheville: July 14, 1994, at 7:00 p.m., District Courtroom 1-A (Night Court, Ground Floor), Buncombe County Courthouse, 60 Courthouse Plaza, Asheville, North Carolina

Raleigh: August 15, 1994, at 7:00 p.m., Commission Hearing Room No. 2115, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

August 16-19, 1994, Commission Hearing Room No. 2115, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, and Daniel W. Clark, Tharrington, Smith, and Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the City of Durham:

W. I. Thorton, Jr., City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701

For the North Carolina Department of Justice:

Margaret A. Force, J. Mark Payne, and Richard L. Griffin, Assistant Attorneys General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27626
For: The Using and Consuming Public

For the Public Staff:

Vickie L. Moir, Gisele L. Rankin, and James D. Little, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On March 9, 1994, Public Service Company of North Carolina, Inc. (PSNC or Company) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust its rates and charges for natural gas service in North Carolina and to make certain changes to its rules, regulations and tariffs. PSNC requested that the proposed rates be effective on and after April 8, 1994. Concurrent with the filing of its application, the Company filed a Petition to Omit or Modify Portions of G-1 Filing Requirements.

On March 24, 1994, the Commission issued an Order Granting Petition which allowed PSNC to omit or modify portions of the G-1 filing requirements as set out in the order.

On April 6, 1994, the Commission issued an Order suspending the proposed rates, declaring the matter to be a general rate case, setting the matter for investigation and hearing, establishing the test period, requiring public notice, and establishing dates for the prefiling of testimony.

Carolina Utility Customers Association, Inc. (CUCA), and the City of Durham filed Motions to Intervene which were allowed by the Commission. The Attorney General filed Notice of Intervention, and the Public Staff intervened through its appearance at the hearing.

Public hearings were held as scheduled. The following public witnesses appeared and testified:

Statesville:	Faye K. Rogers
Gastonia:	William Martin
Asheville:	Marjorie Lockwood, William E. Gravely
Raleigh:	Steven Jurovics, J.L. Cook, Norman F. Carden III, June Horvitz

Witnesses for the parties presented evidence in Raleigh beginning on August 16, 1994.

PSNC presented the testimony and/or exhibits of the following witnesses:

1. Charles E. Ziegler, Jr., Chairman, President and Chief Executive Officer of PSNC;

2. C. Marshall Dickey, Executive Vice President - Corporate Development;

3. Robert D. Voigt, Senior Vice President - Finance and Treasurer;

4. Jerry W. Richardson, Executive Vice President - Operations and Engineering;

5. Robert S. Jackson, Consultant associated with Stone & Webster Management Consultants, Inc.; and

6. John D. Russell, President of John Russell Associates, Inc.

PSNC witness Richardson also presented supplemental testimony.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Henry Mbonu, Staff Accountant in the Public Staff's Accounting Division;

2. Julie G. Perry, Staff Accountant in the Public Staff's Accounting Division;

3. James G. Hoard, Supervisor of the Natural Gas Section in the Public Staff's Accounting Division;

4. Jeffrey L. Davis, Utilities Engineer in the Public Staff's Natural Gas Division;

5. Jan A. Larsen, Utilities Engineer in the Public Staff's Natural Gas Division; and

6. John Robert Hinton, Financial Analyst in the Public Staff's Economic Research Division.

CUCA presented the direct and rebuttal testimony and/or exhibits of Donald W. Schoenbeck, Regulatory & Cogeneration Services, Inc., and Kevin W. O'Donnell, Senior Financial Analyst with Booth & Associates, Inc.

The Attorney General presented the testimony and/or exhibits of Jack Butler, Head of the Remediation Branch of the Superfund Section, Division of Solid Waste Management, North Carolina Department of Environment, Health, and Natural Resources (DEHNR), and Bruce Nicholson, Environmental Engineer with the Remediation Branch of the Superfund Section, DEHNR.

PSNC presented rebuttal testimony and exhibits of C. Marshall Dickey and Robert Voigt and supplemental and rebuttal testimony and exhibit of Robert S. Jackson.

In response to the request of Commissioner Cobb at the close of the hearings, the Public Staff filed Public Staff Schedules 1,2, and 3 on August 24, 1994; CUCA filed its Statement of Position on August 25, 1994, and PSNC filed its schedules on August 26, 1994.

On August 25, 1994, the Public Staff filed Davis Late-Filed Exhibit Requested by CUCA.

Based on the application, the testimony and exhibits, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

GENERAL MATTERS

1. Public Service Company of North Carolina, Inc., is duly organized as a corporation under the laws of North Carolina with its principal place of business located in Gastonia, North Carolina.

2. PSNC is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all or parts of 26 counties in central and western North Carolina.

3. PSNC is a public utility as defined in G.S. 62-3(23) and is subject to the jurisdiction of this Commission and is lawfully before this Commission upon its application for an adjustment in its rates and charges for retail natural gas service pursuant to G.S. 62-133.

4. The Company's application, testimony, exhibits, affidavits of publication, and published hearing notices are in compliance with the provisions of the Public Utilities Act and the Rules and Regulations of the Commission.

5. The appropriate test period for use in this proceeding is the twelve months ended December 31, 1993, adjusted for certain known and measurable changes occurring after the end of the test period and before the conclusion of the hearing as permitted by G.S. 62-133(c).

6. In its initial application, PSNC sought to increase its North Carolina retail rates by $24,336,688, exclusive of the revenue effect of Cardinal Pipeline Company, LLC (Cardinal), a limited liability company, and $27,378,812, including the revenue effect of Cardinal. In the schedules filed subsequent to the hearings, the Company showed its proposed increase to be $17,169,523, exclusive of Cardinal.

7. The Public Staff's final recommendation was an increase in the level of annual operating revenues of $7,799,200 excluding Cardinal, and $10,511,931 including Cardinal.

8. The quality of service being provided by the Company is adequate.

VOLUMES

9. The appropriate level of adjusted sales and transportation volumes for use herein is 58,162,899 dekatherms (dts), which is composed of 50,296,938 dts of sales volumes and 7,865,961 dts of transportation volumes.

10. PSNC sold and transported 57,253,427 dts under its various sales and transportation rate schedules during the test period.

11. PSNC's test period sales and transportation volumes should be adjusted to reflect negotiated sales, weather normalization, customer growth, the transfer of existing customers from one rate schedule to another, and the cessation of operations by certain existing customers.

12. The appropriate volume level for lost and unaccounted for gas is 1,170,860 dts.

13. The appropriate volume level for Company use gas is 178,416 dts.

14. The gas supply required to generate the appropriate sales level is as follows:

Sales and Transportation	58,162,899 dts
Less: Transportation	(7,865,961)
Sales	50,296,938
Lost and Unaccounted For	1,170,860
Company Use	178,416
Gas Supply	51,646,214 dts

COST OF GAS

15. The appropriate level for total fixed gas costs in this proceeding is $38,100,717.

16. It is appropriate to use the most current information relating to fixed gas costs billed by interstate pipelines to determine the total fixed gas costs in this proceeding.

17. The appropriate level for the commodity cost of gas is $138,316,580, based on an estimate of $2.75 per dt for the benchmark.

18. The appropriate amount for lost and unaccounted for gas is $3,219,865.

19. The amount of Company use gas is $490,644, and this amount is appropriate for use in this proceeding.

20. The Company's appropriate pro forma total cost of gas expense under present rates is $180,127,806.

DEPRECIATION RATES

21. PSNC's application included an adjustment of $2,141,497 to adopt revised depreciation rates as proposed by its witness Russell. The proposed depreciation rates were from the Company's latest depreciation study, which was prepared by Mr. Russell and filed by PSNC on June 1, 1992, in compliance with Commission Rule R6-80 in Docket No. G-5, Sub 299.

22. Prior to the commencement of the evidentiary hearings in this proceeding, PSNC and the Public Staff entered into a stipulation in which the parties to that document agreed that the current depreciation rates should continue to be used except for the rates for account numbers 376 (Distribution Mains) and 380 (Distribution Services).

23. It is appropriate to use the stipulated depreciation rates in this proceeding, which are 2.81% for Distribution Mains and 4.43% for Distribution Services.

24. The Stipulation pertaining to the Company's depreciation rates as set forth in the attached Appendix B should be approved.

MANUFACTURED GAS PLANT TRACKER - RIDER F

25. PSNC owns six sites, either solely or jointly with others, that were formerly operated as manufactured gas plants (MGP). The Company acquired the sites in the late-1930s and early-1940s and operated them until the early-1950s. The plants were used to manufacture gas for more than 50 years; the Company operated them for a maximum of 15 years. The MGP sites are currently the subject of investigations under environmental laws.

26. The Company's proposed Rider F - Manufactured Gas Plant Tracker, would allow the Company to adjust its rates periodically to recover the costs it incurs related to the clean-up of MGP sites. The Company's proposed Rider F should be rejected.

27. The proposed Rider F would provide a limited opportunity for prudency review of clean-up costs and would provide less motivation for PSNC to minimize costs or seek contributions from others.

28. A general rate case is the appropriate forum for reviewing the MGP clean-up costs. Deferral and amortization of the MGP costs in a general rate case will result in more stable rates than would recovery of these costs through the Company's proposed tracker and will afford an adequate opportunity for prudency review.

29. The unamortized balance of MGP costs should not be included in rate base. The resulting sharing of clean-up costs between ratepayers and shareholders will provide PSNC motivation to minimize costs and to pursue contributions from other potentially responsible parties and insurers.

30. It is appropriate to increase O&M expenses by $50,000 to reflect the amortization over a three-year period of $150,001 of incurred MGP costs.

RATE BASE

31. The appropriate level of gas utility plant in service for use in this proceeding is $499,618,895.

32. The appropriate level of accumulated depreciation for use in this proceeding is $153,457,716.

33. The appropriate level of net plant in service for use in this proceeding is $346,161,179.

34. The former propane headquarters building was in use by PSNC Propane Corporation until June 30, 1994, at which time a third party bought the assets of PSNC Propane. The building was transferred to PSNC at that time.

35. PSNC has already begun the process of adaptation of the building to utility use and will have it fully staffed by December 1994.

36. It is appropriate to include the propane office building in utility plant in service since it will be used and useful for providing utility service within a reasonable time after the test period consistent with G.S. 62-133(c).

37. The appropriate level of gas in storage for use in this proceeding is $11,280,289.

38. The appropriate level of materials and supplies for use in this proceeding is $3,945,359.

39. The appropriate level of cash working capital investment for use in this proceeding is $888,151.

40. It is appropriate to reflect $258,000 of Transco refunds as cost-free capital.

41. The appropriate level of cost-free capital related to pensions is $13,137,894 as reflected in the Public Staff's revised filing.

42. The proper level of cost-free capital related to the stock option plan accrual is $439,917.

43. The appropriate level of sales tax accruals to deduct from rate base is $200,056.

44. The appropriate level of customer deposits to deduct from rate base is $1,727,116.

45. The appropriate level of cost-free capital related to the postretirement benefits accrual is $507,214 as reflected in the Public Staff's revised filing.

46. The appropriate level of accumulated deferred income taxes for use in this proceeding is $47,391,621.

47. PSNC's rate base used and useful in providing service is $298,613,160, consisting of gas plant in service of $499,618,895, gas in storage of $11,280,289, materials and supplies of $3,945,359, and cash working capital of $888,151 reduced by accumulated depreciation of $153,457,716, customer deposits of $1,727,116, cost-free capital items of $14,543,081 and accumulated deferred income taxes of $47,391,621.

OPERATING REVENUES

48. The appropriate level of end-of-period pro forma revenues under present rates is $297,529,748, which is composed of $296,440,523 of sales and transportation revenues and $1,089,225 of other operating revenues.

49. The "clean rate" adjustment proposed by the Public Staff is appropriate and should be used in this proceeding.

50. The Revenue Adjustment Factor (RAF) as proposed by PSNC is not appropriate and should be rejected.

51. Allowing proration and then compensating with the RAF causes revenue deficits to be made up by customers who are not responsible for the short falls.

52. It is just and reasonable to allow the Company to charge customers for the summer/winter differential in rates on a "bills rendered" basis rather than a "service rendered" basis.

53. It is appropriate for PSNC to charge its customers on a "service rendered" basis for rate changes occurring from Purchased Gas Adjustment (PGA) proceedings and for general rate cases.

54. It is appropriate to apply a customer growth adjustment to other operating revenues which have a direct relationship with customer additions.

OPERATING REVENUE DEDUCTIONS

55. The appropriate level of operation and maintenance expense for use in this proceeding is $52,213,079.

56. It is appropriate to exclude $1,065,706 of nonutility sales commissions and bonuses from O&M expenses.

57. It is appropriate to exclude all expenses associated with the sale of appliances from operating revenue deductions of the utility because these expenses are associated with a nonregulated activity.

58. The York Gas Heat Pump Program does not provide incentives to customers but provides an allowance to the manufacturer to provide the appliance at a mature market price during its introduction.

59. PSNC has sought approval of the York Gas Heat Pump Program in this general rate case proceeding.

60. It is appropriate to include approximately one-third or $79,500 of the expenses associated with the York Gas Heat Pump Program in the cost of service in this proceeding.

61. The cash incentive plan payout percentage appropriate for determining the amount to reflect in O&M expenses is 50%.

62. It is appropriate to consider the cash incentive plan payout history and corporate goals in determining the proper cash incentive plan payout percentage.

63. The Company's adjustment to increase advertising expense by $816,927 to reflect advertising expenses equal to 0.5% of total revenues is rejected.

64. The Public Staff's adjustment to reduce test year advertising expenses by $410,925 is rejected.

65. It is appropriate to include the wage increases scheduled to go into effect on December 7, 1994, under a contract between PSNC and the International Chemical Workers Union.

66. The total rate case expense related to this proceeding is $153,000.

67. The total rate case expense should be amortized over three years, based on PSNC's recent rate case activity.

68. The proper amount to include in O&M expenses for Financial Accounting Statement No. 112 - Accounting for Postemployment Benefit Costs (FAS 112 costs) is $59,756.

69. It is appropriate to determine the level of FAS 112 costs based on 1995 health insurance premiums.

70. Upon adoption of FAS 112, it is appropriate to recognize a transition obligation for regulatory purposes in order to reflect an on-going expense level for this cost.

71. It is appropriate to amortize the transition obligation over a three-year period to reflect a reasonable level of expense.

72. It is appropriate for the Company to record the FAS 112 transition obligation in a deferred debit account for financial accounting purposes and to amortize this deferred debit to O&M expenses over a three-year period.

73. The appropriate level of depreciation expense for use in this proceeding is $17,547,673.

74. The appropriate level of general taxes for use in this proceeding is $15,558,572.

75. The appropriate level of state income tax expense under present rates for use in this proceeding is $1,442,101.

76. The appropriate level of federal income tax expense under present rates for use in this proceeding is $5,479,967.

77. It is appropriate to reduce income tax expense by $24,090 to reflect the amortization over a three-year period of claim of right credits filed by the Company pertaining to excess deferred income taxes refunded to ratepayers.

78. It is appropriate to reduce income tax expense by $77,059 to reflect a three-year amortization of prior year unrecognized tax benefits.

79. It is appropriate for the Company to record $731,503 in its deferred gas cost account for supplier refund claim of right credits that it has filed.

80. The overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $272,369,198.

CAPITAL STRUCTURE AND RATE OF RETURN

81. The 53.65% common equity ratio included in the Company's requested capital structure for ratemaking purposes is considerably higher than the average common equity ratio of the industry or the average common equity ratio of natural gas local distribution companies (LDCs) with a single "A" bond rating.

82. The 53.65% common equity ratio included in the Company's requested capital structure for ratemaking purposes is considerably higher than the average common equity ratio of the Company in recent years.

83. The Company's own financial forecasts indicate that its common equity ratio will be lower than 53.65% in the future.

84. The appropriate capital structure to employ for ratemaking purposes in this case and at this time for PSNC consists of 50% common equity, 4% short-term debt, and 46% long-term debt.

85. The capital structure adopted for use in this proceeding is reasonable and appropriate and in conjunction with the allowed return on equity and the costs of debt included herein should allow the Company to maintain credit and attract capital on reasonable terms, including capital needed by the Company for system expansion.

86. The proper embedded cost of long-term debt is 9.53%.

87. The proper cost of short-term debt is 4.70%.

88. The market-to-book adjustment applied by witness Jackson to his traditional and market-based discounted cash flow (DCF) results is inappropriate and unreasonable.

89. Application of the DCF model as presented by Company witness Jackson should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

90. Company witness Jackson's comparable earnings approach should be accorded only minimal weight for purposes of determining the cost of common equity for purposes of this proceeding.

91. Company witness Jackson's payout ratio test should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

92. Company witness Jackson's capital asset pricing model (CAPM) approach should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

93. Witness Hinton's applications of the DCF and risk premium approaches should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

94. Witness O'Donnell's applications of the DCF and comparable earnings approaches should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

95. Application of the regression analysis approach as presented by witness Jackson should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding.

96. Changes in the gas industry associated with the Federal Energy Regulatory Commission's (FERC's) Order 636 do not justify an additional equity risk premium in this case.

97. The cost-of-service adjustment recommended by the Public Staff to allow the Company to recover the flotation costs incurred in the May 1994 public stock offering is reasonable and proper.

98. The appropriate cost of common equity for use in this proceeding is 11.87%.

99. The overall weighted cost of capital and fair rate of return to the Company is 10.51%.

ADDITIONAL REVENUE REQUIREMENT

100. PSNC should be authorized to increase its annual level of operating revenues by $10,763,226. After giving effect to the approved increase, the annual revenue requirement for PSNC is $308,292,974, which will allow the Company a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable.

CUSTOMER ATTACHMENT FEE

101. The Public Staff's proposal that PSNC impose a customer attachment fee of $15.00 on a new customer if a new service line must be constructed to serve the customer is inappropriate and should be rejected.

COST-OF-SERVICE AND RATE DESIGN

102. PSNC, the Public Staff and CUCA all presented the results of cost-of-service studies under existing and proposed rates.

103. The major differences between the cost-of-service studies presented by CUCA, PSNC and the Public Staff other than the overall level of revenues, expenses, and rate base relate to the allocation of fixed gas costs and the allocation between the customer component and the demand component of the distribution mains and services accounts.

104. CUCA advocated the use of the "Peak Responsibility Method" for allocation purposes in cost-of-service studies.

105. Both PSNC and the Public Staff used the "Seaboard Method" for allocation purposes in their respective cost-of-service studies.

106. Both PSNC and the Public Staff used the system utilization approach to apportion costs between rate classes. CUCA used the cost causation theory to apportion costs between rate classes.

107. The Public Staff used the "zero-intercept" method to determine the customer component of the mains and services accounts; PSNC used the "minimum pipe size" method and CUCA agreed that the minimum size method should be used.

108. PSNC allocated all demand charges on the basis of peak day demand and storage capacity charges on the basis of normal winter sales, while the Public Staff allocated some demand charges and storage capacity charges on peak and average demand and some on normal winter sales.

109. While estimated cost-of-service studies are somewhat subjective and judgmental, they are useful as a guide in designing rates. Cost-of-service studies should not be used exclusively to design rates, but should be used in combination with other factors in determining proper rate design.

110. Rates based solely on one or more estimated cost-of-service studies are not reasonable for purposes of this proceeding.

111. A number of factors must be considered when rates are designed. These factors include the cost-of-service; the value of service to the customer; the type and priority of service received by the customer and, if the service is interruptible, the frequency of interruptions; the quantity of use; the time of use; the manner of service; the competitive conditions related to both the retention of sales to and transportation for existing customers and the acquisition of new customers; the historic rate design and differentials between the various classes of customers; the revenue stability of the utility; and economic and political factors including the encouragement of expansion.

112. In general, each of the cost-of-service studies proposed by the parties showed that higher rates of return are achieved from interruptible commercial and industrial service customers than from residential customers and that residential returns are below the total-company returns.

113. The Public Staff, PSNC and CUCA all suggest increases in the rates paid by residential customers in an effort to narrow the disparity in returns between rate classes and to move toward more equalized rates of return among ratepayers.

114. PSNC's residential customers and small general service customers have a very limited ability to switch to alternate fuels without making significant capital investment in new equipment. In addition, they bear the risk of being required to make up margin losses resulting from PSNC's negotiations with industrial customers through Rider D.

115. The ability of large commercial and industrial customers to negotiate and force PSNC to meet the prices of their alternate fuels gives them bargaining power not enjoyed by other classes of customers. This justifies a higher rate of return for such customers.

116. Residential and small commercial rates have been increased over the last several rate cases, while industrial rates have been decreased.

117. The Commission has historically concluded (and been upheld by the North Carolina Supreme Court) that specific customers classes should not receive rate increases which, in light of all the surrounding facts and circumstances, result in "rate shock".

118. In determining whether a specific class increase results in "rate shock", it is appropriate to consider the utility's historic rate design, as well as other relevant facts and circumstances.

119. Rates based entirely upon equalized rates of return among customer classes are not reasonable for purposes of this proceeding.

120. The large portion of increased plant is to serve residential classes.

121. There is good cause to increase the monthly facilities charge for Rate Schedule Nos. 105 (Residential - year around), 110 (Residential - heat only) and 125 (Small Commercial - year around) by $1.00 per month. This increase will change the charge for Rate Schedule No. 105 from $7.00 to $8.00 per month, the charge for Rate Schedule No. 110 from $10.00 to $11.00 per month and the charge for Rate Schedule No. 125 from $11.00 to $12.00 per month.

122. Both PSNC and the Public Staff included additional steps in the declining block rate structure of Rate Schedule 150 (Large Interruptible Industrial Service) and the corresponding transportation tariff, Rate Schedule 180.

123. The summer-winter differentials proposed by PSNC are appropriate.

124. The Weather Normalization Adjustment (WNA) - Rider E is appropriate and should be continued in this proceeding.

125. Rider E current applies to customers served under Rate Schedule Nos. 105, 110, 125 and 130.

126. The purpose of Rider E is to insulate both PSNC and customers from the impact of significant fluctuations in weather.

127. The natural gas usage of small industrial customers served under Rate Schedule No. 125 may not be weather-sensitive.

128. Any small industrial customer served under Rate Schedule No. 125 may obtain an exemption from rate adjustments under Rider E by establishing the absence of a statistically-significant correlation between its natural gas use and weather.

TRANSPORTATION RATES

129. The Commission has approved full margin transportation rates for all of the LDCs operating in North Carolina and rejected arguments that cost-based rates are required.

130. The Commission has consistently calculated full margin transportation rates by subtracting the annual cost of gas, applicable gross receipts taxes, and any temporary increments or decrements from the sales rate schedule under which the transportation customer would otherwise be buying natural gas from PSNC.

131. The basic premise underlying the concept of full margin transportation rates as previously approved by the Commission is that the LDC should be neutral as to whether a customer transports or buys natural gas under a filed tariff rate. In order for an LDC to be neutral, a transportation customer should pay the same fixed costs it would pay as a sales customer.

132. PSNC's transportation customers become PSNC's sales customers whenever they cannot transport their own supplies of natural gas due to restrictions on the interstate pipeline, unless they switch to their alternate fuels.

FIXED GAS COST RECOVERY RATES

133. The Public Staff's methodology of allocating fixed gas costs reflects how the services are utilized. This methodology results in fixed gas cost recovery rates (in $/dt) as follows:

Rates 105/120	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
$0.9130	$1.0345	$0.7859	$1.0413	$0.5253	$0.3763

134. The fixed gas cost recovery rates proposed by the Public Staff in Larsen Exhibit A, page 4 of 12, are appropriate for purposes of calculating fixed gas cost recovery rates in Rider D and for the functioning of the WNA.

RIDER D MECHANISM

135. It is appropriate to modify the Company's Purchased Gas Adjustment Procedures - Rider D in order to allow fixed gas cost changes that occur between general rate cases to be tracked on a percentage basis among the various rate schedules, and not on a flat per dekatherm basis as has been done historically.

136. The fixed gas cost recovery percentages as shown on Larsen Exhibit A, page 4, are appropriate for use in this proceeding.

137. PSNC should modify its Rider D language as recommended by the Public Staff on Davis Exhibit H, consisting of three pages.

LINE EXTENSION POLICY

138. PSNC's rules and regulations provide that the Company will extend mains in the street that are at an established final grade for distances up to 100 feet without charge to the customer.

139. PSNC's rules and regulations also provide that the Company will install up to 100 feet of gas service line (measured from the premises' property line to the meter on the customer's premises) at no charge.

140. Farm tap situations should be subject to the "free allowance" of 100 feet because the service line extension from the high pressure main and regulation equipment is exactly the same as any ordinary service line extension. The customer should only have to pay a contribution-in-aid-of-construction (CIAC) for the additional regulation equipment and other necessary material when the extension requires 100 feet or less.

141. Any CIAC requirement should be the lesser of the negative net present value of the entire line extension or the cost of the footage beyond the initial allowance.

142. PSNC should modify its rules and regulations as hereinafter set forth regarding its line extension policy.

MISCELLANEOUS ACCOUNTING MATTERS

143. PSNC should comply with the Commission's Order in Docket No. G-100, Sub 44, in preparing its next G-1 rate case filing.

RULES AND REGULATIONS

144. In its original prefiled testimony and exhibits, PSNC proposed certain modifications to its service regulations, including changes in wording within a number of schedules to clarify and simplify the meanings; a clarification that interruptible rate customers must curtail all use other than pilot usage by 100% when requested to do so; and a clarification that PSNC does not allow the combining of meters in most instances. No party to this proceeding has opposed these changes, and they will be approved.

145. It is reasonable and appropriate for PSNC to increase its after-hours service fee from $15.00 to $25.00.

146. It is reasonable and appropriate for PSNC to increase its returned check charge from $15.00 to $20.00.

147. With the modifications found to be appropriate herein, PSNC's proposed service rules and regulations are just and reasonable.

CARDINAL PIPELINE

148. PSNC and Piedmont Natural Gas Company, Inc. (Piedmont), have entered into an agreement to jointly construct Cardinal, an intrastate pipeline, which is expected to be completed in December 1994.

149. It is appropriate to reflect the Company's share of the net investment and operating expenses in and for Cardinal in this rate case docket as if it had constructed its share of Cardinal without the assistance of Piedmont.

150. PSNC proposed that all costs of Cardinal be borne by the residential class, the Public Staff proposed that Cardinal's cost be spread to all rate classes on a flat per dekatherm basis, and CUCA proposed that the cost of Cardinal be assigned among customer classes on the basis of class contribution to peak day.

151. Customers other than residential customers benefit from additional capacity on a peak day.

152. Spreading the cost of Cardinal on a per dekatherm basis would not reflect the relative value of new transmission capacity to the various rate classes.

153. Spreading the cost of Cardinal using a peak day allocation factor would give interruptible customers the benefit of reduced curtailment at no cost.

154. The Cardinal pipeline is a transmission line.

155. The Public Staff's cost-of-service study allocated transmission line costs using a peak and average allocation factor.

156. Because Cardinal will provide benefits to firm and interruptible customers, it is appropriate to reflect the increase in rates for PSNC's share of Cardinal using a peak and average allocation factor. For this purpose only, a peak and average allocation factor shown on lines 40 and 41 of Revised Larsen Exhibit A, page 1 of 12, will be used in this proceeding.

157. It is appropriate for the Commission to reopen the record in this proceeding when Cardinal is in service solely for the purpose of receiving testimony stating that Cardinal is in service and providing the actual cost involved in the construction of the project and the updated costs of operating the project. The Commission will approve rates at that time using the rate design approved in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-8

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records, the Commission's orders scheduling hearings, the testimony and exhibits of the Company and the Public Staff, the schedules filed subsequent to the hearing at the request of Commissioner Cobb, and the testimony of the public witnesses. These findings are essentially informational and noncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-14

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Dickey and Public Staff witness Davis. Mr.

Dickey offered evidence that the actual test period volumes were 57,253,427 dts in the G-1 Minimum Filing Requirements, Item 10, Workpaper 1 and in Dickey Exhibit No. 1, Schedule No. 1.

After adjusting this test period volume of 57,253,427 dts for negotiated sales, weather normalization, customer growth, reclassification of customers, and the removal of Ball Incon, an industrial customer that left the system in April of 1994, PSNC arrived at a level of sales and transportation volumes of 58,360,499 dts.

Public Staff witness Davis testified that he performed a similar evaluation of the test year volumes, and that he agreed with PSNC's adjustments with the exception of the growth adjustment. Mr. Davis testified that the difference between the Company and the Public Staff is attributable to the fact that the Public Staff had updated growth to customer bills and volumes through July 31, 1994, while the Company reflected growth through September 30, 1994.

Mr. Davis testified that he had updated growth to customer bills and volumes to achieve a coordination of pro forma revenues and expenses at that date. He testified that Public Staff witness Perry had reflected plant additions through July 31, 1994, in her exhibits, and that since rates are a function of net plant investment, expenses, and revenues, the growth update at the same point in time is appropriate. He further testified that the Public Staff used July 31, 1994, because that was the latest date for which verifiable information was available at the time of the hearing.

Based on the update of customer and volumetric growth through July 31, 1994, Davis Exhibit A showed that the appropriate pro forma volume level should be 58,162,899 dts. This volume level is composed of 50,296,938 dts of sales volumes and 7,865,961 dts of transportation volumes.

During the hearing, the Company agreed with the Public Staff's recommendation regarding the appropriate volume level for use in this proceeding. Based on the foregoing, the Commission concludes that the appropriate volume level for use in this proceeding is 58,162,899 dts.

There is no disagreement as to the level of Company Use gas and Lost and Unaccounted For volumes among the parties. Based on the foregoing, the Commission concludes that the appropriate level of gas supply volumes required is as follows:

Sales and Transportation	58,162,899 dts
Less: Transportation	(7,865,961)
Sales	50,296,938
Lost and Unaccounted For	1,170,860
Company Use	178,416
Gas Supply	51,646,214 dts

The Commission notes that the Company Use gas and the Lost and Unaccounted For gas are to be trued-up and accounted for as provided in NCUC Rule R1-17(k)(4)(c).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-20

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Dickey and Public Staff witness Davis. The levels of the cost of gas proposed by the Company and the Public Staff are set forth in the schedule below:

	PSNC	PUBLIC STAFF	DIFFERENCE
Commodity Cost of Gas	$138,859,981	$138,316,580	$ (543,401)
Lost & Unaccounted For	3,219,865	3,219,865	0
Company Use	490,644	490,644	0
Fixed Cost of Gas	39,401,669	38,100,717	(1,300,952)
	$181,972,159	$180,127,806	($1,844,353)

As can be seen from the above schedule, the Company and the Public Staff agree as to the level of Company Use gas amount and Lost and Unaccounted For amount.

Witness Davis testified that there are two reasons for the differences between the Company and the Public Staff: commodity gas costs and fixed gas costs levels. He testified that one reason for the difference is in the volume growth updates previously discussed. Because the pricing of commodity gas costs is dependent on the volume level, the difference in volume levels between PSNC and the Public Staff caused a difference in gas costs.

Mr. Davis further testified that fixed gas costs are different because he reflected cost of gas rates from interstate pipelines at July 1, 1994, as shown on Davis Exhibit C, while the Company's cost of gas rates are as of February 1, 1994.

By the close of the hearing, the Company had agreed that the appropriate level of gas costs is $180,127,806, as shown in the Company's revised schedules filed on August 26, 1994, in response to Commissioner Cobb's request at the close of the hearing.

Based on the foregoing, the Commission concludes that the appropriate level of the cost of gas in this proceeding is $180,127,806, made up of the following components:

Commodity Cost of Gas	$138,316,580
Unaccounted For Gas	3,219,865
Company Use Gas	490,644
Fixed Gas Costs	38,100,717
Total Cost of Gas	$180,127,806

The Commission concludes that the unit benchmark is $2.75 per dt in this proceeding and no other party offered contrary evidence. The Commission also finds that the cost of gas rates at July 1, 1994, are the most recent known rates charged to PSNC and are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-24

The evidence for these findings of fact is contained in the testimony and exhibits of PSNC witnesses Russell and Voigt and Public Staff witnesses Davis and Perry.

Mr. Russell prepared a depreciation study and recommended annual depreciation rates for PSNC. The depreciation study was filed with the Commission on June 1, 1992, in Docket No. G-5, Sub 299. At the time the depreciation study was initially filed, the Company did not seek approval of the depreciation rates recommended in that docket, but instead sought to include the rates in this instant case.

Witness Davis testified that during the course of the investigation in this rate case PSNC and the Public Staff reached an agreement and entered into a stipulation concerning the depreciation rates for the Company.

The stipulation, which is identified as Davis Exhibit K, is an agreement that the Company's current depreciation rates should continue to be used except for Account Nos. 376 (Distribution Mains) and 380 (Distribution Services). The depreciation rates agreed to by the Public Staff and PSNC are 2.81% and 4.43% for Account Nos. 376 and 380, respectively. The net negative salvage values included in the depreciation rate calculations for these accounts are currently -15% for Account No. 376 and -30% for Account No. 380. PSNC and the Public Staff stipulated and agreed that the depreciation rates for distribution mains and distribution services should be based upon net negative salvage values of -35% for Account No. 386 and -55% for Account No. 380, with all depreciation rates continued to be calculated based upon the average service life method.

The effect of implementing these limited changes is an increase in annual depreciation expense of $1,529,373, as compared to the $2,141,497 contained in PSNC's request based on plant totals at December 31, 1993.

The Commission finds good cause to approve the stipulation between the Company and the Public Staff, which is attached hereto as Appendix C. The Commission further finds that the rates as described in the stipulation are appropriate for use in this proceeding and should be adopted.

EVIDENCE AND CONCLUSIONS OF FINDINGS OF FACT NOS. 25-30

Company witnesses Dickey and Richardson, Public Staff witness Hoard, and Attorney General witnesses Butler and Nicholson provided testimony regarding manufactured gas plant (MGP) clean-up costs and the appropriate ratemaking treatment for recovering the clean-up costs.

Mr. Richardson in his testimony explained that the Company owns six sites that were formerly operated as manufactured gas plants. Before piped natural gas became generally available in the 1950s, gas was commonly manufactured by a process that involved the hearing of coal in a reduced-oxygen environment. The plants in questions were constructed from the mid-1800s to the early-1900s; they were acquired by PSNC as the Company was formed in the late-1930s and early-1940s. PSNC operated them for a maximum of some 15 years before they were taken out of service in the early 1950s. By-products of the gas manufacturing

process included sulfur, hydrogen sulfide, iron cyanide, light oils, tar, water and coke. These by-products were disposed of consistent with the laws applicable at the time, but their existence has raised concerns under current environmental laws and standards. Federal and State environmental authorities have been looking into MGP sites around the country in recent years. PSNC has retained an engineering firm to conduct a preliminary assessment of the sites.

Company witness Richardson in his initial prefiled testimony gave an estimate of $5,100,000 to $18,000,000 for the cost for the management of all six sites. Attorney General witness Butler testified that he felt the actual costs, especially for remediation, might be outside the estimated ranges given in Company witness Richardson's prefiled testimony. Witness Richardson presented supplemental testimony with new estimates of potential costs for the management of the MGP sites. The thirty year costs were estimated to be between $3,705,000 and $50,145,000 for the six sites. Witness Richardson testified at the hearing that through June 30, 1994, the Company had spent $176,092 on the investigation.

Richardson Exhibit No. 1, Schedule No. 1 shows that three of the six MGP sites are owned solely by PSNC and three are owned jointly with one or more other entities. During cross-examination, witness Richardson testified that in regard to the three which are jointly owned, the Company has had "very preliminary discussions" with some of the other property owners regarding how the costs are going to be shared but that no agreement has been reached. He testified that the Company hopes the other owners will share the costs, but one cannot assume the sharing of the cost will be in proportion to land ownership. Witness Richardson also indicated that these sites were used for manufactured gas plants for more than fifty years and that PSNC operated manufactured gas plants on them for a maximum of 15 years. He again indicated that there had been "very preliminary discussions" with prior owners regarding sharing the costs. Witness Richardson stated that he did not know if there would be entitlement to contribution from joint and prior owners if the sites were under the State or Federal Superfund.

Company witness Dickey testified that MGP clean-up costs are properly recoverable from current ratepayers, even though the plants have not been operated since the 1950s, because the costs are being incurred currently to conform to today's laws. Witness Dickey proposed that the Commission approve a tracker which would allow the Company to adjust its rates periodically to recover the costs incurred in the clean-up of MGP sites. Mr. Dickey proposed that the Company establish an MGP Deferred Account for accumulating MGP clean-up costs incurred, recoveries from third parties, and amounts collected from and refunded to ratepayers. The tracker proposed by Mr. Dickey would allow the Company to adjust its rates periodically to refund or collect balances in the MGP Deferred Account. During cross examination, witness Dickey was asked over what period costs flowed through the tracker would be recovered and he indicated that such costs are generally spread over 12 months.

Company witness Dickey testified that trackers are generally used for recovery of costs that may vary considerably over time and cannot be predicted with accuracy. He stated that MGP clean-up costs certainly fit this definition. Mr. Dickey also testified that a tracker would lead to smoother ratemaking treatment over time relative to deferral and amortization.

Public Staff witness Hoard recommended that the Commission not approve the Company's proposed tracker. Mr. Hoard stated that Public Staff counsel had advised him that the Commission has previously ruled that a tracker of the type proposed by PSNC would preclude appropriate regulatory oversight of the utility's overall expenses and that, absent specific statutory authority, the Commission does not have the authority to approve such a tracker. Public Staff witness Hoard testified that trackers have been approved for significant cost items, such as gas costs for gas utilities and fuel costs for electric utilities, but he pointed out that there is specific authority given to the Commission for changing utility rates as the result of changes in these types of costs. Mr. Hoard stated that just because a cost changes or varies significantly over time does not necessarily result in a tracker.

Public Staff witness Hoard was also questioned on whether a tracker mechanism would result in smoother ratemaking treatment over time relative to deferral and amortization. Mr. Hoard testified that a tracker could allow the Company's rates to jump up and down depending on much has been incurred, resulting in more volatility in rates than if the costs were amortized as he has recommended.

Public Staff witness Hoard also testified that the appropriate forum for reviewing and analyzing and investigating MGP costs is a rate case due to the potential liability and complexity of the issue. He stated that an expedited proceeding, such as a tracker proceeding, would not give MGP clean-up costs the full attention that they receive in a rate case. Mr. Hoard explained that more resources can be marshalled in a rate case proceeding than in an expedited proceeding to assure that the clean-up costs are prudently incurred and that the Company's initial operation of the sites was prudent. Mr. Hoard testified that the Public Staff's review of MGP costs would be a much more manageable task and that the Public Staff could do a better job of performing its investigation in the context of a rate case than in the context of an expedited tracker proceeding.

Mr. Hoard recommended that the Company's O&M expenses be increased by $50,000 to reflect the amortization of $150,001 of actual incurred MGP costs over a three-year period. Mr. Hoard testified that the Commission may want to determine the appropriate amortization period for future MGP clean-up costs on a case-by-case basis in the future considering the dollars involved and the rate impacts of its decisions.

Mr. Hoard also recommended that the unamortized balance of MGP costs not be included in rate base. Public Staff witness Hoard testified that he does not believe it is the responsibility of current ratepayers to absolve shareholders of <u>all</u> cost responsibility for cleaning up the sites. He stated that excluding the unamortized balance of deferred MGP costs from rate base would require shareholders to share in the cost by being required to bear the carrying costs associated with the unamortized balance of LGP costs. Mr. Hoard noted that this ratemaking treatment is consistent with the Commission's treatment in the past for abandoned plant costs by electric utilities. Mr. Hoard also testified that although interest is accrued on the deferred gas cost accounts of gas utilities, the Commission does not normally allow utilities to accrue interest on expenses deferred as the result of accounting orders.

Company witness Dickey testified that if the Public Staff's ratemaking treatment is adopted, carrying costs on the uncollected balance should be allowed to lessen the impact on PSNC. He recommended that the overall cost of capital rate or 10% be applied to the uncollected balance.

In his brief, the Attorney General argued against adoption of the Company's proposed tracker. He argued that there is insufficient evidence concerning the costs, duration, and rate impact of such a tracker at this time, that the entire burden of MGP clean-up costs should not be placed on current ratepayers as current operating expenses, that the proposed tracker would not provide sufficient opportunity for prudency review, and that the tracker would not provide sufficient motivation for PSNC to minimize costs.

The Commission concludes that the Company's proposed MGP tracker should not be approved. Assuming, without deciding, that the Commission would have legal authority to approve such a tracker, the Commission believes that this is not an appropriate situation for such an extraordinary rate mechanism. Provisional, non-fixed rates should be reserved for limited circumstances. Public Service is just beginning to investigate MGP clean-up. Management of the MGP sites could take decades and cost tens of millions of dollars. Approval of the proposed tracker would have far reaching consequences which cannot be known at this early stage. Further, complicated prudency issues are likely to arise in connection with the MGP clean-up. Among the factors to be considered in passing these costs on to the ratepayers are whether the Company's initial operation of each site was prudent, whether the clean-up costs were prudently incurred, and whether contributions should be provided by prior and joint owners. The Company's proposed tracker would provide a limited opportunity for review of these prudency issues. Finally, the Company's proposed tracker should be rejected because a passthrough of MGP clean-up costs to current ratepayers will inevitably undermine PSNC's motivation to minimize costs and to pursue contributions from others. Based on the foregoing concerns, the Commission rejects the Company's proposed MGP tracker.

On the other hand, the approach advocated by the Public Staff addresses all of these concerns. Public Staff witness Hoard recommended that actual incurred MGP clean-up costs should be recovered in this case by amortization over a three-year period. He further testified as follows regarding this issue:

> I recommend that the Company continue to record its actual incurred MGP costs in Account 186.10 0012 - Environmental Compliance Costs (a miscellaneous deferred debit subaccount), as approved by the Commission in its order dated May 11, 1993, in Docket No. G-5, Sub 317. The additional MGP costs will be eligible for recovery through rates in the Company's next rate case. Of course, these additional costs will be subject to investigation and review in the next rate case by the Public Staff and the Commission before they can be recovered through rates. The appropriate amortization period applicable to those costs should be addressed during the next proceeding.

The MGP costs that are approved for recovery in this proceeding should be transferred to a separate account and the Company should credit the account each month to reflect the monthly amortization of the costs to expenses.

The Commission concludes that the Company should account for the MGP clean-up costs in the manner described by Mr. Hoard. The Commission concludes that this approach is appropriate as a matter of law and as a matter of policy. It is proper and in the public interest for the Commission to allow PSNC to recover the prudently-incurred clean-up costs from current ratepayers as reasonable operating expenses, even though the MGP sites are not used and useful in providing gas service to current customers. At the same time, however, it is not appropriate for ratepayers to relieve shareholders of all cost responsibility associated with the ratemaking treatment of MGP clean-up. We conclude that the proper balance between ratepayer and shareholder interests is achieved by amortizing the prudently-incurred costs to O&M expenses in general rate cases but denying the Company any recovery from ratepayers of the carrying costs on the deferred and the unamortized MGP clean-up cost balances. A sharing of MGP clean-up costs between ratepayers and shareholders has been adopted by several other state commissions. See, e.g., AG Dickey Cross Examination Exhibits 1 and 2; 146 PUR 4th 123; 147 PUR 4th 1. This treatment is analogous to the treatment ordered by this Commission for the costs of abandoned nuclear plants of electric utilities, which was upheld as reasonable by the North Carolina Supreme Court. See State ex. rel. Utilities Commission v. Thornburg, 325 N.C. 463 (1989). This approach will provide an appropriate forum where prudency issues can receive the regulatory oversight they deserve in the context of general rate cases. This approach will give the Company an incentive to minimize clean-up costs and to pursue contributions. Finally, the Commission concludes that this approach will result in greater rate stability. Rather than recovered over a 12-month period, the costs can be amortized over an appropriate period, determined in each case, depending upon their magnitude.

The Commission finds it appropriate to allow the Company to recover its $150,001 of actual incurred MGP costs by increasing O&M expenses by $50,000 to reflect the amortization of these costs over a three-year period. The Commission is aware that witness Richardson testified that the Company had spent a slightly higher amount as of June 30, 1994, but the June 30, 1994, figure was not presented until the hearing and there was no opportunity for other parties to investigate these additional costs. The Commission therefore believes that $150,001 is the appropriate amount for use in this case. These costs are being amortized over a three-year period in consideration of the dollars involved and the rate impact and also to be consistent with the amortization period found reasonable for rate case expenses in this proceeding.

To assist the Commission in monitoring the progress of the Company's MGP clean-up, the Commission requires the Company to file annual reports on their investigation and remediation efforts. These reports shall be filed October 1 of each year and shall be maintained in a separate docket in the Chief Clerk's Office.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 31-47

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Voigt and Public Staff witnesses Perry and Mbonu. The amounts which the Company and the Public Staff presented as their final recommendations as to the Company's rate base are shown in the schedule below:

Item	Company	Public Staff	Difference
Gas plant in service	$499,618,895	$498,776,271	$ (842,624)
Accumulated depreciation	(153,457,716)	(153,183,883)	273,833
Net plant in service	346,161,179	345,592,388	(568,791)
Allowance for working capital:			
-Gas in storage	11,280,289	11,280,289	-
-Materials and supplies	3,945,359	3,945,359	-
-Lead-Lag study	888,151	888,151	-
-Customer deposits	(1,727,116)	(1,727,116)	-
-Cost-free capital	(14,543,081)	(14,543,081)	-
Accumulated deferred income taxes	(47,391,621)	(47,263,979)	127,642
Total original cost rate base	$298,613,160	$298,172,011	$ (441,149)

Propane Office Building

The differences between PSNC and the Public Staff on rate base shown above relate to the treatment of a single item: the former PSNC propane office building. This building was in use by PSNC Propane Corporation until June 30, 1994, at which time a third party bought the assets of PSNC Propane. PSNC included $859,032 (before non-utility allocation of 1.91%) as part of its plant in service attributable to the former propane headquarters building, based on the Company's plans to convert the building for utility use, primarily as a base for its Gastonia service center operations. PSNC witness Voigt, in his rebuttal testimony, testified that although the propane building was formerly classified as non-utility property, it had been reclassified as utility property based on the Company's adaptation of the property for utility use. Mr. Voigt further testified that PSNC had begun the process of adapting the building to utility use, and that PSNC expected to have the building fully staffed as its Gastonia service center in December. According to Mr. Voigt's testimony, one or more utility employees were working in the building at the time of the hearing. Mr. Voigt testified further that in reclassifying the building as utility property, PSNC did so at its net book value, rather than an estimated fair market value, giving its customers the advantages of a well-maintained and functional facility at a bargain price.

Public Staff witness Perry proposed to remove the entire propane building amount from the Company's utility plant in service portion of its rate base because the building is not being used for utility operations at this time. On cross-examination, Ms. Perry testified that her only basis for excluding the

building was the timing of its use for utility purposes. Although Public Staff witness Perry acknowledged that PSNC was adapting the building for utility use at the time of the hearing, she believed it was not used or useful to ratepayers as of the hearing date.

The Commission notes that under N.C.G.S. Section 62-133(c), the "test period"

> shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

The evidence presented by the Company--that the building is being adapted to utility use--shows actual changes in the costs of the utility's property to be used and useful within a reasonable time after the test period. The rates adopted by this Order will be placed in effect over the billing cycle following October 8, 1994, and thus will not be fully in effect until November. The Company is currently adapting the building for full utility use in December, 1994. No witnesses offered any evidence to rebut PSNC's testimony. The Commission concludes that this period constitutes a "reasonable time" for purposes of G.S. 62-133(c), and that the building should be included in PSNC's rate base.

Based on the foregoing, the Commission concludes that the appropriate amount to reflect for gas plant in service is $498,776,271, for accumulated depreciation is $153,183,883, and for accumulated deferred income taxes is $47,263,979.

Allowance for Working Capital

The Company and the Public Staff agree that the appropriate amount of the allowance for working capital is $156,398, and is composed of the following:

Item	Amount
Gas in storage inventory	$ 11,280,289
Materials and supplies	3,945,359
Working capital-lead lag study	888,151
Cost-free capital:	
- Transco refunds	(258,000)
- Pension accrual	(13,137,894)
- Stock option plan accrual	(439,917)
- Sales tax accrual	(200,056)
- Postretirement benefits	(507,214)
Customer deposits	(1,727,116)
Allowance for working capital	($156,398)

No other party presented evidence on these issues. In summary, the Commission concludes that the appropriate level to reflect for the allowance for working capital is $156,398.

SUMMARY CONCLUSION

The Commission concludes that the Company's rate base used and useful for purposes of this proceeding is $298,613,160, composed of the following:

Item	Amount
Gas plant in service	$499,618,895
Accumulated depreciation	(153,457,716)
Net gas plant in service	346,161,179
Gas in storage	11,280,289
Materials and supplies	3,945,359
Working capital-lead lag study	888,151
Customer deposits	(1,727,116)
Cost-free capital	(14,543,081)
Accumulated deferred income taxes	(47,391,621)
Total rate base	$298,613,160

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 48-54

The evidence supporting these findings of fact is found in the testimony and exhibits of Public Staff witnesses Davis and Perry and PSNC witnesses Dickey and Voigt.

The Company's filed end-of-period revenue level was $301,711,857, which was composed of $300,662,867 of sales and transportation revenues and $1,048,990 of other operating revenues. (G-1 Minimum Filing Requirement, Item 10, Workpaper 1) The Company did not object to applying customer growth to other operating revenues which have a direct relationship with customer additions.

Public Staff witness Davis testified that the appropriate end-of-period revenue level is $297,529,748 of which $296,440,523 is associated with sales and transportation revenues and $1,089,225 is related to other operating revenues.

Witness Davis testified that the adjustments made to the volume determination as discussed in the Evidence and Conclusions for Findings of Fact Nos. 9-14 are used for the revenue calculation.

Mr. Davis further testified that PSNC and the Company used different end-of-period rates which also contributes to the difference between the Company's and the Public Staff's end-of-period revenue level. Mr. Davis attributes the difference in the end-of-period rates to the treatment of temporary increments and temporary decrements (temporaries) in rates. Mr. Davis explained that

> [t]emporaries are usually associated with deferred account activities and are not related to revenue generation for the Company. The margins associated with various rate schedules are not affected by temporaries (except when temporaries are associated with fixed gas costs). The removal of temporaries is done for the calculation of end-of-period rates as well as for proposed rates in order to achieve a level playing field. Davis Exhibit F shows the removal of the current temporaries in PSNC's rates, which were approved by the Commission on October 20, 1993, in Docket No. G-5, Sub 318. After the Commission determines the proper rates in this case, the new rates will be adjusted for the current temporaries.

Mr. Davis further testified that

> ...Public Service did not remove the temporary increment associated with anticipated gas cost increases [shown on Davis Exhibit F, column (5)], which was approved in Docket No. G-5, Sub 318, in the Company's Annual Gas Cost Review pursuant to G.S. 62-133.4 and Rule R1-17(k). The intent of the temporary adjustments was that they would offset each other resulting in no net change in rates. Failure to remove this temporary resulted in PSNC overstating its end-of-period revenue level.

Witness Davis testified that once the temporaries have been properly excluded from the Commission approved rates at October 20, 1993, what are known as "clean rates" result which are used for the end-of-period revenue level determination.

By the close of the hearing, the Company had agreed that the appropriate end-of-period revenue level is $297,529,748, as shown in the Company's revised schedules filed on August 26, 1994, in response to Commissioner Cobb's request at the close of the hearing.

Another difference in the end-of-period revenue level is the Company's proposed Revenue Adjustment Factor (RAF). PSNC witness Dickey testified that

> PSNC compared the amounts billed during the test period with the amounts that would have been billed under the full tariff rates. This analysis showed that actual billings during the test period were less than the amounts calculated by pricing out test year quantities and bills at the appropriate rates and charges. There are basically two

causes for this; one is that PSNC prorates facilities charges for partial months of service on initial bills and final bills and the other reason is the proration of PSNC's winter-summer differential, which heretofore has not been considered in rate design.

Public Staff witness Davis testified that the Company's main contentions for the necessity of the RAF are the need to prorate the winter-summer differential (the seasonal change in rates) and facilities charges for partial months of service on initial and final bills. Witness Dickey in prefiled testimony later states that the Company intends to implement all future rate changes on a "bills rendered" rather than a "service rendered" basis.

Witness Davis testified that the Public Staff agrees that the summer-winter differentials and facilities charges should be applied on a "bills rendered" basis, and that it is appropriate to allow the Company to charge customers under the "bills rendered" concept for two reasons.

First, he stated that in the traditional rate case environment, the development of rates and charges for end-of-period revenue levels, as well as proposed revenue levels, is on a "bills rendered" basis.

Second, Mr. Davis testified that facilities charges, which in effect are non-gas fixed charges, should be charged on a "bills rendered" basis because of its nature. He testified that facilities charges are composed of utility plant costs, operation and maintenance costs, customer accounting costs, and taxes. Witness Davis testified that because these components of facilities charges do not vary with consumption levels or time of utilization, proration is unnecessary.

Witness Davis also testified that "[t]he RAF, as it pertains to facilities charges, presents a conflict. Allowing proration and then compensating with the RAF causes revenue deficits to be made up by customers who are not responsible for the short falls."

The Commission believes that it is appropriate to remove the temporary decrements and increment as shown on Davis Exhibit F to arrive at the correct "clean rates". The Commission concludes that the appropriate end-of-period revenue level for use in this proceeding is $297,529,748, consisting of $296,440,523 in sales and transportation revenue and $1,089,225 in other operating revenues.

The Commission further finds that the approval of the RAF is <u>not</u> appropriate in this proceeding. The Company will be charging its customers on a "bills rendered" basis for the summer-winter differential. The Commission notes that other gas utilities in the state are already following this practice and finds good cause to allow PSNC the same treatment. Facilities charges billed to customers should not be prorated and allowed to be recovered through the RAF, which in essence would collect the shortfall resulting from proration from other customers not responsible for the deficit. The Commission concurs that facilities charges do not vary with time of use or consumption and that the cost responsibility should be borne by the responsible customers in instances where service is provided for less than a full billing cycle.

The Commission does find, however, that prospective changes in rates resulting from general rate increases and PGA filings should be charged on a proration or "service rendered" basis.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 55-80

INTRODUCTION

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witnesses Voigt and Dickey and Public Staff witnesses Perry and Hoard. The final positions of the Company and the Public Staff regarding the appropriate levels of operating revenue deductions are set forth in the schedule below:

Item	Company	Public Staff	Difference
Cost of gas	$180,127,806	$180,127,806	$ -0-
Operation and maintenance	54,399,746	51,364,304	(3,035,442)
Depreciation	17,547,673	17,526,529	(21,144)
General taxes	15,558,572	15,534,699	(23,873)
State income taxes	1,365,345	1,496,413	131,068
Federal income taxes	5,591,018	6,142,813	551,795
Amortization of ITC	(439,000)	(439,000)	-
Total	$274,151,160	$271,753,564	$(2,397,596)

The Company and the Public Staff agree on the level of the cost of gas and the Commission has previously found the cost of gas to be $180,127,806.

As can be seen from the above schedule, the Company and the Public Staff also agree as to the amortization of ITC. The Commission, therefore, concludes that the appropriate amount of cost of gas is $180,127,806 and the appropriate amount of amortization of ITC is $439,000.

OPERATION AND MAINTENANCE EXPENSE

The first area of difference between the Company and the Public Staff is operation and maintenance expense. The difference of $3,035,442 is composed of the following items:

Item	Amount
1. Nonutility sales commissions and bonuses	$(1,065,706)
2. York Gas Heat Pump Program	(119,250)
3. Cash incentive plan	(220,562)
4. Increase in advertising above test year level	(816,927)
5. Reduction in test year level of advertising	(410,925)
6. Union wage increase	(317,779)
7. Rate case expense	(25,500)
8. FAS 112 - Postemployment benefits	(108,793)
9. Manufactured gas plant cleanup costs	50,000
Total	$(3,035,442)

Nonutility Sales Commissions and Bonuses

The first item of difference concerns nonutility sales commissions and bonuses related to sales of natural gas appliances. Public Staff witness Perry adjusted O&M expenses to exclude these sales commissions and bonuses because these expenses relate to a nonutility business.

Public Staff witness Perry testified that prior to 1992, the Company awarded nonutility commissions and bonuses to its appliance salespersons based on the sales price of the appliance sold, and charged the commissions and bonuses to nonutility operations. Ms. Perry stated that during 1992, the Company changed the basis for computing the sales bonuses and commissions from the sales price of the appliance to the amount of gas load generated by the appliance. When the Company changed its methods for computing commissions and bonuses, it began charging utility operations for these costs.

Ms. Perry further testified that she did not believe ratepayers should be required to pay for nonutility compensation costs through their monopoly utility rates. She stated that she did not believe it is appropriate to charge appliance salespersons' compensation costs to utility operations no matter how the compensation is determined. She stated that the charging of these costs to the ratepayers represents a classic case of utility cross-subsidization of nonutility operations.

In rebuttal testimony, Company witness Voigt stated that these sales commissions and bonuses should be allowed in utility operations because of the NARUC Uniform System of Accounts description of Account 916-Demonstrating and Selling Expenses and because the object of the sale of appliances is to promote gas load that benefits the system instead of making a profit. In support of his position, Mr Voigt quoted the description of Account 916 from the Uniform System of Accounts (USOA), which states that "...expenses incurred in promotional, demonstrating, and selling activities, except by merchandising, the object of which is to promote or retain the use of utility services by present and prospective customers". (emphasis added) Mr. Voigt explained that the sale of appliances is not a merchandising activity because the Company's objective regarding the sale of appliances is not to make a profit, but instead to promote and retain the use of natural gas.

On cross-examination, Mr. Voigt agreed that the sale of appliances is a nonutility business. He also agreed that the revenues associated with these sales are recorded in Account 415 - Revenues from Merchandising, Jobbing, and Contract Work, which is a nonutility account.

The Commission agrees with Ms. Perry that ratepayers should not be required to pay rates to cover costs incurred by the Company's nonutility appliance sales business.

The Commission rejects the assertion that the NARUC Uniform System of Accounts prescribes that the sales commissions and bonuses associated with the sale of appliances should be charged to Account 916. The Commission finds Mr. Voigt's interpretation of merchandising activities is incorrect. Historically, the Commission has consistently recognized that the sale of appliances is a merchandising activity, and has reflected all revenues and expenses related to this activity in nonutility accounts.

Even if the NARUC Uniform System of Accounts prescribed for the sales commissions and bonuses in utility accounts, the Commission has authority to require different regulatory treatment than that prescribed in the Uniform System of Accounts. Clearly, it would be inappropriate to reflect appliance sales revenues in a nonutility account and reflect the associated expenses in a utility account as Mr. Voigt proposed.

Mr. Voigt stated that margins should be reduced if the Commission ultimately decides that the sales commissions and bonuses should be excluded from expenses. Ms. Perry testified that although there may be additional volumes generated as a result of appliance sales, the sale of more efficient appliances to existing customers could result in a lower level of volume sales.

The Commission rejects the Company's argument that margins should be reduced if sales commissions and bonuses are excluded from utility expenses. The utility business and the appliance sales business should be viewed as separate entities. The Commission must determine revenues for the utility business based on end-of-period volume and customer levels. Gas sales and transportation volumes should not be excluded solely because the volumes result from the purchase of an appliance from PSNC's appliance business. Exclusion of gas sales margins as proposed by the Company would result in an understatement of the utility business' end-of-period revenues.

The Commission concludes that the sale of appliances is clearly a nonutility activity and it is entirely appropriate to remove the sales commissions and bonuses related to the sales of appliances from utility operations.

York Gas Heat Pump Program

The second area of disagreement between the Public Staff and PSNC is the York Gas Heat Pump Program. PSNC proposed to include approximately one half of the cost of this three year program or $119,250 for O&M expenses related to this item. The Public Staff recommended removing this item from expenses because it

relates to an appliance incentive program that has not been approved by the Commission. Public Staff witness Perry testified that "[s]ince Public Service has not received approval from the Commission for this incentive appliance program, these incentive appliance program costs are not properly includible in rates."

PSNC witness Dickey testified that the York Gas Heat Pump Program does not provide an incentive to customers, but provides an allowance to the manufacturer to provide the equipment at a mature market price during the period of its introduction. Mr. Dickey testified that the Company believes it reasonable to fund the commercialization of the gas heat pump technology, in that the development of the technology was similarly funded by an increment in interstate pipeline rates. As to the approval issue, Mr. Dickey stated that PSNC was requesting approval for this program in this rate case, which would eliminate any need to file the program under G.S. 62-140(c).

The issue of what kinds of promotions or incentive programs are required to be filed for Commission approval pursuant to G.S. 62-140(c) is currently pending in Docket No. M-100, Sub 124. There is a question as to whether the kind of financial support contemplated by the Company falls within the parameters of G.S. 62-140(c). As Mr. Dickey explained, the program is designed to continue into the initial commercialization stage the support previously given to the development of this technology through the Gas Research Institute under a program approved by the Federal Energy Regulatory Commission (FERC).

It is unnecessary to resolve that question here, however. The Public Staff's position appears to be that the Company should be required separately to secure Commission approval under G.S. 62-140(c) before this item could be included in its general rate filing. That seems an illogical construction of the statute. The overall purpose of G.S. 62-140 is to prohibit undue discrimination, including rebates or preferences to individual customers or groups of customers; it embodies the common law prohibition on discriminatory practices. E.g., Hilton Lumber Co. v. Atlantic C.L.R.R., 141 N.C. 171, 53 S.E. 823 (1906). Subsection (c) elaborates on the restriction as to discriminatory preferences by specifying the kinds of payments to customers for which filing and Commission approval are required. The underlying objective, however, is to retain Commission supervision and control over departures from the Company's schedule of rates through payments by the company. G.S. 62-133 embodies an "overall scheme for fixing rates," State ex rel. Utilities Commission v. Duke Power Co., 305 N.C. 1, 12, 287 S.E.2d 786 (1982), and the Commission's authority under Chapter 62 of the General Statutes is brought fully to bear in a general rate proceeding. See, e.g., State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 345-46, 230 S.E.2d 651 (1976). The Company has described the program and quantified the associated expenditures in connection with its general rate application. We see no reason why approval cannot be granted in a general rate proceeding.

Based upon the foregoing, the Commission concludes that this ratemaking proceeding is an appropriate forum for PSNC to request approval for the York Gas Heat Pump Program and that approval should be given and inclusion of $79,500 for O&M expenses for the gas heat pump program is appropriate. In so concluding, the Commission finds it appropriate to only include one third of the cost of this three year program in expenses in this proceeding so as to arrive at a reasonable and representative level.

Cash Incentive Plan

The next area of difference between the Company and the Public Staff concerns the Cash Incentive Plan. The Cash Incentive Plan provides annual cash bonuses to approximately 70 key employees on an individual employee basis if certain corporate goals and that individual employee's goals are attained. The Company has reflected 100% of the amounts budgeted for Plan bonuses, whereas the Public Staff reflected a 40% Plan payout percentage. Public Staff witness Hoard recommended that expenses be reduced by $220,562 to reflect a 40% Plan payout percentage based on his evaluation of the Plan's corporate and individual goals, and his determination of the Plan payout percentage that he considered likely for the next few years.

Company witness Voigt testified that the full amount of the Cash Incentive Plan bonuses should be reflected in expenses. He stated that it is not reasonable to deny recovery of the Plan costs in rates just because that portion of employee compensation is at-risk. Mr. Voigt also testified that he considered PSNC's payroll costs, including the Cash Incentive Plan, quite reasonable by industry standards.

Mr. Hoard testified that the PSNC Board of Directors has complete discretion over how much, if any, will be paid out in bonuses for a particular year based on its evaluation of management's performance. Mr. Hoard pointed out that the average payout percentage since the Plan's inception in 1990 has been 37.4%, and that the payout percentage for the most recently concluded fiscal year, the year ended September 30, 1993, was 49.5%. Mr. Hoard testified that the Commission should include a representative ongoing level for this expense item, since any overstatement in the expense will enure to the benefit of shareholders.

To further support his recommended payout percentage, Mr. Hoard stated that some of the Plan goals are geared more towards providing shareholder benefits than ratepayer benefits, and for that reason it would be inappropriate to charge ratepayers for the full cost of those Plan goals. Mr. Hoard cited the earnings per share goal as an example of a goal that is tilted more towards shareholders than ratepayers.

The Commission has given this matter great consideration. Though the Commission does not want to discourage at-risk compensation plans, the Commission does not want to build into expenses a level of expenses that the Plan's payout history indicates will probably not be incurred. Furthermore, the Commission does not believe ratepayers should be required to pay rates which compensate management for pursuing goals that may not provide benefit to them. The Commission concludes that the most appropriate payout percentage to use in arriving at a reasonable and representative level for this item is 50% which approximates the payout percentage for the most recently concluded fiscal year. Accordingly, the Commission concludes that the Company's expenses should be adjusted to reflect a 50% Cash Incentive Plan payout percentage. Consequently, O&M expenses should be reduced by $183,801.

Increase in Advertising Above Test Year Level

The fourth area of difference relates to the Company's adjustment to increase advertising expense to equal 0.5% of total sales and transportation revenues. Company witness Voigt testified that advertising expenses should be increased to equal 0.5% of total revenues because it would be a good rule of thumb for allowable advertising expenses and would represent a reasonable level of operating expenses.

Public Staff witness Perry testified that the Company's pro forma adjustment of $816,927 should be removed because it has not spent these dollars nor provided any basis or support for increasing advertising expense equal to 0.5% of total revenues.

The Commission concludes that it is appropriate to exclude the 0.5% of total revenues adjustment. The adjustment has no basis and could not be supported by the Company and therefore, should be removed from the cost-of-service. The Commission finds that expenses should be reduced by $816,927 to remove the Company's adjustment.

Reduction in Test Year Level of Advertising Expense

The fifth difference relates to the Public Staff's adjustment to advertising expense to exclude two-thirds of PSNC's test year expense (not including safety advertisements which the Public Staff included in full) as "competitive, promotional, and image" advertising. In support of the Public Staff's proposed exclusion of advertising costs from the test year, Ms. Perry quoted from the Order in the 1991 NCNG general rate proceeding which stated that "it is appropriate to reduce advertising expenses in order to remove costs incurred for advertising designed to compete with other sources of energy and designed to promote the Company's image."

PSNC witness Voigt testified on rebuttal that PSNC is "in the business of minimizing the aggregate energy cost for its customers" and that its ads are designed to inform the public as to the efficiency of gas. Mr. Voigt stated that the amount recommended by the Public Staff for PSNC advertising was woefully inadequate. He testified that PSNC does certain advertising for which the Company does not charge, nor thinks it appropriate to charge to utility rates, but that the amount sought in this rate case is for that portion of the ads the Company has determined to be in compliance with the Commission's Rules. Mr. Voigt testified that PSNC needs dollars "in order to be able to inform both present customers and potential customers of the availability and inherent characteristics of gas so they can make an educated choice between gas and electricity and any other fuel that they might want to choose."

On rebuttal, Mr. Voigt emphasized the Company's position that the advertisements in question were in compliance with Rules R12-12 and R12-13 and thus the costs should be recoverable. Rule R12-12(d) provides as follows:

> (d) The terms "political advertising" and "promotional advertising" as defined hereinabove do not include--

(1) advertising which informs electric and natural gas consumers how they can conserve energy or can reduce peak demand for energy,

* * *

(5) advertising which promotes the use of energy efficient appliances, equipment or services,. . . .

Rule R12-13(c) additionally provides:

> (c) Expenditures made by an electric or natural gas utility for the types of advertisements described in Rule R12-12(d) will generally be deemed to be reasonable operating expenses; provided however, that the Commission shall not be precluded from determining, on a case-by-case basis, the extent to which such expenditures have exceeded a reasonable level or amount. [Emphasis supplied.]

On cross-examination, Mr. Voigt was presented with an Exhibit containing the PSNC advertisements and asked whether certain ads were not designed to compete with electricity. The following response by Mr. Voigt is typical, and illustrative: "This particular [ad] has used electricity as an example of a fuel that's not as efficient as gas. Again, the message that's being sent here is informing potential customers of why they're better off choosing gas as a fuel. . . . It is my understanding and my belief that this ad is in full compliance with Rule, I think, R12-12(d)(5) in that it does promote conservation by virtue of informing the customers of the advantages of natural gas."

The Commission rejects the Public Staff's recommendation to disallow two-thirds of PSNC's test year advertising. PSNC is not seeking here to recover the costs of all its advertising, but seeks to recover for advertising which, it maintains, is in compliance with the Commission's Rules. No Public Staff testimony was offered as to which advertisements were inconsistent with the Commission's Rules. Ms. Perry, in response to questions by Commissioner Cobb, could not identify which particular ads she had excluded as promotional or which she had excluded as competitive, and relied instead on the view that any advertisement that mentioned electricity was competitive and should be excluded.

In summary, no relevant and credible testimony was offered to rebut the testimony of Mr. Voigt that the advertisements complied with Commission Rules R12-12 and R12-13, and the Commission's review finds them to be in conformity with the rules. Furthermore, the Commission's ruling in the NCNG proceeding in 1991 cited by witness Perry is not controlling here; Rule R12-13(c) specifically provides that the Commission is not precluded from determining "on a case-by-case basis" the extent to which advertising expenses shall be disallowed. In the circumstances presented in this proceeding, the Commission finds the advertising in question to be in conformity with Rules R12-12 and R12-13, and accordingly finds no basis for disallowing any portion of PSNC's test year advertising expense.

Union Wage Increase

The sixth area of difference is the disagreement between the Public Staff and PSNC over salary and wage expenses. Specifically, PSNC disagreed with Public Staff adjustments to remove union wage increases of $353,787 and overtime wages of $88,174. Public Staff witness Perry testified she excluded union wage increases and overtime because they will become effective in December 1994, which she argued would not be within a reasonable time after the test period. The Public Staff does not contest the fact that this increase will become effective as scheduled or the amount of the increase. Its sole position is that the effective date is too far after the date of the hearing in this case and, therefore, the increase should not be considered by the Commission.

PSNC witness Voigt testified that both the union wage increase and overtime wages are part of a contracted wage increase which will become effective on December 7, 1994. Mr. Voigt testified the increase is known, not subject to estimation or avoidance. Mr. Voigt testified that the Commission has found such adjustments appropriate in prior cases. In PSNC's rate case in 1986, Docket G-5, Sub 207, the Commission made clear its position on this issue to allow such known and measurable changes in the Company's costs. Mr. Voigt testified that "given the clear precedent established by this Commission, the certain nature of this change, its proximity to the close of the hearing and the end of the test year, and the fact that the wage increases will be effective within approximately one month after full implementation of the rates in this case," the increase should be allowed. Mr. Voigt testified that these points similarly supported allowance of related 401(k) match and FICA taxes.

The Commission believes that the wage increase is a known and measurable change in PSNC's costs that will be in effect during the period when the rates the Commission prescribes in the Order will be in effect. These contractual payroll expense increases are known or actual changes which are based on circumstances and events occurring through the close of the hearing and the Commission concludes that the inclusion of such expenses is necessary for determining a representative level of payroll expense.

Rate Case Expense

The seventh area of difference relates to the appropriate level of rate case expense to include in this proceeding. The Public Staff and the Company have agreed that the total level of rate case expense to be amortized is $153,000.

The difference between the Company and the Public Staff of $25,500 relates to the amortization period over which to spread rate case expense in this proceeding. Public Staff witness Perry amortized rate case expense over three years, while the Company used a two-year amortization period.

Company witness Voigt stated in rebuttal testimony that based on the Company's 14-year rate case history, rate case expense should be amortized over two years. Mr Voigt accepted on cross-examination that rate case expense relating to the prior rate case had been over-recovered, since the Company had received a two-year rate case amortization period in that case. Mr. Voigt also stated that two years could possibly be too short while three years is too long a lot of the time for rate case amortization.

The Commission concludes that rate case expense should be amortized over three years based on PSNC's recent rate case history. Exactly when PSNC will come in for another rate case is not known. Recent experience is the best guide for determining the estimated time between rate cases. Based on the fact that it has been approximately three years since PSNC's last rate case, two years prior to that, and three years prior to that case, the Commission concludes that the appropriate rate case amortization period to use in this proceeding is three years.

Based on the conclusion herein, the appropriate level of rate case expense for use in this proceeding is $51,000.

FAS 112 - Postemployment Benefit Costs

The seventh item concerns the appropriate level of Financial Accounting Standards (FAS) 112 - Postemployment Benefit costs to include in this proceeding. The $108,793 difference between the Company and the Public Staff result from their different positions regarding (1) whether the expenses should be computed using estimated 1995 health insurance premiums or actual 1994 premiums, (2) the normalization of the transition obligation, (3) the amortization period over which to spread the transition obligation for regulatory purposes and (4) the correction of an error for the health and life insurance recognized elsewhere in the Company's filing. There is also the issue of whether deferral accounting is appropriate for the transition obligation if the Commission were to decide that the transition should be normalized.

In her direct testimony, Public Staff witness Perry described FAS 112 - Accounting for Postemployment Benefit costs. Upon adoption on October 1, 1994, the Company must recognize a liability for health insurance, life insurance and workers' compensation benefits related to employee disability for employees injured on the job or severance pay when the benefit payments become apparent instead of when they are paid as the Company had previously done.

The first area of difference concerns the appropriate health insurance premium rates to use for computing the FAS 112 expense. Public Staff witness Perry reduced post-employment benefits costs by recalculating them using 1994 health insurance premiums, although she stated in her testimony that FASB 112 will become effective for PSNC at the beginning of the Company's 1995 fiscal year. Mr. Voigt testified on rebuttal that the estimated 1995 rates provide a much more reasonable estimate of FASB 112 expenses than the 1994 rates, especially since health insurance costs generally are still trending upward, and that use of the 1994 rates should be inappropriate. The Commission agrees that the use of 1995 rates is more appropriate, given that health care costs are continuing to rise significantly and the rates in question will go into effect essentially in 1995.

The second difference relates to the recognition and normalization of a transition obligation for regulatory purposes as the result of the Company adopting FAS 112. Ms. Perry testified that the transition obligation is basically a "catch-up" adjustment. She indicated that the Company is to recognize, at the adoption date of the statement, all liabilities incurred since 1981. She also testified that the purpose of her adjustment to normalize the transition obligation is to make the level of these costs an on-going reasonable

level so the ratepayers do not have to bear the impact of the catch-up entry all in one year. The on-going expense level proposed by the Public Staff of $55,947 includes a current expense portion related to the 1993 test year expense level and the annual amortization amount of the transition obligation.

In rebuttal testimony, Company witness Voigt argued that PSNC's filing reflects the expenses in rates consistent with the manner required for financial reporting purposes in FAS 112. The Company maintained that special accounting should be adopted when regulatory and financial accounting procedures differ.

The Commission finds that it is appropriate to recognize a transition obligation element for regulatory purposes upon adoption of the FAS 112-Accounting for Postemployment Benefits, since the initial year's FAS 112 expense would not represent a reasonable on-going level of expense for the Company.

The third difference related to FAS 112 costs is the amortization period over which to spread the transition obligation element. This amortization period is directly tied to the amortization period for rate case expenses, mentioned in Finding of Fact No. 67. The Public Staff recommended a three-year amortization period and the Company has requested two years.

The Commission finds that it is appropriate to amortize the transition obligation over three years consistent with the rate case amortization period found reasonable for this proceeding.

The fourth area of difference relates to the correction of an error in the Company's calculation of FAS 112 costs. Ms. Perry states in her direct testimony that the total FAS 112 expense level must be reduced for health and life insurance expenses recognized elsewhere in the Company's rate case filing. No other party offered evidence on this matter and the Commission concludes that it is appropriate to reduce the FAS 112 expense level recognize health and life insurance expenses included elsewhere in the Company's rate case filing.

Based on the foregoing, the Commission concludes that the ongoing expense level for this item to be included in the cost of service is $59,756.

The Company requested that if the Commission adopts the Public Staff's transition obligation adjustment, it also require deferral accounting treatment for the transition obligation. On cross-examination, Public Staff witness Perry did not recommend or oppose the deferral accounting treatment for the transition obligation.

The Commission finds that it is appropriate for the Company to record the FAS 112 transition obligation in a deferred debit account for financial accounting purposes and to amortize this deferred debit over a three-year period.

Manufactured Gas Plant Clean-up Costs

The final item of difference between the Company and the Public Staff is related to the manufactured gas plant clean-up costs. The Commission has found in Finding of Fact No. 30, that it is appropriate to increase O&M expenses by $50,000 to reflect the amortization of $150,001 of MGP costs over a three year period.

DEPRECIATION EXPENSE

The only area of difference regarding depreciation expense between the Public Staff and the Company is the $21,144 related to the propane office building.

Having previously found in Finding of Fact No. 36 that the propane office building should be included in rate base, the Commission concludes that it is appropriate to include the depreciation expense related to the propane office building. The proper level of depreciation expense for use in this proceeding is $17,547,673.

GENERAL TAXES

The Public Staff and the Company agree on the level of general taxes, except for the payroll taxes associated with the union contract wage increase discussed in the evidence and conclusions for Finding of Fact No. 65. The difference of $23,873 is calculated using the Company's current FICA tax rate of 7.65%.

Having previously concluded that the union contract wage increase should be allowed in this proceeding, the Commission concludes that the associated payroll taxes should also be allowed.

The appropriate level of general taxes for use in this proceeding is $15,558,572.

INCOME TAXES

The last area of difference between the Company and the Public Staff is income taxes. The $131,068 difference related to state income taxes and the $551,795 difference related to federal income taxes is due to (1) the supplier refund claim of right credit, (2) the excess deferred income tax claim of right credits, (3) the unrecognized prior year tax benefits, and (4) the difference in levels of expenses used to calculate income taxes.

Supplier Refund Claim of Right Credit

The Company's per books income tax expense for the test year reflected $438,259 for a claim of right federal income tax credit filed by the Company related to supplier refunds. Public Staff witness Hoard recommended that the Company record a $731,503 credit in its deferred gas cost account for refund to ratepayers in the same manner that gas cost overcollections are refunded to ratepayers. Company witness Voigt opposed Mr. Hoard's recommendation.

Witness Hoard testified that Section 1341 of the Internal Revenue Code, which is referred to as the "Claim of Right Doctrine," allows taxpayers to take a credit on their tax returns for certain items which were established as taxable in one tax period but are later proven to be nontaxable. He stated that essentially, the credit is equal to the reduction in the income tax rate from the first period to the later period, multiplied by the gross amount of the item.

Mr. Hoard testified that during the years 1989, 1990, 1991, and 1992 PSNC received several refunds from Transcontinental Gas Pipeline Corporation (Transco), its interstate pipeline supplier, relating to periods of service prior to the July 1, 1987, effective date of the reduction in the corporate federal income tax rate. Mr. Hoard stated that during the test year the Company filed an amended return to reflect the credit and that it is reflected in the book income tax expense for the test year.

Mr. Hoard testified that ratepayers are entitled to receive the benefit of the claim of right credits pertaining to supplier refunds because all of the supplier refunds result from Transco rate changes that were specifically tracked by PSNC either through automatic rate adjustments to its customers bills or through its deferred gas cost accounting procedures, and that PSNC never experienced a shortfall in its income taxes. Mr. Hoard reasoned that since PSNC was allowed to automatically pass through to its customers the Transco overcharges, it is only reasonable and fair that ratepayers be allowed to enjoy the tax benefits resulting from the refund of these overcharges.

Mr. Hoard also testified that since these claim of right credits were reflected in test year income taxes, these items could be amortized over a period of years as a reduction in income tax expense in the same manner that the Commission typically handles extraordinary maintenance costs. To illustrate how the Commission's traditionally handles extraordinary maintenance costs, Mr. Hoard referred to the Commission's handling of extraordinary maintenance costs in the last Nantahala Power & Light Company rate case, Docket No. E-13, Subs 142 and 157.

The Commission has historically allowed utilities to reflect extraordinary or unusual expenses as a component of operating revenue deductions for the purpose of determining rates. Many of these extraordinary or unusual expenses result from circumstances and events that are not considered "ongoing." The Commission takes judicial notice of the following rate case orders: Nantahala Power & Light Company, Docket No. E-13, Subs 142 and 157; North Carolina Power Company, Docket No. E-22, Sub 314; Duke Power Company, Docket No. E-7, Sub 487; and Carolina Water Service, Inc., Docket No. W-354, Subs 74, 79, and 81.

In Nantahala Power & Light Company, Docket No. E-13, Subs 142 and 157, the Commission reflected several extraordinary or unusual costs in operating revenue deductions including, storm damage costs related to a "100 year blizzard", storage site clean-up costs, and clean-up costs related to vandalism.

In Duke Power Company, Docket No. E-7, Sub 487, the Commission allowed Duke to recover extraordinary maintenance costs that it had incurred as the result of Hurricane Hugo and a tornado.

In Carolina Water Service, Inc., Docket No. W-354, Subs 74, 79, and 81, the Commission allowed the company to recover extraordinary maintenance costs that it had incurred as the result of Hurricane Hugo.

The Commission is aware that there are many more instances where it has reflected in expenses, or allowed specific recovery of, costs related to extraordinary or unusual circumstances that would not be considered "ongoing." Because we have consistently allowed utilities to increase expenses for circumstances and events that would not be considered "ongoing," we find it is only equitable for utilities to decrease expenses for circumstances and events of a similar nature.

Public Staff witness Hoard testified that Piedmont and NCNG have flowed through to ratepayers every dollar that they have received as the result of claim of right credits.

The Commission recognizes that its Purchased Gas Adjustment rules allowed the Company to automatically adjust its rates to recover from ratepayers cost increases that resulted from supplier rate changes. Some of these supplier rate changes were later found to be inappropriate by the FERC, and the amounts collected by the supplier were consequently refunded to the Company, which in turn, refunded the amounts to its ratepayers or deposited the amounts into the Company's Expansion Fund. After it received the supplier refunds, the Company filed for claim of right income tax credits. Clearly, the supplier refunds CAUSED the claim of right credits. If there had been no supplier refunds, there would not have been any claim of right credits. The objective of these PGA rules was to permit the Company to recover its gas costs, not to provide the Company with an opportunity to experience a tax windfall.

The supplier refund claim of right credits were reflected in the Company's test year book expenses. While it is true that the supplier refund claim of right credits do not represent a normal ongoing expense, this Commission has historically allowed utilities to reflect a normalized level of prudently incurred extraordinary expenses in the cost of service. This Commission has not traditionally excluded extraordinary expenses from the cost-of-service simply because the expenses are not "ongoing." Likewise, the Commission should not deny ratepayers the benefit of the supplier refund claim of right credit simply because they are not "ongoing."

Based on the foregoing, the Commission concludes that the Company should refund the supplier refund claim of right credit to ratepayers. The Company shall accomplish this refund by recording a $731,503 credit in its deferred gas cost account.

Excess Deferred Income Tax Claim of Right Credits

Witness Hoard testified that he believed it was appropriate to amortize the $72,271 excess deferred income tax claim of right credits over three years as a reduction to income tax expense. Public Staff witness Hoard recommended that income tax expense be reduced by $24,090 to reflect a three-year amortization of

these credits. Company witness Voigt recommended that these credits be amortized over a two-year period. Consistent with our finding that rate case expenses be amortized over a three-year period, we conclude that the excess deferred income tax claim of right credits should also be amortized over a three-year period.

Unrecognized Prior Year Tax Benefits

Witness Hoard testified that when adopting FAS Statement No. 109 - Accounting for Income Taxes, the Company determined that its books reflected more deferred tax reserves than required and recorded an accounting entry to reduce (debit) the deferred tax reserves with a balancing entry to reduce (credit) the test year income tax expense. He indicated that the Company did not however reflect in its rate case filing the $189,164 reduction to book federal income tax expense and the $42,013 reduction to book state income tax expense.

Public Staff witness Hoard explained that FAS 109 required the Company to study its deferred tax reserves to determine its liability for deferred taxes at the current tax rates and to adjust its deferred tax reserves on its balance sheet accordingly. Mr. Hoard further explained that prior to FAS 109, the rules regarding accounting for income taxes were set forth in APB 11, which focused on reflecting income taxes on the income statement for each period at the tax rates in effect during that period. Mr. Hoard testified that as the result of the Company's deferred tax study, it recognized that it had some excess tax reserves for non-plant deferred tax items.

Public Staff witness Hoard recommended that federal income tax expense be reduced by $63,055 and state income tax expense be reduced by $14,004 to reflect a three-year amortization of the unrecognized prior year tax benefits. He stated that he used a three-year amortization period to be consistent with Public Staff witness Perry's recommendation regarding the appropriate amortization period for rate case expenses.

Company witness Voigt opposed the Public Staff adjustment. Witness Voigt testified that PSNC recorded a one-time reduction to income taxes of $272,201 as the result of adopting FAS 109. He stated that this reduction was composed of various tax credits, including $41,024 for the estimated 1993 claim of right credits and $231,177 for various book/tax differences. Mr. Voigt stated that the prior year unrecognized tax benefits entry is a non-recurring correction of cumulative omissions that were corrected through accounting entries made upon adopting FAS 109. Mr. Voigt recommended that the Commission use a two-year amortization period for this item, consistent with his recommendation regarding rate case expenses, if it determines that it is appropriate to reflect the prior year unrecognized tax benefits as a reduction to income taxes.

Public Staff witness Hoard testified that some utilities have had deficiencies in their deferred tax reserves in the past. Mr. Hoard cited an NCNG rate case, Docket No. G-21, Sub 235, as one example of a utility being allowed to recover a deferred tax reserve deficiency from ratepayers, and he noted that many utilities in this jurisdiction have recovered the deficiency in their state deferred tax reserves by simply reclassifying a portion of their excess federal tax reserves to the state deferred tax reserve account. Mr. Hoard

reasoned that if it is appropriate for utilities to recover deferred tax reserve deficiencies from ratepayers, it is just as appropriate for ratepayers to receive the benefit of excess deferred tax reserves.

The prior year unrecognized tax benefits were reflected in the Company's test year book expenses, but do not represent a normal ongoing expense. In our discussion of the supplier refund claim of right credit we noted that the Commission has historically allowed utilities to reflect extraordinary or unusual expenses as a component of operating revenue deductions for the purpose of determining rates and that many of these extraordinary or unusual expenses result from circumstances and events that are not considered "ongoing." The Commission in that discussion cited cases where the recovery of extraordinary items were allowed. The Commission believes those cases are equally relevant here and incorporates that discussion by reference.

The Commission recognizes that it has historically allowed utilities to increase expenses for circumstances and events that would not be considered "ongoing." The Commission therefore believes that it is only equatable to require utilities to decrease expenses for circumstances and events of a similar nature

The Commission concludes that income tax expense should be reduced by $77,059 to reflect the three-year amortization period for prior year unrecognized tax benefits. It is only fair that ratepayers should benefit from these excess deferred income taxes because they have provided rates to cover these deferred tax amounts.

Based on its findings elsewhere in this Order regarding the appropriate level of expenses, the Commission concludes that the appropriate levels of state and federal income taxes for this proceeding are $1,442,101 and $5,918,967, respectively.

The Commission concludes that it is appropriate to calculate the level of state and federal income taxes as presented in the following schedule:

Item	Amount
1. Operating Revenues	$297,529,748
2. Less: Operating Expenses	(265,447,130)
3. Operating Income before Interest (L1-L2)	32,082,618
4. Less: Interest Expense	(13,651,997)
5. Plus: Permanent Book/Tax differences	171,800
6. State Taxable Income (L3-L4+L5)	18,602,421
7. State Income Taxes @ 7.8275%	1,456,105
8. Amortization of Unrecognized Prior Year Tax Benefits over 3 years	(14,004)
9. State Income Taxes (L7-L8)	$ 1,442,101
10. Federal Taxable Income (L6-L9)	$ 17,160,320
11. Federal Income Taxes @ 35%	$ 6,006,112
12. Amortization of Unrecognized Prior Year Tax Benefits over 3 years	(63,055)
13. Amortization of Excess Deferred Taxes Claim of Right over 3 years	(24,090)
14. Federal Income Taxes (Sum of L11-L13)	$ 5,918,967

SUMMARY CONCLUSION

Based upon the Commission's findings set forth herein, the Commission concludes that the overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $272,369,198 consisting of the following components:

Item	Amount
Cost of gas	$180,127,806
Operation and maintenance	52,213,079
Depreciation	17,547,673
General taxes	15,558,572
State income taxes	1,442,101
Federal income taxes	5,918,967
Amortization of ITC	(439,000)
Total operating revenue deductions	$272,369,198

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 81-85

The evidence for these findings of fact is found in the testimony of Company witnesses Voigt, Ziegler, and Jackson; CUCA witness O'Donnell; and Public Staff witness Hinton.

In pre-filed direct testimony, Company witness Voigt originally requested a capital structure for ratemaking purposes consisting of 55.84% common equity, no short-term debt, and 44.16% long-term debt. Witness Voigt determined the

Company's originally requested capital structure by first calculating the average capital structure during 1993. The Company's average capital structure, including short-term debt, during 1993 consisted of 44.64% common equity, 8.62% short-term debt, and 46.74% long-term debt. Witness Voigt made pro forma adjustments to the 1993 average capital structure to reflect the impact of the Company's planned offering of additional common stock and to reflect use of the proceeds from the aforesaid offering to eliminate all short-term debt then outstanding and to reduce the outstanding balance of long-term debt. The reduction to long-term debt was based on the Company's decision to voluntarily prepay and conduct early retirement of $5.6 million of debt capital composed of two issues with effective cost rates of 9.875% and 10% and to reflect a $5.2 million debt capital reduction due to mandatory sinking fund requirements. In essence, witness Voigt's pro forma adjustments increased the 1993 average common equity ratio of 44.64% to the requested 55.84% common equity ratio and totally eliminated short-term debt from the capital structure for ratemaking purposes. In supplemental and rebuttal testimony, Company witness Voigt changed the Company's requested capital structure and agreed with Public Staff witness Hinton's inclusion of short-term debt. By including the level of short-term debt recommended by witness Hinton in the Company's originally requested capital structure, witness Voigt then recommended a capital structure consisting of 53.65% common equity, 3.92% short-term debt, and 42.43% long-term debt.

Company witnesses Ziegler and Jackson both testified in support of the reasonableness of the Company's originally requested capital structure. Company witness Ziegler contended that in order for the Company to attract capital on reasonable terms when competing with its gas distribution company peer group, PSNC must maintain an equity ratio in the 50% to 55% range. He identified the peer group as the 35 LDCs covered by the stock brokerage firm of Edward D. Jones & Company. Company witness Jackson testified that the 55.84% common equity ratio included in the Company's originally requested capital structure was reasonable based on the 52.7% average common equity ratio of his comparable group over the last five years.

CUCA witness O'Donnell disagreed with the Company's requested capital structure. He testified that the Company's requested capital structure, which excluded all short-term debt, did not accurately reflect the financing of its proposed rate base. Witness O'Donnell pointed out that gas inventory was financed by short-term debt and that gas inventory was included in rate base. His testimony explained that by excluding short-term debt from its requested capital structure, PSNC was asking ratepayers to pay the financing cost of gas inventory, but was not allowing ratepayers the benefits of the low cost short-term debt actually used to finance such inventory.

CUCA witness O'Donnell recommended a capital structure for ratemaking purposes consisting of 48.7% common equity, 11.8% short-term debt, and 39.5% long-term debt. To determine his recommended capital structure, witness O'Donnell calculated the twelve-month average capital structure of Public Service including total short-term debt for the period ending March 31, 1994. He then adjusted the average capital structure by including the effects of the common equity issue which occurred in May 1994 as well as the Company's anticipated long-term debt retirements.

Public Staff witness Hinton also disagreed with the appropriateness of the Company's requested capital structure for ratemaking purposes. When witness Hinton compared the equity ratio in the Company's requested capital structure to the average common equity ratio of the same 35 LDCs in the Edward D. Jones peer group, he found that the average common equity ratio of the peer group defined by witness Ziegler was significantly less than the Company's requested common equity ratio. Further, witness Hinton's prefiled testimony also pointed out that Company witness Jackson, who testified that the Company's requested common equity ratio was reasonable based on the five-year average common equity ratio of his comparable group, had omitted short-term debt in the comparison and had also included double "AA" rated LDCs in his determination.

Public Staff witness Hinton recommended a capital structure consisting of 49.19% common equity, 4.07% short-term debt, and 46.74% long-term debt. To determine the long-term debt and common equity balances in his recommended capital structure, he averaged common equity and long-term debt balances for the 12 months ending June 30, 1994. Consistent with past Commission treatment, $258,000 was subtracted from the average common equity balance to remove previous Transco refunds which have been treated as cost-free capital to the Company. To determine the amount of short-term debt in the capital structure, he recommended a balance of short-term debt equal to the Public Staff's recommended amount of stored gas inventory included in rate base. He testified that, since short-term debt financed gas inventory, matching the average amount of short-term debt included in the capital structure to the average amount of gas inventory included in rate base accounted for seasonality and established the minimum amount of short-term debt which should be included in the capital structure for ratemaking purposes. It was his opinion that the use of stored gas inventory as a proxy for short-term debt better matches the actual financing cost of gas inventory which is included in rate base.

The cost of capital component of a company's overall revenue requirement or cost of service is, of course, in part, a function of the capital structure. More specifically, it is a function of the relative weighting of the various kinds of capital included in the capital structure to total capital. Various kinds of capital have vastly different cost rates. Typically, the cost rate for common equity capital exceeds by far the cost rates for both short-term and long-term debt capital. Due to the aforesaid capital costs differentials, the development of a reasonable and appropriate capital structure is an integral part of the rate making process. After careful review and consideration of the entire evidence of record, the Commission finds and concludes:

(1) The 53.65% common equity ratio included in the Company's recommended capital structure for ratemaking purposes is considerably higher than the average common equity ratio of the industry or the average common equity ratio of LDCs with a single "A" bond rating. The common equity ratio in the Company's recommended capital structure for ratemaking purposes equals 53.65%. According to the testimony of Company witness Ziegler, PSNC must maintain a common equity ratio in the 50% to 55% range in order to attract capital on reasonable terms when competing with its gas distribution company peer group. Witness Ziegler identified this "peer group" as the 35 LDCs followed by the stock brokerage firm of Edward D. Jones & Co. However, the record clearly shows that the average common equity ratio of the peer group is lower than 50%. Moreover, the 11 LDCs with a single "A" bond rating within the peer group have a common equity ratio

below 50%. On an end-of-period basis, the entire 35 company group exhibits only a 47.8% average common equity ratio and the 11 single "A" rated LDCs exhibit only a 49.1% average common equity ratio. Over the most recent four quarters, the average common equity ratio of the entire group is 45.2% and the average common equity ratio of the single "A" rated LDCs is 46.1%.

Witness Jackson maintained that the 55.84% common equity ratio requested originally by the Company for ratemaking purposes was reasonable, because the average common equity ratio of his twelve company comparable group was 52.7%. First, the Commission notes the obvious difference between 55.84% and 52.7%. Second, his comparison suffers because the 52.7% which he presented as the average common equity ratio of the group omitted consideration of short-term debt. When short-term debt is included, the average common equity ratio of his group is 47.1%. Further, his comparable group includes three LDCs with a double "AA" bond rating. When these three LDCs are omitted, and short-term debt is included, the average common equity ratio of the remaining nine LDCs is 45.0%.

Witness Ziegler also testified that the difference in the Company's requested capital structure and the Public Staff's recommended capital structure was necessary due to the associated risk of FERC Order No. 636 and fast-growth system expansion. However, he also agreed on cross-examination that all LDCs had been affected by FERC Order No. 636. The Commission notes that all companies in the 35 member peer group, defined by witness Ziegler himself, have been affected by FERC Order No. 636. Yet, the average common equity ratio of these LDCs has not increased to even a 50% level.

(2) The 53.65% common equity ratio included in the Company's recommended capital structure for ratemaking purposes is considerably higher than the average common equity ratio maintained by the Company in recent years. Public Staff witness Hinton's Exhibit JRH-4 shows the common equity ratio of PSNC each month since January 1989. This exhibit shows that the average common equity ratio maintained by the Company in recent years is significantly below the common equity ratio included by the Company in the capital structure it proposes for use for purposes of this proceeding.

(3) The Company's own financial forecasts indicate that its common equity ratio will be lower than 53.65% in the future. According to the record, in response to Public Staff discovery, the Company provided a forecasted capital structure for December 31, 1994. Public Staff Voigt Cross-Examination Exhibit No. 1 contains the Company's forecasted capital structure and shows a capital structure consisting of 49.7% common equity, 12.9% short-term debt, and 37.4% long-term debt. During cross-examination, witness Voigt testified that the short-term debt included in the Company's discovery response was overstated by $13 million to $15 million. This overstatement, according to witness Voigt, was due to the sale of the Company's propane operations subsequent to the discovery response. He testified that the proceeds of this sale would allow the Company to borrow $13 million to $15 million less short-term debt than originally expected. However, on redirect examination, witness Voigt testified that after consideration of the proceeds of the propane sale, the forecasted common equity ratio is still only 52.4% to 52.5% as of December 31, 1994. Further, witness Voigt testified that PSNC expects to issue long-term debt in early 1995 and that short-term debt would continue to increase in the winter months of 1995. This financing in 1995 will serve to reduce the common equity ratio.

In rebuttal testimony, witness Voigt contended that the Public Staff's recommended capital structure was based on a historical perspective and failed to incorporate significant known factors which clearly made the historical perspective inappropriate. The Commission notes, however, that evidence in the record shows that the Company's own financial forecast predicts that the common equity ratio of the Company at the end of 1994 is expected to be in the range of 49.7% to 52.5% with additional debt borrowings expected to occur in 1995. Therefore, on a prospective basis, the 53.65% common equity ratio reflected in the Company's recommended capital structure is less than the common equity ratio expected in the near future according to the Company's own financial forecast.

(4) The appropriate capital structure to employ for purposes of this proceeding consists of 46% long-term debt, 4% short-term debt, and 50% common equity. Based upon the facts and circumstances set forth hereinabove, the Commission finds and concludes that the capital structure advocated for use by the Company, which includes a common equity ratio of 53.65%, is inappropriate for use for purposes of this proceeding.

As previously discussed, CUCA witness O'Donnell recommended a capital structure consisting of 48.7% common equity, 11.8% short-term debt, and 39.5% long-term debt. Public Staff witness Hinton recommended a capital structure consisting of 49.19% common equity, 4.07% short-term debt, and 46.74% long-term debt. While both of those witnesses used a 12-month average approach to account for seasonality, witness O'Donnell ended the 12-month period in March 1994 while witness Hinton's 12-month average ended in the more recent period of June 1994. Witness O'Donnell also adopted the Company's reductions to long-term debt, which included the early retirement of certain debt issues using proceeds from the sale of additional common stock. Witness Hinton in developing his 12-month average capital structure used actual monthly long-term debt balances through June 30, 1994. Further, witness O'Donnell used total short-term debt in his recommended capital structure while witness Hinton employed an amount of short-term debt equal to the level of gas inventory included in rate base. Company witness Voigt agreed with witness Hinton regarding the appropriate basis for determining the level of short-term debt appropriate for use in developing the proper capital structure for purposes of this proceeding.

Based upon the foregoing and after careful consideration of the entire evidence of record, the Commission finds and concludes that the appropriate capital structure for use for purposes of this proceeding is one consisting of 46% long-term debt, 4% short-term debt, and 50% common equity. In reaching this decision, the Commission, largely for the reasons presented by witness Hinton, has concluded that the proper amount of short-term debt for use in developing the capital structure for use herein is an amount reasonably representative of and approximately equivalent to the level of gas inventory included in rate base. With respect to the levels of long-term debt and common equity capital found appropriate for use herein, the Commission has concluded that such levels are entirely reasonable and appropriate in virtually every respect, particularly from the standpoint of allowing the Company to maintain its credit-worthiness and to obtain debt and equity capital on terms that are favorable to both ratepayers and shareholders, which should facilitate the acquisition of capital needed by the Company for system expansion.

The common equity ratio of 50% adopted for use herein is within Standard & Poor's (S&P) recommended financial benchmark range for a single "A" bond rating, even though the Company's debt is not formally rated. The pre-tax interest coverage which the Company is being afforded a reasonable opportunity to achieve is also within S&P's recommended financial bench mark range for a single "A" bond rating. Additionally, the 50% common equity ratio adopted for use by the Commission is very close to the 49.1% average common equity ratio of single "A" rated LDCs for the most recent quarter ending March or April of 1994, and to the 49.19% equity ratio advocated by Public Staff witness Hinton. Finally, it is noted that the 50% equity ratio is the lower bound of the range of common equity ratios considered to be appropriate by Company witness Ziegler.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 86 AND 87

Company witnesses Voigt and Jackson, CUCA witness O'Donnell and Public Staff witness Hinton each recommended an embedded cost of long-term debt of 9.53%. According to Public Staff witness Hinton, 9.53% was the embedded cost of long-term debt at June 30, 1994. The Commission, therefore, finds and concludes that the appropriate cost of long-term debt for purposes of this proceeding is 9.53%.

With respect to the cost of short-term debt, CUCA witness O'Donnell recommended a cost rate of 5.33%. According to his testimony, that rate was the current prime rate minus 242 basis points. The 242 basis points was subtracted from the prime rate because PSNC can typically obtain short-term debt at 242 basis points below prime according to the Company's response to a data request. Public Staff witness Hinton recommended a cost of 4.70% for short-term debt. Witness Hinton's cost rate was determined by subtracting 255 basis points from the prime rate at the time of his pre-filed testimony. He subtracted 255 basis points to reflect the spread below prime which PSNC had obtained with respect to its short-term debt financing in 1994. In a late-filed exhibit requested by the Commission, the Company also employed a 4.70% cost rate for short-term debt.

Based on the testimony and exhibits of the Company and the Public Staff, the Commission finds and concludes that the cost of short-term debt appropriate for use in this proceeding is 4.70%.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 88-99

Three witnesses testified on the issue of the cost of common equity capital. Company witness Jackson recommended a cost rate of 12.9%. CUCA witness O'Donnell recommended a cost rate of 10.63%, which included an allowance of 0.13% for flotation costs, and Public Staff witness Hinton recommended a cost rate of 11.2%.

Company witness Jackson used five approaches to determine the cost of common equity. Those approaches were presented from the standpoint of a comparable group of companies, including PSNC, as well as from the standpoint of PSNC on a stand-alone basis. From a comparable group perspective, witness Jackson included a comparable earnings study which yielded average and median common equity costs of 12.18% and 12.00%, respectively; a DCF analysis that included a market-to-book adjustment which yielded average and median common equity costs of 14.15% and 14.01%, respectively; a payout ratio test which yielded average and median common equity costs of 11.87% and 11.84%, respectively; a risk premium model based on

a regression analysis of authorized returns and interest rates in gas rate cases since the early 1980s which yielded an average and median common equity cost of 11.87%; and a capital asset pricing model (CAPM) approach which yielded an average and median common equity cost of 11.80%. On a PSNC stand-alone basis, witness Jackson's five approaches yielded the following results: comparable earnings study 12.40%, DCF analysis 15.59%, payout ratio test 12.94%, regression analysis 11.87%, and CAPM approach 11.80%. From the results of the foregoing approaches, as shown on his updated Schedule 6, witness Jackson concluded that the cost of common equity to PSNC was in the range of 11.87% to 12.92%. He recommended a return at the upper end of that range due to the small size of PSNC, its stand-alone indicated common equity cost, and the overall impact of FERC Order No. 636.

CUCA witness O'Donnell employed a DCF analysis of PSNC, which yielded a common equity cost range of 10.10% to 10.60%, as well as a DCF analysis for 24 companies included in the natural gas distribution section of The Value Line Investment Survey, which yielded a common equity cost range of 9.95% to 10.45%. He also used the comparable earnings method, which yielded a common equity cost range of 10.25% to 11.25%. Based on the results of his methods, Witness O'Donnell estimated the cost of common equity to be within the range of 10% to 10.50% and recommended a cost of 10.50%. He added a flotation cost adjustment which he calculated to equal 0.13%. The flotation cost adjustment calculation was based on the known and actual costs associated with stock issuances over the last 10 years. Thus, he recommended a rate of 10.63% for the cost of common equity.

Public Staff witness Hinton employed two methods to analyze the investor return requirement for PSNC. The first method was the DCF applied to PSNC and to two groups of companies he considered to be comparable in risk to PSNC. His DCF analyses indicated an overall common equity investor return requirement of 10.2% to 11.2%, which was based on a PSNC-specific DCF analysis yielding a common equity cost range of 10.1% to 11.1% and DCF analyses of his two comparable groups of companies which yielded common equity cost ranges of 10.3% to 11.3% and 10.4% to 11.4% for his Group A and Group B companies, respectively. The second method witness Hinton employed was a risk premium model based on an approach used by the FERC staff for electric utilities. This method indicated an investor return requirement in the range of 11.2% to 11.7%. Based on the results of that analyses, he concluded that the cost of equity to PSNC was within the range of 10.7% to 11.7%. He further concluded and recommended 11.2% as the best single estimate of the cost of equity.

Witness Hinton further testified that his 11.2% recommended return was reasonable based upon the results of a comparable earnings study which showed that recent earned returns for gas utilities have been predominately in the range of 10.6% to 11.4%. The recommended return of 11.2%, according to witness Hinton, was also reasonable in comparison to the 11.2% average authorized return in 17 natural gas rate cases in 1993.

Witness Hinton also recommended an adjustment to the cost-of-service in order to allow the Company the opportunity to recover actual expenses incurred with respect to the May 1994 public offering of common stock.

The determination of the fair rate of return for the Company is of great importance and must be made with great care since the return allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed, it must balance the interest of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4) to

> ...enable the public utility by sound management to produce a fair profit for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its existing investors.

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b)

> ...supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, those of the State Constitution, Art. I, §19, being the same in this respect.

State ex rel. Util. Comm. v. Duke Power Co., 285 N.C. 377, 388, 206 S.E.2d 269, 276 (1974).

The Commission is mindful of the fact that its conclusion of the appropriate rate of return must be based upon specific findings showing what effect it gave to particular factors in reaching its decision. State ex rel. Util. Comm. v. Public Staff, 322 N.C. 689, 699, 370 S.E.2d 567, 573 (1988).

The Commission has carefully considered all of the relevant evidence presented in this case with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers and that the Commission must use its impartial judgment to ensure that all parties involved are treated fairly and equitably. Based upon evidence in the record, the Commission concludes the following.

(1) Application of the DCF model as presented by Company witness Jackson should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. Company witness Jackson performed a market-based and traditional DCF analysis with a quarterly compounding adjustment. He also applied a market-to-book ratio adjustment to the result of the market-based DCF result to arrive at a second DCF result which included the effect of that adjustment. The two DCF results are shown in column 7 and column 10 of Jackson Exhibit No. 1, Schedule 2, page 3 of 3. Column 7 contains the market-based and traditional DCF results, including the quarterly compounding adjustment. This

column shows a cost of equity estimate of 10.45% for the comparable group and 10.95% for PSNC. Column 10 contains his market-based DCF result after the application of the market-to-book ratio adjustment. This column shows cost of equity estimates of 17.62% for his comparable group and 20.24% for PSNC.

According to his testimony, DCF theory holds that a DCF cost rate, if earned by a utility company, will tend to equate market price and book value over time. Since the natural gas industry has been trading in excess of book value and is estimated to continue to do so, witness Jackson advocated the use of a market-to-book ratio adjustment applied to the results of his market-based DCF. He testified that the foundation of the DCF model rests upon the efficient market hypothesis which assumes that the current market price is the best available estimate of a stock's true value. He opined that, to the extent market prices do not reflect true "value" at all times, the exclusive use of the DCF approach as a determinant of the current cost of common equity in a rate proceeding is called into serious question.

Witness Jackson agreed on cross-examination that investors determine return requirements. He also agreed that investors are aware of the fact that the Commission's allowed returns are applied to a company's rate base stated at book value and not market value. Upon consideration of the foregoing testimony and after review of the entire evidence of record, it has become clear to the Commission that the market-to-book ratio adjustment advocated by witness Jackson in this case is entirely inappropriate. Such a result is inescapable when one considers the fact that, under the efficient market hypothesis to which witness Jackson appears to subscribe, knowledge regarding the aforementioned Commission practice has been taken fully into account by investors in establishing the market price of the Company's common stock. Inasmuch as market price is one of the parameters embodied in the DCF model and since, as previously discussed, market price is, in part, a function of book value and the rate making practices of this Commission, the Commission can only conclude, in the absence of evidence to the contrary, that consideration of market-to-book relationships are inherently, appropriately, and fully considered under straight forward application of the DCF model, including witness Jackson's application as presented herein before consideration of his market-to-book ratio adjustment, and that no further adjustment to account for market-to-book relationships are warranted or appropriate. Further, the Commission concludes that witness Jackson's market-to-book ratio adjustment as proposed in this regard is at best unfounded, unsupported, and without merit.

Regarding witness Jackson's implied concern that market price may at times be unrepresentative of true value, the Commission notes that it is hard pressed to understand why in view of that concern witness Jackson relied upon and placed such great weight on market price as evidenced by his DCF approach, particularly in consideration of his market-to-book ratio adjustment. Based upon the Commission review of the record, it does not appear that Witness Jackson offered any meaningful insight in that regard.

There is additional corroborative evidence in the record that supports the Commission's finding concerning the market-to-book adjustment applied to the market-based DCF result. For example, Public Staff Jackson Cross Examination Exhibit No. 2 shows the effect of the market-to-book adjustment in two examples. First, example one shows that the cost of equity increases for a utility trading

at greater than book value. This phenomenon is at odds with witness Jackson's own testimony that consumers benefit if a utility's market-to-book value is greater than one. Example two shows that the cost of equity decreases for a utility trading at less than book value, a result even witness Jackson termed "ridiculous." Also, on cross-examination witness Jackson agreed that he was not aware of any Commission in the United States that has adopted his market-to-book ratio adjustment for the DCF in setting the allowed return. Public Staff Jackson Cross-Examination Exhibit No. 6 showed that the Connecticut Department of Public Utility Control referred to witness Jackson's non-market based DCF as an inappropriate methodology. Witness Jackson also agreed on cross-examination that he had applied the market-to-book ratio differently in the PSNC rate case in 1989, Docket No. G-5, Sub 246, than he applied it in this case.

After careful review of the entire evidence of record, the Commission finds and concludes that witness Jackson's market-to-book ratio adjustment is unreasonable and inappropriate for use herein. Due to the Commission's having found support for the appropriateness of the aforesaid adjustment to be grossly deficient and due to the impact of said adjustment on witness Jackson's overall DCF approach, the Commission further finds and concludes that witness Jackson's overall application of the DCF methodology should be viewed with guarded skepticism for purposes of this proceeding. Therefore, the Commission finds and concludes that witness Jackson's DCF methodology should be accorded only minimal weight for use herein.

(2) Company witness Jackson's comparable earnings approach should be accorded only minimal weight for purposes of determining the cost of common equity for purposes of this proceeding. Witness Jackson agreed on cross-examination that his recommended cost of equity was derived from his updated Schedule 6. The first column on updated Schedule 6 consists of Value Line's projected returns on common equity for each company in his comparable group for the period 1997 through 1999. He testified that investors are far more interested in potential returns than historical earned returns, therefore he relied extensively on the Value Line projected returns for the comparable group.

Public Staff Jackson Cross-Examination Exhibit No. 1 shows that Value Line has previously overestimated the earned return of every single company in witness Jackson's comparable group. Further, in 1987 Value Line projected that the average return for the group would be 14.5% during 1989 through 1991. The group earned 10.7%. In 1989, Value Line projected that the average return for the group would be 13.1% during 1991 through 1993 but the group again earned 10.7%.

It is readily apparent from the foregoing that Value Line's forecasted returns on common equity have proven to be overly optimistic in prior periods. Thus, after careful consideration of the foregoing and all other evidence of record, the Commission finds and concludes that witness Jackson's comparable earnings methodology should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

(3) Company witness Jackson's payout ratio test approach should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. In performing his payout ratio test approach, witness Jackson begins by dividing the current dividend per share by an average payout ratio determined over some historical period. The quotient thus produced is then assumed to be

the required earnings per share. By dividing the required earnings per share by the current book value, witness Jackson obtained an estimate of the cost of equity for each company in his comparable group.

Because the payout ratio test approach relies only on dividends per share, payout ratios, and book value per share, it is not a market-based approach. That method also appears to be devoid of risk factor considerations.

In pre-filed direct testimony, witness Jackson testified that the payout ratio for the industry was relatively stable over time. However, on cross-examination witness Jackson acknowledged that the payout ratio for the industry ranged from 78% to 100% over the 1990 to 1993 time period and is forecasted to drop to 68% by 1997 through 1999 by Value Line. Witness Jackson also agreed on cross-examination that the result from this method varied according to the payout ratio assumed in the calculation. Public Staff Jackson Cross-Examination Exhibit No. 4 showed the effect of increasing the payout ratio from 79% to 84% for PSNC. This rather small change caused the cost of equity estimate to decrease from 12.94% to 12.15% using the payout ratio test.

Further, on cross-examination, witness Jackson agreed that, if the Commission targeted the payout ratio as a way to determine the cost of equity, all the company would need to do to be eligible for a higher rate of return would be to increase its dividend. He also stated that was why it was inappropriate to use this method as the exclusive determinant of the cost of common equity.

Given the shortcomings of the payout ratio test approach as set forth hereinabove, the Commission concludes that such approach is largely inappropriate for use herein. The Commission, therefore, finds and concludes that the payout ratio test approach should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

(4) Company witness Jackson's CAPM approach should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. Witness Jackson used the CAPM to determine a cost of equity estimate of 11.80%. In his CAPM equation, witness Jackson used a beta value of 0.61. He testified that the 0.61 beta value was the average beta reported by Value Line for the 27 natural gas distribution companies included in that publication.

Public Staff Jackson Cross-Examination Exhibit No. 5 showed the CAPM result obtained by using the average beta value of 0.39 as reported by Standard & Poor's for the same 27 companies used in witness Jackson's CAPM formula. Using the Standard & Poor's average beta value, the CAPM result changed to reflect a cost of common equity of 10.22%. Public Staff Jackson Cross-Examination Exhibit No. 5 also showed the CAPM result obtained using the beta value for PSNC standing alone of 0.50 as calculated by witness Hinton using the Value Line methodology. Using the PSNC-specific beta value, the CAPM result changed to reflect a cost of common equity of 11.01%. On cross-examination in this regard, witness Jackson agreed with the foregoing results without explanation of his preference for either one of the foregoing beta values.

Based upon the foregoing and all other evidence of record, due to the significant variability of the CAPM results arising from use of the various beta values as described hereinabove, the Commission finds and concludes that witness

Jackson's CAPM approach is largely inappropriate for use herein. The Commission, therefore, finds and concludes that witness Jackson's CAPM approach should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

(5) Witness Hinton's applications of the DCF and risk premium approaches should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. Witness Hinton derived his cost of common equity recommendation based on a DCF analysis and a risk premium analysis. With respect to his DCF analysis, witness Hinton selected one group of natural gas distribution companies according to certain risk measures. He analyzed an additional group of companies composed of electric and water utilities which were screened according to similar criteria. The results of applying his DCF model to these companies indicated an investor return requirement in the range of 10.2% to 11.2%.

The second method employed by witness Hinton was a risk premium model. He used an approach based upon a study performed by Nicholas P. Lewnes of the FERC. This method attempts to capture the additional return investors require on the added risk of a utility's equity investment over its debt. The result of this analysis was an investor return requirement in the range of 11.2% to 11.8%. Witness Hinton testified that he placed more emphasis on his DCF results than on the risk premium method, and he recommended 11.2% as the cost of common equity for PSNC.

The Commission has a number of concerns with the testimony of witness Hinton. First, with respect to witness Hinton's DCF study, he agreed that the "growth factor" in the DCF equation is the area where one is most apt to see the effects of judgment on the part of the analyst. He further testified that he derived a growth rate from the data shown on his testimony in Exhibit JRH-8. The data presented there for PSNC growth rates, including its historical growth rates as well as the forecasted growth rates, ranged all the way from zero to 8%. Witness Hinton testified that he looks "at all the numbers and makes a calculation and estimation on the long-term investor expectations"; he was unable, however, to explain with any greater particularity how he arrived at his growth factor for PSNC.

Secondly, with respect to witness Hinton's risk premium analysis, there was substantial confusion over the basis on which data from state utility rate cases was included or excluded. Witness Hinton testified that he used both Public Utilities Fortnightly data and also information from Regulatory Research Associates. He testified that the Public Utilities Fortnightly data was not as thorough as that of Regulatory Research Associates, but that Regulatory Research Associates data only targets the "big rate cases that have large revenue requirements." Also, witness Hinton eliminated from the Public Utilities Fortnightly data cases in which the debt of the utility was not publicly rated. As he stated:

> So I had to use or I chose to use both the data bases. One had a clear sample of the larger cases, the other Public Utilities Fortnightly had a lot of the smaller cases, and a lot of the smaller cases were not reasonable to use because they did not have - they [the debt] were not publicly rated.

Overall, witness Hinton concluded that the cost of equity capital of PSNC is within the range of 10.7% to 11.5%; he settled upon 11.2% as the "best single estimate" of the cost of common equity. The Commission has difficulty squaring this opinion with witness Hinton's discussion of present financial market conditions relative to those experienced in the past and corresponding allowed returns by the Commission. He testified, for example, that:

> During the twelve months prior to September, 1991, at the time of the PSNC last rate hearing in Docket No. G-5, Sub 280, the economy was experiencing annual inflation rates (CPI-U) and upwards to 6.3%.

He stated that the economy over the last 12 months had experienced levels of inflation between 2.3% and 2.8%. He further testified, however, that Data Resources, Inc. currently forecasts inflation rates of 3.4% to 3.5% for the period 1995 through 1996, which represents a return to levels more like those experienced in 1991. He further testified that: "According to Moody's Bond Survey, the average yield on long-term 'A' rated utility bonds was 9.1% for August 1991, as compared to the average yield of 8.3% June, 1994." On cross-examination, he agreed that the rate for July was 8.4% . Thus, the difference in long-term bond yields between August of 1991 and July of 1994 is approximately 0.7%. PSNC's allowed return on equity in 1991 was 12.9%; simply adjusting this figure by the corresponding reduction in interest rates for long-term bonds (0.7%) would imply a current equity return of 12.2%, a figure that is a full percentage point above witness Hinton's recommendation of 11.2% and significantly above the top of his recommended range of equity returns.

Further, looking at witness Hinton's risk premium analysis, in particular Exhibit No. JRH-9, page 3 of 14, Mr. Hinton presented a regression equation used to derive an estimated or predicted cost of common equity; using the current long-term debt cost of 8.4% in this equation, the result would be 11.9%. This figure, again, is above the recommended range of 10.7% to 11.5% used by witness Hinton in arriving at his final recommendation of 11.2%. Again, this disparity tends to undermine witness Hinton's recommended equity range.

Finally, witness Hinton testified that based on his recommended capital structure and cost rates, the pre-tax interest coverage ratio was 3.0 times. As he acknowledged on cross-examination, the Standard & Poor's bench mark range for a single "A"-rated utility is 3.0 to 4.25, with 3.75 being the average. His recommendations thus produce the results at the very bottom of the range required for debt coverage of an "A"-rated utility. Moreover, the "BBB" range runs from 2.0 to 3.25, so that his recommendation actually lies within the overlapping "BBB" coverage range. The Commission does not establish allowed returns based on the resulting interest coverage, but the resulting interest coverage of a witness's recommendation does provide a useful check on the reasonableness of the recommendation. On this basis, also, the Commission finds the recommendation of witness Hinton to be unduly low.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that witness Hinton's DCF and risk premium approaches should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

(6) Witness O'Donnell's applications of the DCF and comparable earnings approaches should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. Witness O'Donnell, testifying for CUCA, used the DCF method and the comparable earnings method in arriving at his recommendation. He testified that the DCF method was his primary methodology and that the comparable earnings method was used to check his DCF results. Witness O'Donnell arrived at a DCF range of 9.95% to 10.45% for his comparable group of companies and 10.10% to 10.6% for PSNC specifically. His estimated current cost of equity from use of the comparable earnings method for PSNC was in the range of 10.25% to 11.25%. Overall, witness O'Donnell recommended that the Company be allowed a 10.5% return on equity (plus a flotation cost adjustment).

For his comparable group, witness O'Donnell determined that the appropriate dividend yield was 5.7% and the appropriate growth rate range was 4.25% to 4.75%, producing a return on equity range of 9.95% to 10.45% using the DCF method. For PSNC, he used a dividend yield of 5.65% and a growth rate range of 4.5% to 5.0% for a DCF range of 10.1% to 10.6%.

The Commission has concerns with witness O'Donnell's recommendation similar to those set forth above with respect to witness Hinton's recommendation; if anything, however, these concerns are greater in the case of witness O'Donnell's recommendation. First of all, witness O'Donnell testified on cross-examination that he had calculated a pre-tax interest coverage ratio for his return on equity recommendation of 3.0. This suggests, for the reasons discussed above, that witness O'Donnell's recommendation is unreasonably low. Reducing the Company's ability to cover its interest payments tends to increase the cost of debt, which disadvantages ratepayers and is not consistent with the Supreme Court's direction in the Hope and Bluefield cases, supra.

Secondly, as was the case with witness Hinton, witness O'Donnell could give no real explanation of how he arrived at his forecasted growth rate for the comparable companies used in his study. He testified that he used a rate of 4.25% to 4.75% based on the data presented in his Exhibits KWO-4 and KWO-5. As he conceded on cross-examination, however, of the 95 "data points" presented on KWO-5, only 4 actually lie within the range of 4.25% to 4.75%. Witness O'Donnell's judgment may be correct or it may not be; the Commission has no way of knowing from his testimony how he arrived at his judgment as to the appropriate growth rate for his comparable companies.

Additionally, witness O'Donnell testified on cross-examination that applying his cost of common equity to the Company's existing common equity capital would produce an implicit return of $.90 per share. By way of comparison, the Company's current dividend is $.82 per share per year. Dividing the dividend of $.82 by the return on equity per share of $.90 results in a payout ratio of 91%, which would leave a retention ratio of only 9%. Clearly, PSNC could not continue its current rate of growth, not to mention increase its growth by expanding to unserved territories as desired by the North Carolina General Assembly, if witness O'Donnell's recommendation was accepted.

A similar conclusion results from examination of witness O'Donnell's reported return on common equity for PSNC in comparison to its recommended return. Witness O'Donnell testified that for the period 1990 through 1993, PSNC achieved returns of 12% on common equity. For the year 1993, the return was

11.5% on common equity. His proposal would effect a reduction in equity returns to 10.5%. The Commission does not believe it plausible to expect PSNC to maintain its rate of expansion--much less accelerate it--while simultaneously lowering its equity return as recommended by witness O'Donnell.

Finally, the Commission concludes that witness O'Donnell's recommendation is simply not plausible. Based on abundant evidence in this record, current A-rated utility bond yields are in the range of 8.4%, as discussed above. Mr. O'Donnell's analysis presented a recommended return on equity of 10% to 10.5% for PSNC. It is not credible that investors can, under existing market conditions, be expected to supply equity capital to an LDC for an implied risk premium of 1.5% to 2%.

Based on the foregoing and the entire evidence of record, the Commission finds and concludes that witness O'Donnell's DCF and comparable earnings methods should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

(7) Application of the regression analysis approach as presented by witness Jackson should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding. On balance, the Commission finds the cost of common equity recommendation presented by witness Jackson based upon his regression analysis approach to be the most credible. Accordingly, it will be given preponderant weight for purposes of this proceeding. As indicated previously, witness Jackson's regression analysis approach yielded a cost of common equity of 11.87%.

The Commission's decision to place the greatest weight on the aforesaid methodology is based primarily on the fact that witness Jackson's testimony was more persuasive in support of his regression analysis approach than was his testimony in support of his other methodologies and the fact that witness Jackson was more persuasive in support of his regression analysis approach than were witnesses Hinton and O'Donnell in support of their respective methodologies.

After careful consideration of the entire evidence of record, the Commission finds and concludes (1) that witness Jackson's conclusion that there is a significant correlation between authorized returns on common equity in gas rate decisions by state regulatory commissions and utility bond yields is valid and useful for purposes of estimating the cost of common equity for purposes of this proceeding and (2) that the methodology employed by witness Jackson for estimating the aforesaid relationship is reasonable and proper. For the period of 1982 through 1993, witness Jackson's regression analysis shows a very high correlation (R^2 = 0.932) between authorized returns and utility bond yields. Based upon the results of that analysis, and consistent with the regression methodology, witness Jackson solved his regression equation for the current average A-rated utility bond yield to produce the indicated cost of common equity of 11.87%. The Commission finds and concludes such an approach to be entirely consistent and proper.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that witness Jackson's regression analysis approach is reasonable and appropriate for use and should be assigned the greatest weight in determining the Company's cost of common equity for purposes of this proceeding.

(8) Changes in the gas industry associated with FERC Order No. 636 do not justify an additional equity risk premium in this case. The evidence for this conclusion is found primarily in the testimony and exhibits of Company witnesses Ziegler and Jackson and Public Staff witness Hinton.

Company witness Ziegler testified that the impact of FERC Order No. 636 has increased the risk incurred by an LDC in managing its supply portfolio and that these additional risks faced by PSNC and all LDCs should be recognized as future allowed returns on equity are established. Concerning FERC Order No. 636 risk, witness Jackson testified that individual LDCs face greater challenges than pipeline companies, the smaller the LDC the less flexibility and greater risk it has, and gas prudence reviews like PSNC's annual gas prudence review expose LDC investors to greater risks. Witness Jackson also quoted Mr. Frank Heintz of the Maryland Public Service Commission as stating that the changes in the gas industry will create increasing risks to LDCs warranting higher rates of return.

Public Staff witness Hinton testified that the investor related risk of FERC Order No. 636 was reflected in the market price of PSNC's and other LDC's common stock. Witness Hinton testified that investors are aware of the current changes in the gas industry associated with Order No. 636 and have seen the gas industry perform in the past under similar regulatory changes that were aimed at creating a market-based system of gas delivery. Witness Hinton reviewed various investor-related reports on the risks associated with Order No. 636 that were written before and after the Order's implementation. Witness Hinton also cited the fact that PSNC and other LDCs met an all-time system peak on January 19, 1994, with only minor problems, and this fact served to demonstrate to investors the Company's ability to operate in this new environment.

On cross-examination related to risks associated with Order No. 636, witness Hinton testified that Moody's and Standard & Poor's analyzed several key factors before any risk assessment was made. These factors included: pipeline transition costs, the size of the utility, the utility's load factor, management's ability to operate in a competitive environment, and the regulatory environment. Witness Hinton further testified that Transco's low transition costs, the Company's prior experience with unbundling, and a high load factor placed the Company in a favorable position with regard to these factors.

The Commission concludes that the implementation of FERC Order No. 636 does not justify an additional equity risk premium in this case. The Commission notes that the transition to open access has existed for several years and Order No. 636 is, in part, just a continuation of prior FERC Orders aimed at creating a market for gas delivery. To the extent that increased risk exists in that regard, it is the Commission's view that any attendant increase(s) in the cost of common equity arising therefrom would have been captured and accounted for within the regression analysis adopted for use herein in determining the cost of common equity and that no further adjustment is warranted or appropriate.

Therefore, based on the foregoing and the entire evidence of record, the Commission finds and concludes that implementation of FERC Order No. 636 does not justify an additional common equity risk premium, and no such premium will be allowed.

(9) The cost-of service adjustment recommended by the Public Staff to allow the Company to recover the flotation costs incurred in the May 1994 public stock offering is reasonable and proper. The evidence for this conclusion is found in the testimony and exhibits of Public Staff witness Hinton.

Witness Hinton testified that his recommended cost of service adjustment would allow the Company to recover the actual expenses incurred in the issuance of common stock on May 11, 1994. He explained further that his recommendation would allow for the five-year levelized recovery of the actual utility portion of issuance expense of $1,145,914. The inclusion of a cost-of-service adjustment for the flotation costs, incurred since the test year but prior to the hearing, reflects an appropriate level of cost recovery for the Company, which is of particular importance in view of the Supreme Court's holding that such evidence is essential. State ex rel. Util. Comm. v. Public Staff, 331 N.C. 215, 415 S.E.2d 354 (1992). The Commission concludes that the cost-of-service adjustment recommended by witness Hinton is reasonable and supported by evidence in the record.

Before proceeding, the Commission notes that as a result of its having adopted the Public Staff's position in this regard there is no need to adjust the cost of common equity capital for flotation costs as proposed by witness O'Donnell, assuming that such an adjustment would otherwise be appropriate.

(10) The cost of common equity capital to the Company for purposes of this proceeding is 11.87%. Based upon the findings and conclusions reached in this regard as set forth hereinabove and after careful consideration of the entire evidence of record, the Commission finds and concludes that the cost of common equity appropriate for use for purposes of this proceeding is 11.87%. In reaching this decision, the Commission, as previously discussed, has placed the greatest weight on the cost of common equity derived by application of witness Jackson's regression analysis approach.

(11) The overall fair rate of return which the Company should be allowed the opportunity to earn on its rate base is 10.51%. Based upon the Commission findings with respect to the proper capital structure and the appropriate cost rates for each component of capital reflected in that capital structure, the Commission further finds and concludes that, for purposes of this proceeding, the overall fair rate of return that PSNC should be afforded an opportunity to earn on its rate base is 10.51%.

It is well-settled law in this State that it is for the administrative body in an adjudicatory proceeding to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E.2d 786 (1982); Commissioner of Insurance v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980). The Commission has followed these principles in good faith in exercising its impartial judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon careful consideration of a number of different methodologies weighed and tempered by the Commission's impartial judgment. The determination of rate of return in one case is not res judicata in succeeding cases. State ex rel. Utilities Commission v. Duke Power

Company, 285 N.C. 377, 395, 206 S.E.2d 269, 281 (1974). The proper rate of return on common equity is "essentially a matter of judgment based on a number of factual considerations that vary from case to case." State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 697, 370 S.E.2d 567, 570 (1988). Thus, the determination must be made based on the evidence presented and its weight and credibility in each case.

The Commission cannot guarantee that PSNC, in fact, will achieve the levels of return on rate base and common equity found to be just and reasonable herein. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiency. The Commission finds and concludes that the rates of return on rate base and common equity approved in this Order will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 100

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which PSNC should be afforded an opportunity to earn.

The following schedules summarize the gross revenue and the rate of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. These schedules, illustrating the Company's gross revenue requirement, incorporate the findings and conclusions made by the Commission in this Order.

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 327
STATEMENT OF NET OPERATING INCOME
(excluding Cardinal Pipeline)
Twelve Months Ended December 31, 1993

Item	Present Rates	Approved Increase	Approved Rates
Gas operating revenue	$297,529,748	$10,763,226	$308,292,974
Operating revenue deductions:			
Cost of gas	180,127,806		180,127,806
Operation and maintenance	52,213,079	45,745	52,258,824
Depreciation	17,547,673		17,547,673
General taxes	15,558,572	345,396	15,903,968
State income taxes	1,442,101	811,875	2,253,976
Federal income taxes	5,918,967	3,346,074	9,265,041
Amortization of ITC	(439,000)		(439,000)
Total operating revenue deductions	272,369,198	4,549,090	276,918,288
Net operating income for return	$ 25,160,550	$ 6,214,136	$ 31,374,686

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 327
STATEMENT OF RATE BASE AND RATE OF RETURN
(excluding Cardinal Pipeline)
Twelve Months Ended December 31, 1993

Item	Amount
Gas plant in service	$499,618,895
Accumulated depreciation	(153,457,716)
Net gas plant in service	346,161,179
Gas in storage	11,280,289
Materials and supplies	3,945,359
Working capital - lead lag study	888,151
Customer deposits	(1,727,116)
Cost-free capital items	(14,543,081)
Accumulated deferred income taxes	(47,391,621)
Rate base	$298,613,160
Rates of return:	
Present rates	8.43%
Approved rates	10.51%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 327
STATEMENT OF CAPITALIZATION AND RELATED COSTS
(excluding Cardinal Pipeline)
Twelve Months Ended December 31, 1993

Item	Capitalization Ratio	Original Cost Rate base	Embedded Cost Rate	Net Operating Income
		Present Rates		
Long-term debt	46%	$137,362,054	9.53%	$13,090,604
Short-term debt	4%	11,944,526	4.70%	561,393
Common equity	50%	149,306,580	7.71%	11,508,553
Total	100%	$298,613,160		$25,160,550
		Approved Rates		
Long-term debt	46%	$137,362,054	9.53%	$13,090,604
Short-term debt	4%	11,944,526	4.70%	561,393
Common equity	50%	149,306,580	11.87%	17,722,689
Total	100%	$298,613,160		$31,374,686

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 101

The evidence for this finding of fact is contained in the testimony of Public Staff witness Davis and in the rebuttal testimony of PSNC witness Dickey.

Witness Davis recommended that the Commission approve a "customer attachment fee" for new residential and small commercial customers to help defray some of the costs associated with their addition to the system. He explained that he believed that a small contribution is appropriate to cover some of the administrative costs involved with the addition of those customers. Mr. Davis testified that the proposed fee of $15.00 for new customers on Rate Schedule Nos. 105, 110, 125, and 130 would not apply to requests for turn-ons of services or reestablishment of services already provided at premises or dwellings. He further testified that because the average cost of adding these types of customers is approximately $1,450, the "customer attachment fee" is a step in the right direction for collection of these costs. Witness Davis stated that the Commission had approved the attachment fee for North Carolina Natural Gas Corporation (NCNG) and Pennsylvania & Southern Gas Company (P&S) in their most recent general rate cases.

The Company, through its witness Dickey on rebuttal, opposed the "customer attachment fee." Mr. Dickey explained that the fee had no purpose in that a fee of approximately 1% of the capital costs required to serve each of the affected customers does little to defray that cost and that the proposed fee is somewhat of a disincentive since natural gas is a fuel of choice. Mr. Dickey pointed out that the fee may cause an income tax problem for PSNC, since the IRS may interpret such a fee as a contribution-in-aid-of-construction (CIAC). Mr. Dickey testified that he believed that the fee would cause many potential problems while solving few.

The Commission concludes that the proposed attachment fee accomplishes little in defraying the cost of connection and raises potential problems for PSNC. In view of the Company's strong opposition, the attachment fee should therefore not be included in PSNC's tariffs, rules, and regulations at this time.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 102-110

The evidence supporting these findings of fact can be found in the testimony and exhibits of Company witness Dickey, Public Staff witness Larsen, and CUCA witness Schoenbeck.

In its application, PSNC filed the results of its cost-of-service studies based on the pro forma end-of-period levels as well as the proposed levels, both excluding and including the revenue effect of Cardinal. The Public Staff filed cost-of-service studies using the Company's end-of-period levels (which take into effect the Public Staff's adjustments to volumes, revenues, investment, and expenses) as well as the Public Staff's recommended rates, both excluding and including Cardinal. Although CUCA discussed the cost-of-service issue at length, its witness did not file a cost-of-service study. Witness Schoenbeck commented on and manipulated the other parties' cost-of-service studies.

Public Staff witness Larsen identified the main differences between his cost-of-service study and PSNC's as (1) differences in total company dollars for

revenues, expenses, and investment that would affect the overall rate of return and (2) differences in allocation factors. Mr. Larsen explained that PSNC allocated all demand charges on the basis of peak day and allocated all storage capacity on the basis of normal winter sales, while he allocated Firm Transportation (FT) charges on the basis of peak and average demand. He testified that both the Public Staff and PSNC allocated the customer component of mains and services based on peak customers and the demand component based on peak and average demand.

One of the first steps in performing a cost-of-service study is to choose which model to utilize. Both PSNC and the Public Staff used the Seaboard Method. According to witness Larsen, this method uses direct allocations of costs that can be directly assigned and allocates fixed costs that cannot be directly assigned on the basis of 50 percent peak demand and 50 percent annual sales. CUCA favored the Peak Responsibility Method which assigns fixed costs based on peak day demand only.

During cross-examination by CUCA, witness Larsen explained that the Seaboard Method "gives proper weighing to the fact that the gas is used year around as well as during peak times." Witness Larsen also testified that in apportioning fixed costs, the Seaboard Method's methodology of using "50 percent peak and 50 percent average demand is the proper allocation factor since they are used both for peak purposes as well as the rest of the year."

CUCA witness Schoenbeck testified that the Peak Responsibility Method was the "recommended" method in conducting a cost-of-service study. Witness Schoenbeck also testified that if one were to use the Seaboard Method, it should be modified somewhat to allocate transmission plant and the demand portion of distribution mains on the basis of peak day demand rather than the peak and average methodology employed by both PSNC and the Public Staff. In defending this modification, witness Schoenbeck testified that the use of the peak and average factor "is equivalent to classifying 50% of these costs as being related to sales or throughput and only the remaining 50% as truly going related to the peak demands for which these facilities are sized." Witness Schoenbeck further testified that "a peak design day criterion is used in the engineering and design of transmission and distribution facilities." During cross-examination by the Public Staff, when asked whether an industrial customer who was not on line on the one peak day "even though he received gas on the other 364 days" would not pay any of the costs for the transmission and distribution mains, witness Schoenbeck stated, "That's absolutely right."

The next step in performing a cost-of-service study is to determine the categorization of costs. Through cross-examination of witness Dickey by the Public Staff, it was determined that costs generally fall into one of four categories: production, storage, transmission, and distribution. After this determination is made, then costs are classified into one of three components: customer-related, demand-related, and energy or commodity-related. There is no controversy in this docket between the parties about the categorization or classification of costs for the cost-of-service studies.

Once costs are categorized and classified into components, the cost-of-service analyst then determines which allocation factors should be used to apportion costs between the rate classes. The controversy in this case can be

described as the fundamental difference between two general principles: assigning costs on the basis of which customer classes "caused" the costs to be incurred or on the basis of how the customer classes utilized the system.

CUCA advocates the cost-causation theory which assigns costs to customers who supposedly "cause" the system or service to exist. When speaking about fixed gas costs, witness Schoenbeck states that "[t]hese fixed costs are related to providing a reliable gas supply through the use of firm interstate capacity... Consequently, based on cost-causation theory, these same customers should be assigned these costs." Witness Schoenbeck also stated that "[c]ontracts such as these are entered into to enable the Company to meet the firm peak demand needs of its customers. Hence, the associated costs should be assigned using a peak demand-related allocation factor."

Witness Larsen, on the other hand, used the theory of system utilization for assigning allocation factors. Witness Larsen testified that the choice of allocation factors should "accurately depict[s] the utilization of the services associated with these costs." Mr. Larsen further explained this principle, as follows:

> For example, those services utilized only on peak days are allocated on peak day sendout. If the service is utilized only in the winter, it is allocated based on normal winter sales. Costs associated with services utilized all year, such as Firm Transportation (FT), are allocated on a combination of peak day and annual sales.

The last issue to discuss concerning the cost-of-service studies is the method used to calculate the customer and demand components of the distribution mains and services. Two general theories were discussed: the "minimum pipe size" method and the "zero-intercept" method.

Although PSNC used the "minimum pipe size" method in this docket, in past cases it has used the "zero-intercept" method. The Public Staff used the "zero-intercept" methodology. Although CUCA agreed with PSNC's use of the "minimum pipe size" method, CUCA witness Schoenbeck stated that "both approaches are valid if properly applied and generally will yield similar results when applied correctly..."

Witness Schoenbeck further testified:

> Proponents of the minimum size method argue that it is readily understandable, that mains of at least a minimum size are required to serve all customers, and that the zero-inch method can produce unreliable or statistically invalid results. Advocates of the zero-inch approach argue that the minimum size main can in fact serve some demand, therefore it should be viewed as a demand-related rather than customer-related cost.
>
> Fortunately, however, for gas distribution utilities, either approach results in about the same amount of costs being assigned to the demand and customer components. This occurs because most of the cost associated with installing distribution mains is related to labor and trenching. Consequently, in the current age of plastic mains and

higher labor costs, the direct material cost of the minimum size main is a relatively small component of the total installation cost. Thus, similar results should occur under either approach and theoretical arguments over which approach is superior can be put aside.

The Public Staff argued that the minimum size method inappropriately allows some demand to be included in the customer component. The two-inch main and three-quarter-inch service chosen by PSNC and CUCA will actually supply all the needs of residential customers and therefore should not be used to calculate the customer cost component.

The Public Staff also pointed out that the NARUC Gas Distribution Rate Manual states that the minimum size is "the smallest main actually installed in the system." Both PSNC and CUCA agreed that the minimum size distribution main chosen (two-inch) was actually the fourth largest in a series of only 12 different main sizes.

PSNC witness Dickey testified that the Company has not installed a main of smaller diameter than two-inch nor a service line smaller than three quarters of an inch since the late 1950s, so PSNC used the average embedded costs for these sizes to determine the customer component of the mains and services accounts.

Public Staff witness Larsen used the zero-intercept method. CUCA contended that there were mathematical errors in Public Staff's zero-inch regression. An error involving the combination of the two-inch and the two and one-half-inch distribution mains was corrected by witness in Larsen Revised Exhibits A, B, and C which also include other changes recommended by other witnesses to utility plant, operating expenses, and revenues.

PSNC witness Dickey testified that PSNC had previously used the zero-intercept method, but changed to the minimum size method because the zero-intercept method produced negative values, a physical impossibility.

CUCA's primary objection was to witness Larsen's removal of certain data points (called outliers). Mr. Larsen explained that he used a zero-inch regression analysis and removed the 3-inch and 12-inch diameter mains to improve the "fit" of variables in his analysis: "I discovered the variables 'fit' better if I removed the 3-inch and 12-inch diameter mains..." With respect to Service Account 380, Mr. Larsen testified that he removed 6-inch diameter services to improve the "fit." During cross-examination by CUCA, witness Larsen explained his reasoning for excluding outliers as follows:

> They were determined to be outliers because they're [sic] unusual cost per foot, and also some of them had very little main length, and we were trying to develop the relationship of the majority of the information on main sizes and cost per foot to determine where the zero-intercept point was.

CUCA witness Schoenbeck pointed out that other data points used by Public Staff also displayed unusual costs per foot, including the 0.75-inch, 1.5-inch, 4.0-inch and 8-inch mains as shown in the following table:

Diameter (Inches)	Staff Unit Cost ($/ft)
0.75	1.07
1.00	3.95
1.25	3.73
1.50	1.43
2.00	3.04
2.50	8.99
4.00	7.81
6.00	12.43
8.00	18.6
10.00	12.75

Witness Schoenbeck testified that it is inappropriate for an analyst performing a zero-inch main analysis to eliminate select historical data in order to achieve a better fit. Data should only be eliminated if it is in error or some other abnormality exists. Witness Schoenbeck pointed out that a perfect fit could be obtained by eliminating all but two points.

During cross-examination by the Public Staff, witness Schoenbeck was asked whether or not it was appropriate to drop outliers. Mr. Schoenbeck answered that it is inappropriate to drop outliers and not say what the results of the regression are with all the outliers included.

Mr. Schoenbeck's own prefiled testimony indicated that the Public Staff's workpapers showed regression analyses that included the outliers. However, witness Schoenbeck also testified that the Public Staff performed twelve regressions of which eight produced negative customer-related components. Witness Schoenbeck testified that a negative result is statistically invalid and should be disregarded since it predicts that there is a negative cost for a zero-inch main even th ugh the labor and associated trenching cost must still be performed.

As stated earlier, witness Schoenbeck testified that the minimum pipe size methodology and the zero-intercept methodology should yield similar results when applied correctly. However, the customer cost components from the "minimum pipe size" methodology favored by PSNC and CUCA for mains and services are 65% and 89%, respectively and the "zero-intercept" methodology sponsored by the Public Staff yields customer cost components for mains and services of 10% and 65%, respectively. In summary, the methods used by the Public Staff and PSNC to calculate the customer and demand components of the distribution mains and services differed and were both challenged by other parties. It should also be

noted that the rates-of-return for various customer classes are calculated from the cost-of-service studies using the various customer and demand components discussed here.

The Commission notes that the results of the three cost-of-service studies discussed in this case differed significantly. For example, the rates-of-return for Rate Schedule No. 150 customers under the current rates are 61.37% under PSNC's study, 11.57% under the Public Staff's study, and 331.75% under CUCA's study. Cost-of-service studies reflect a good deal of subjective judgment. The Commission has consistently maintained and held that it would not be appropriate to design natural gas rates solely on the basis of cost-of-service studies. Cost-of-service studies should be used as a guide in reaching an appropriate balance in rate design. The Commission concludes that because of the subjectivity involved, it is not appropriate to endorse any single cost-of-service study.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 111-132

The evidence concerning rate design is found in the testimony of public witnesses Faye K. Rogers, William Martin, Marjorie Lockwood, William E. Gravely, Dr. Steven Jurovics, J.L. Cook, Norman F. Norman F. Carden III and June Horvitz, PSNC witness Dickey, Public Staff witness Davis, and CUCA witness Schoenbeck.

Mr. Dickey testified that the first requirement of rate design is to develop rates that will recover the revenue requirement allowed by the Commission. As the factors he considered in addition to the estimated cost-of-service study, Witness Dickey listed the following: (1) value of service or competitive conditions existing in the marketplace; (2) historical rate structure and relationship between the rates; (3) consumption characteristics of the different classes of customers; (4) future prospects of maintaining sales levels to the various classes of customers; (5) the need for conservation; (6) National and State policies; and (7) ease of administration.

Mr. Dickey testified that in addition he considered such factors as the ability to negotiate rates, quantity of natural gas used, time of use, manner of use, and the facilities which the Company must provide and maintain in order to meet the requirements of customers.

Mr. Dickey testified cost-of-service studies are useful as a tool to estimate the return on each rate schedule, but that such studies are somewhat subjective since many judgments of the preparer are reflected in the outcome. Mr. Dickey stated that no two cost-of-service studies prepared independently by different individuals will arrive at the same results. Witness Dickey further testified that for these reasons, cost-of-service studies should not be used exclusively to design rates but should be used in combination with other factors in arriving at the final rate design. He noted that the returns calculated in his cost-of-service study indicated that rates needed to be moved over the next several cases closer to the system return.

Witness Dickey testified:

> Utility rates in this state and in many others are based on average embedded costs rather than incremental costs. Since incremental costs

exceed embedded costs, rates have to be increased over time as new plant is added to meet the utility's obligation to provide service. A large portion of the increased plant is to serve the residential classes. We believe residential rates should more nearly provide the overall return to the system in fairness to the other customers. Given that a feasibility test is used to determine whether an extension of service is economically sound, increased residential returns would also increase the likelihood that PSNC would be able to meet the requests for service from this class of customer. The State has enacted legislation that provides funds to encourage expansion of the natural gas systems. With increased returns from the residential class, expansion could be more easily justified without resorting to the expansion funds.

Mr. Dickey recommended that the disparity in returns between rate schedules should be lessened in fairness to all customers.

With respect to rate design, Mr. Dickey testified that the Company was proposing several changes. The first is an increase in the facilities charges for residential customers. The Company is proposing to increase the year around residential facilities charge (Rate Schedule No. 105) from $7.00 to $10.00 per month and the seasonal residential facilities charge (Rate Schedule No. 110) from $10.00 to $15.00 per month.

Mr. Dickey testified the increase was desirable in order to accommodate the FERC's utilization of the Straight Fixed Variable Method (SFV) versus the Modified Fixed Variable Method (MFV). Witness Dickey testified that due to the issuance of FERC's Order No. 636, no pipeline costs were being billed in the demand component of rates through the SFV cost assignment method. The MFV method formerly assigned some costs through the volumetric component of rates.

Other changes in rate design proposed by the Company included additional steps in the declining block rate structure of Rate Schedule No. 150 (Large Interruptible Industrial Service) and its corresponding full margin transportation tariff, Rate Schedule No. 180, and changes to the summer-winter differentials of all rate schedules. Mr. Dickey justified the increase in the steps in Rate Nos. 150 and 180 as one measure to allow the company to serve new large users with rates more in line with the cost to serve those customers. Mr. Dickey explained that economies of scale related to the use of larger quantities were recognized when step rates were initially established and that the Company's instant proposal will carry that concept further to accommodate the large potential customers that are currently looking at the Company's service territory. The Public Staff also proposed rates with the same new declining blocks in Rate Schedules Nos. 150 and 180. The Commission finds that the establishment of the new blocks is not controversial and should be approved.

Mr. Dickey testified that the Company's present year around rates reflected a differential of $.30 per dekatherm on all rates except Rate Nos. 150 and 180 which currently had a $.20 per dekatherm differential. The Company proposed differentials in non-seasonal rates that range from $.40 on the year around residential rate to $.02 per dekatherm on the last step in Rate Nos. 150 and 180. The Public Staff introduced rate schedules with significantly different summer-winter differentials. Davis Revised Exhibit D shows increases in non-seasonal

rates ranging from $.35 per dekatherm in Rate Schedule 125 and in the last block of Rate Schedule Nos. 150-180 to $.14 per dekatherm in Rate Schedule No. 130. The Commission notes that the Public Staff chose to raise the summer-winter differentials in the largest block rates of Rate Schedules Nos. 150 and 180 while the PSNC progressively decreased the differentials. In general, the Commission concludes that the Company summer-winter differentials are more reasonable.

Under the Company proposal, the percent increases and/or decreases (excluding the effect of Cardinal Pipeline) to its customers would be as follows:

Rate Schedule No.	Customer Class	Percent Increase/(Decrease)
105	Residential-Year Around	14.55%
110	Residential-Seasonal	22.25%
120	Gas Lights	0.00%
125	Sm. Gen. Srv.-Yr. Around	2.14%
130	Sm. Gen. Srv.-Seasonal	19.85%
145	Large General Service	1.05%
150	Large Interruptible Srv.	(2.86)%
175	Transportation for Rate Schedule 145	(3.06)%
180	Transportation for Rate Schedule 150	(14.39)%

Public Staff witness Davis testified that cost-of-service studies are subjective and judgmental at best, and that he did not depend on them solely for the magnitude of rate increases or decreases necessary to design rates. He indicated that the cost-of-service study is useful as a guide but, like other cost studies, cannot objectively show the returns paid by each customer class. He indicated that cost-of-service studies do not contemplate negotiated industrial sales, for example. Mr. Davis stated that since cost studies incorporate rates at the filed tariff, the returns for the industrial class are overstated.

Mr. Davis testified that there are other relevant factors in addition to cost-of-service considerations. He stated that:

> I believe that there are other important factors that must be considered in designing rates. Among these are (1) value of service, (2) the type of service, (3) the quantity of use, (4) the time of use, (5) the manner of service, (6) competitive conditions relating to acquisition of new customers, (7) historical rate design, (8) the revenue stability to the utility, and (9) economic and political factors.
>
> Value of service is an important consideration because it recognizes that the price paid for natural gas service cannot be significantly greater than a satisfactory alternate. That gas is cleaner burning and easier to use also affects its value for some customers. Value of service consideration is the reason why rates are designed to allow negotiating based on alternative fuels and also transportation of gas procured by end-users.

The type of service, quantity of use, time of use and manner of service are considered by reviewing customer characteristics. Different types of customers have different needs. Heat sensitive residential and commercial customers need more security of service during peak winter days and contribute more margin to pay for storage services than do non-heat sensitive customers. There are also distinctions among industrial customers, such as those requiring a more firm supply than others. Some industrial customers use their gas only as boiler fuel. Some may decide not to have an alternative fuel. Rate design should reflect differences among customers.

Rates should be attractive to new customers. Industrial customers are energy intensive and are very conscious of their choice of fuels. Residential customers are also concerned with their long-term commitment to their energy choice. Rates should be set in a manner to be appealing to all classes of customers so as to contribute both to the health of the utility and the welfare of its customers.

Historical rate design is considered both to evaluate the results of past rate design and to anticipate the response to proposed rate design. In the recent past cases for the Company, residential rates have been increased substantially more than industrial rates. Considering what has occurred in the past, I believe the trend should continue in this case, but not by the same magnitude. In this case, the Public Staff is recommending a 4.45% increase in residential year around revenues and a decrease in interruptible industrial revenues of 1.19%, excluding the effect of Cardinal.

In reviewing the revenue stability of the utility, I considered whether the rates would enable the Company to attract new customers and keep the customers it has. Dramatic changes in rate design can result in unpredictable revenue shifts and should generally be avoided.

Last, there are economic and political factors to consider. Economic growth may be encouraged through rate design in the Company's service territory. Proper rate design can facilitate appropriate growth.

In summary, my approach to designing rates in this case is consistent with that followed in prior cases.

Mr. Davis proposed to increase the facilities charge for two classes of customers. He testified that he was proposing to increase the monthly facilities charge for Rate Schedule Nos. 105 (Residential - Year Around) and 125 (Small General Service - Year Around) by $1.00. This would increase Rate Schedule No. 105 from $7.00 to $8.00 per month and Rate Schedule No. 125 from $11.00 to $12.00 per month. Mr. Davis, through cross-examination by the Company, indicated that the Company's proposal to substantially increase the facilities charge due to the adoption by FERC of the SFV method was not valid. Mr. Davis indicated that the pass-through of the interstate pipeline costs in accordance with the SFV method was already being accounted for in gas costs and should not also be reflected in facilities charges.

Under Mr. Davis' proposed rate design (excluding the effect of Cardinal), the percent increases and/or decreases by class would be as follows:

Rate Schedule	Customer Class	Percent Increase/(Decrease)
105	Residential - Year Around	4.45%
110	Residential - Seasonal	3.82%
120	Gas Lights	0.00%
125	Sm. Gen. Srv.-Yr. Around	3.50%
130	Sm. Gen. Srv.-Seasonal	6.12%
145	Large General Service	0.14%
150	Large Interruptible Service	(1.19)%
175	Transportation for Rate Schedule 145	0.51%
180	Transportation for Rate Schedule 150	(6.25)%

Both the Company and the Public Staff advocated the continuance of full margin transportation rates which the Commission has consistently adopted in prior cases.

CUCA, through its witness Schoenbeck, recommended that the Commission adopt cost-based rates. Witness Schoenbeck recommended that transportation rates should only include transmission and distribution costs. Mr. Schoenbeck testified that no supply related costs--such as firm interstate capacity, storage or peaking facilities--should be assigned to transportation customers.

Mr. Schoenbeck recommended that the Commission adopt the principle of moving each class one-third of the way to a cost-based level in this proceeding. He recommended the following rate spread:

CUCA
Recommended Rate Spread Proposal
At Various Increase Levels
(Excluding Cardinal)
($000)

Rate Class	$5 Million	$10 Million	$15 Million	$20 Million
105/120	$10,868	$13,426	$15,985	$18,543
110	1,060	1,298	1,537	1,776
125	(67)	1,026	2,120	3,214
130	167	229	291	354
145/175	(1,322)	(1,094)	(866)	(638)
150/180	(5,705)	(4,885)	(4,067)	(3,249)
Total	$ 5,000	$10,000	$15,000	$20,000

The Commission has consistently maintained and held that it would not be appropriate to design natural gas rates solely on the basis of cost-of-service studies. The Supreme Court of North Carolina has noted that factors other than

cost-of-service should be considered in setting utility rates. In Utilities Commission v. N.C. Textile Manufacturers Assoc., 313 N.C. 215, 222, 238 S.E.2d 264, 269 (1985), the Court held:

> In determining whether rate differences constitute unreasonable discrimination, a number of factors should be considered: '(1) quantity of use, (2) time of use, (3) manner of service and (4) costs of rendering the two services.' Utilities Comm. v Oil Co., 302 N.C. 14, 23, 273 S.E.2d 232, 238 (1980). Other factors to be considered include 'competitive conditions, consumption characteristics of the several classes and the value of service to each class, which is indicated to some extent by the cost of alternate fuels available.' Utilities Co. v. City of Durham, 282 N.C. 308, 314-15, 193 S.E.2d 95, 100 (1972).

The Supreme Court examined this matter again in State ex rel. Util. Comm. v. Carolina Utility Customers Association, 323 N.C. 238, 372 S.E.2d 692 (1988). In that case, CUCA and other parties challenged the Commission's conclusion in an NCNG rate case that the differences in rates of return among NCNG's various customer classes were not unreasonably discriminatory nor unjust and unreasonable. The Court found that the Commission had made adequate findings and conclusions and that the Commission had drawn "legitimate distinctions" which justified maintaining large industrial rates of return at a higher level than residential, commercial, and small industrial rates of return. The Court held, "While an assessment of the Commission's Order based simply on the cost-of-service evidence might suggest the adopted rates are unreasonably discriminatory, the Commission's analysis of the non-cost factors permitted in our case law is sufficient to justify the Commission's decision." Id at 252. The Supreme Court examined this matter most recently in State ex rel. Util. Comm. v. Carolina Utility Customers Association, 328 N.C. 37, 399 S.E.2d 98 (1991). In this case, the Court once again held that the Commission did not have to establish rates based solely on cost-of-service considerations.

The Commission concludes that it is appropriate to consider a number of factors when designing rates, including cost-of-service, value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which the Company must provide and maintain in order to meet the requirements of its customers, competitive conditions and consumption characteristics.

With regard to equalized rates of return, return is a function of risk. Witnesses for the Public Staff and Company testified that different customer classes presented different risk profiles. Although no witness attempted to quantify the risk associated with the different customer classes, Public Staff witness Davis testified that industrial customers with alternate fuel capabilities present more risk to the Company than other customer classes. Rates of return among customer classes, as determined through cost-of-service studies, are not directly comparable. Large industrial customers do not always pay the rates approved, as assumed in cost-of-service studies. PSNC has the right to, and does, negotiate rates for these customers in order to meet alternative fuel prices. This ability to negotiate lower rates gives these industrial customers a bargaining power unavailable to residential and small general service customers and increases the risk to the Company. This justifies a higher rate of return relative to residential and small general service customers. Fuel-switchable

customers pose greater financial risk because they can leave the system, causing PSNC a substantial loss of sales. The degree of this risk is a function of alternative fuel prices. Therefore, it is important that the Company be able to negotiate gas prices below the tariff rate when alternative fuel prices are low, in order to lessen the risk of losing customers. It is equally important that the tariff rate be set at a level that will compensate the Company when alternate fuel prices are high.

The effect of equalized returns, even if achieved over several rate cases, would be hard for Rate Schedule 105 customers because these customers, unlike many fuel-switchable customers, cannot easily switch fuels. At the time Rate Schedule 105 customers bought their heating systems, their gas rates looked relatively attractive compared to how they would look under an equalized return. The long-established expectations of these customers should be taken into consideration.

As discussed previously, the Supreme Court does not require that the Commission approve rates resulting in equalized customer class rates of return. The Commission concludes that it is not appropriate to adopt equalized rates of return. Furthermore, industrial customers have been the prime beneficiaries of the use of value of service as a consideration in ratemaking. Both negotiated rates and transportation rates grew out of the Commission's recognition of the need to consider value of service and competitive conditions in ratemaking.

The Commission rejects the argument by the Company to substantially increase the facilities charge to Rate Schedules Nos. 105 and 110. The Commission does not agree with the Company's assertion that the adoption of the SFV method by the FERC in Order 636 supports increases in non-gas charges by PSNC. The Commission agrees with the Public Staff that the Commission's assignment of fixed gas costs by rate schedule already includes the charges imposed by interstate pipelines. The Commission, therefore, agrees that the facilities charge for Rate Schedule Nos. 105 and 125 should be increased only by $1.00 per month as proposed by witness Davis. However, the Commission finds no justification to reduce the relative difference between the facilities charges in Rate Schedules 105 and 110 and therefore finds that the facilities charge to Rate Schedule No. 110 should also be increased by $1.00 per month.

The Commission finds the rate design as proposed by the Company to be unduly burdensome on certain classes. If allowed, rate shock would result. The Commission also finds that the rate design as proposed by the Public Staff places an undue burden on other classes. After careful consideration of the many factors relevant to rate design including the various cost-of-service studies, the many differences between and among different customer classes, the need to avoid rate shock, the revenue stability of the utility and the need to expand gas service, the Commission concludes that rates designed according to the requirements shown on Appendix A of this Order are just and reasonable.

WEATHER NORMALIZATION ADJUSTMENT

PSNC proposed to continue the Weather Normalization Adjustment (WNA) clause, Rider E, approved by the Commission in the Company's last general rate case. Rider E currently applies to customers served under Rate Schedule Nos. 105, 110, 125 and 130. On cross-examination, witness Dickey testified that the Company's

WNA clause is intended to minimize the impact of abnormal weather upon PSNC's earnings; that a number of small, year around industrial customers receive service under Rate Schedule No. 125; and that the natural gas usage of some of those customers was not weather-sensitive. In response to a suggestion advanced by counsel for CUCA, Mr. Dickey testified that he opposed allowing small industrial customers served under Rate Schedule No. 125 the opportunity to seek and obtain an exemption from rate adjustments under Rider E to the extent that those customers could establish the absence of any relationship between weather fluctuations and their own natural gas usage.

The Commission has historically exempted those customer classes whose usage was not weather sensitive from rate adjustments under WNA clauses. The imposition of such rate adjustments upon customers whose natural gas usage did not vary with changes in the weather is completely inconsistent with the entire weather normalization adjustment concept. The Commission has recognized that fact in the most recent Pennsylvania & Southern Gas Company general rate case, in which it concluded that "[i]ndustrial customers on Rate Schedule 102 that are determined to be non-heat sensitive may be excluded from the WNA mechanism after one year of experience." In re Pennsylvania & Southern Gas Company, Docket No. G-3, Subs 178 and 180, Eighty-Third Report of the North Carolina Utilities Commission, 365, 373 (1993). Thus, in the Pennsylvania & Southern case, the Commission "fine tuned" the local distribution company's Weather Normalization Adjustment clause in order to limit the impact of that ratemaking device to weather-sensitive customers.

The undisputed evidence in the present record establishes that small industrial customers served under Rate Schedule No. 125 whose natural gas usage does not vary with weather are currently subjected to rate adjustments under the Company's Weather Normalization Adjustment clause. The continuation of that situation is unfair to the affected customers, inconsistent with the entire purpose of Rider E, and in conflict with the treatment of similar customers served by Pennsylvania & Southern Gas Company. The only basis for the Company's opposition to CUCA's proposal that small industrial customers served under Rate Schedule 125 be given an opportunity to obtain an exemption from rate adjustments under the Weather Normalization Adjustment clause due to the absence of weather-sensitive gas usage was Mr. Dickey's claim that allowing small industrial customers to seek such an exemption would impose an undue administrative burden upon PSNC. The Commission is not persuaded by the Company's argument. The Commission suspects that the number of small industrial customers seeking such an exemption is likely to be small. Thus, the Company must exempt any customer served under Rate Schedule No. 125 who establishes the absence of any statistically significant relationship between its natural gas usage and fluctuations in weather from rate adjustments under the Weather Normalization Adjustment clause. Rider E should be revised to reflect this exemption.

TRANSPORTATION RATES

With respect to PSNC's transportation rates, CUCA contends that transportation rates, like natural gas sales rates, should be based primarily upon cost-of-service considerations and that full margin rates contain "fixed gas costs" that are incurred to obtain the delivery of natural gas volumes to the

Company's city gate. CUCA contends that entities transporting their own customer-owned gas are required to separately contract and pay for the delivery of that gas to PSNC's city gate.

CUCA's position has been consistently rejected by the Commission and the full margin concept has been adopted as appropriate in all recent natural gas utility rate cases. This includes the Company's last general rate case (Docket No. G-5, Sub 280) and the most recent natural gas utility rate cases decided for the other three natural gas companies regulated by the Commission.

CUCA's contention that transportation rates should be based primarily on cost-of-service studies is rejected for the same reasons set forth in the earlier discussion of cost-of-service studies and factors in rate design. In addition, the Commission continues to find no justification for a difference between the margins earned on the Company's sales rate schedules and its transportation rate schedules. The Commission concludes that the services performed by the Company are substantially the same whether service is provided under the sales rate or transportation rate. The Commission concludes that full margin transportation rates continue to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 133 AND 134

The evidence for this finding of fact is contained in the testimony of PSNC witness Dickey, Public Staff witnesses Davis and Larsen, and CUCA witness Schoenbeck.

In his initial testimony, PSNC witness Dickey proposed the implementation of fixed cost recovery rates which "maintained the same general relationship between our rate schedules as was established in our prior general rate case" except that "[w]e are not proposing that any fixed cost increment be included in the last three steps of Rate Schedule Nos. 150 and 180 since there are no significant quantities included in these new steps." On cross-examination, Mr. Dickey testified that the fixed-charge recovery rate which he proposed for use in this proceeding did not track the results of his cost-of-service study and did not reflect the levels of fixed gas costs actually included in the Company's rates for rate design purposes.

CUCA witness Schoenbeck recommended that the Commission adopt fixed cost recovery rates for use in this proceeding based upon the results of his proposed peak responsibility cost-of-service study.

While witness Davis provided the volumes by rate class and the total cost of gas schedule, witness Larsen provided the allocation factors between rate classes. Witness Larsen testified that he summed up the demand and storage services from the cost of gas schedule and divided this by the normal annual sales including transportation. Witness Larsen further testified that this allocation of demand and storage charges accurately depicts the utilization of the services associated with these costs.

Through cross-examination by CUCA, Mr. Larsen explained that in determining how gas services were utilized, he also reviewed the Company's daily dispatch sheets. In addition, he explained that the peak and average demand allocation factor "gives proper weighing to the fact that the gas is used year round as well

as during peak times." When questioned about whether the use of the normal winter sales allocation factor gives any weighing to a "peak component", witness Larsen stated that this factor does not have a separate peak component but the fact that is in the winter means it does have some influence on the peak.

The Commission notes that the industrial customers (Rate Schedules 145 and 150) account for 36% of the winter sales and that the peak and average allocation factor for these same customers is only 26%. (Larsen Exhibit A, page 1 of 12) This is an indication that these customers are utilizing the system to a significant degree during the winter period and should pay fixed gas costs for that use.

The Commission also notes that although the cost-of-service study is subjective and judgmental at best, Mr. Larsen's Purchased Gas Expense Exhibit contains known volumes and dollar figures and is allocated as accurately as possible. The Commission concludes that although the purchased gas expense allocations may not be exact, they are accurate and are the best available tool for the calculation of the fixed gas cost recovery rates. Therefore, the Commission adopts the fixed gas cost recovery rates set forth in this finding of fact.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 135-137

The evidence for these findings of fact is contained in the testimony and exhibits of PSNC witness Dickey and Public Staff witnesses Davis and Larsen. The proposed changes to the Company's Purchased Gas Adjustment Procedures - Rider D is non-controversial and uncontradicted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 138-142

The evidence for these findings of fact is contained in the testimony and exhibits of Public Staff witness Davis, in the testimony of PSNC witness Dickey, and in the Company's approved rules and regulations.

Witness Davis testified that PSNC has an extension policy to provide main and/or service line extensions at no charge whenever such extension is 100 feet or less. He indicated that in cases where an extension requires more than 100 feet, the Company performs an economic feasibility test. PSNC uses a 30-year Net Present Value (NPV) analysis. Mr. Davis stated that if the result of the NPV for a particular project is positive, the extension is made at no charge to the customer. A negative result requires a contribution-in-aid-of-construction (CIAC) from the potential customer to make the project feasible.

Mr. Davis testified that there are two areas with which the Public Staff has concerns. The first is how to incorporate the free allowance of 100 feet into the calculations made to determine the appropriate level of CIAC to be paid by the customer. Mr. Davis' concern is that a customer requiring 95 feet of service gets service free, while a customer requiring 110 feet of service would have to pay a CIAC based on a feasibility study that gives no consideration to the free allowance of 100 feet.

Mr. Davis further testified that it is inequitable to allow PSNC to connect a customer free of charge because he requires slightly less than 100 feet of

extension, while charging another customer requiring slightly over 100 feet a CIAC based on the total construction costs for the extension. Mr. Davis stated that in the Public Staff's opinion, the proper method would be to provide all customers with the 100 feet of free allowance. He testified that this could be done without drastically changing the Company's method for determining economic feasibility. In cases where a CIAC (based on the total project) is determined to be necessary, PSNC could simply take the determined unit cost, multiply it by 100 feet, and remove that cost from the total CIAC. This would reduce the amount of CIAC due and give the customer the benefit of the free allowance of 100 feet.

Mr. Davis testified that the second area of concern is when a farm tap is required for service to be provided. Farm taps occur in situations where a dwelling or business is served from a high pressure transmission or distribution line. PSNC's current policy on farm taps is that the Company considers any farm tap to be "excess facilities". Mr. Davis disagrees with this policy. He explained that all farm taps are now installed so that the regulation equipment required to step the pressure down to house pressure is located at the main. The service line extension from the high pressure line and regulation equipment is exactly the same as any ordinary service line extension, in which case the "free allowance" should apply. When service extensions are less than 100 feet, the customer should only have to pay for the additional regulation equipment and other extra materials. In situations where extensions require more than 100 feet, the unit cost for the service line multiplied by 100 feet should be removed from the total CIAC.

To effect the changes he recommend, Mr. Davis recommended that the Company's rules and regulations, as shown on Davis Exhibit J, be amended to read:

> "In the event a CIAC is required, PSNC will multiply the per unit ($/ft) cost of the specific project by 100 feet (free allowance footage) and remove that amount from the total CIAC."

PSNC witness Dickey testified that he disagreed with the Public Staff's proposal. He stated that if PSNC were to credit each feasibility study with the cost of 100 feet of main and 100 feet of service, the Company, in effect, would be crediting all of the margin generated by the customer to the cost of the second 100 feet of main or service.

With respect to the potential for discrimination among customers, upon cross-examination by the Public Staff, Mr. Dickey testified as follows:

Q. (MS. RANKIN) Can you tell me whether the following occurs under your application of your extension policy. I'm going to give you two scenarios. Scenario one, you have a potential customer who is applying for service for his new gas hot water heater and his -- the point at which he will be connected is 95 feet from your main. He would get that 95 feet free, is that correct?

A. Yes, this was 95 feet of main or service or both.

Q. You say main in your paragraph. I assume you mean both.

A. Okay.

Q. And no study is done, no questions are asked, he gets 100 -- the 95 feet free, is that correct?

A. Yes.

Q. Scenario two, his next door neighbor who the connection for which is 105 feet from your lines wants to put in a gas hot water heater. He has to -- a study is done and to the extent the hot water usage isn't enough to offset the cost he has to pay for a substantial part of that 105 feet, does he not?

A. Yes, the feasibility study is run showing the margin generated by the expected use and it's done as a net present value study against the cost of the facility and then a contribution is paid to make up the negative net present value.

Based upon the foregoing, the Commission concludes that when a customer exceeds the line extension allowance of 100 feet of mains and/or service, a cost feasibility test should be performed on the basis of the customer's or project's estimated usage and the total amount of main and service line extension needed to serve the customer--not just on the amount of line extension beyond the 100 foot allowance. The customer should then be required to pay CIAC based on the lower of (1) the negative net present value of the entire line extension, or (2) the full cost of extending the line beyond the 100 feet initial allowance.

Accordingly, the Commission further concludes that PSNC make the necessary modifications to its line extension policy in its rules and regulations in conformity with the provisions as provided above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 143

The Company filed its G-I Rate Case Information Report on March 9, 1994, at the same time it filed its witnesses' testimony and exhibits. As stated in Public Staff witness Perry's direct testimony, the filing included little or no detail for many of the adjustments. Instead, the Company included a statement in Item 10 maintaining the Company will make "more detailed" workpapers available to appropriate parties upon request.

Ms. Perry indicated that the Commission's April 3, 1985, Order, in Docket No. G-100, Sub 44, states as follows regarding what information the Company is required to provide in the Form G-I Rate Case Information Report for Item 10a:

> ...detailed workpapers showing calculations supporting all accounting, pro forma, end-of-period, and proposed rate adjustments in the rate application to revenue, expense, investment, and reserve accounts for the test year and a complete detailed narrative explanation of each adjustment, including the reason why each adjustment is required. Explain all components used in each calculation.

Ms. Perry further testified that the Company did not file the necessary details required by the Commission or include detailed narratives addressing specific components used in the calculations. No other party offered evidence on this matter.

Based on the foregoing and a review of the Company's G-1 Rate Case Information Report, the Commission agrees with the Public Staff that the Company's G-1 Rate Case Information filing did not incorporate the necessary details required by the Commission Order. The Commission concludes that the Company must comply with the Commission Order in preparation of its next G-1 Rate Case Information Report.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 144-147

The evidence for these findings of fact is contained in the testimony and exhibits of PSNC witness Dickey and Public Staff witness Davis.

PSNC witness Dickey testified that the Company's proposed revisions to its tariff language and rules and regulations include: (1) changes in wording within a number of schedules to clarify and simplify the meanings; (2) a clarification as to the curtailment required of interruptible rate customers; (3) a clarification that PSNC does not allow the combining of meters in most instances; (4) an increase in the after hours service fee from $15.00 to $25.00 to move toward covering costs; and (5) an increase in the returned check charge from $15.00 to $20.00 and a provision to allow the charge to correspond with the maximum level provided in G.S. 25-3-512.

An example of the Company's proposed changes to clarify meanings is its proposal to clarify the definition of residential and small general services rate schedules and move certain facilities such as nursing homes, apartment buildings, retirement facilities, etc. from residential rate schedules to the small general service rate. The Company proposed to change language in its interruptible rates to ensure that it is perfectly clear that customers must curtail all use other than pilot usage by 100% when requested to do so by the Company. PSNC also proposed to change some of the language in the large general service and large interruptible commercial and industrial service rate schedules to clarify that PSNC does not allow the combining of meters for billing customers unless the design of the metering facilities required the use of multiple meters. Finally, the Company proposed that Riders A, D and E continue in effect, and that Rider B be approved.

The Public Staff did not object to the majority of changes proposed by PSNC to its tariff rules and regulations. Public Staff witness Davis suggested that the after hours fee be raised to $20.00 rather than $25.00. The Public Staff supported the Company's increased returned check fee but did not speak to the proposal for automatic future changes.

The Commission concludes that it is appropriate to raise the after-hours fee to $25.00 and the returned check fee to $20.00 as proposed by the Company. The Commission does not accept the Company's proposal for automatic increases in the returned check fee to correspond with the maximum level under the law.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 148 AND 149

The evidence for these findings of fact is found in the verified application and the testimony and exhibits of PSNC witnesses Voigt and Richardson and Public Staff witness Perry. These findings are essentially uncontradicted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 150-157

The evidence for these findings is found in the testimony and exhibits of PSNC witness Dickey, Public Staff witness Davis, and CUCA witness Schoenbeck.

PSNC witness Dickey testified that he filed two sets of rates in this proceeding, one that excludes Cardinal and one that includes the estimated cost to build and operate Cardinal. PSNC proposes that the first set be charged from the effective date of the Commission's Order in this proceeding until Cardinal is in service. At the time Cardinal is completed, he recommended that the record in this proceeding be re-opened only to receive testimony that states that Cardinal is in service and to receive evidence as to the actual costs involved in the construction of Cardinal and the updated costs of operating Cardinal.

Both the Company and the Public Staff designed rates for the inclusion of Cardinal, a pipeline project constructed jointly between PSNC and Piedmont Natural Gas Company, Inc. The separate rate designs in this case, excluding and including Cardinal costs, were developed because the date on which Cardinal will be in service will be after the effective date of the Commission's order in this docket. Previous findings of fact and the related evidence and conclusions section established the appropriate rate design without the costs of Cardinal.

PSNC proposed placing the entire increase related to Cardinal on the residential classes (Rate Schedule Nos. 105 and 110). Mr. Dickey testified that the capacity available through Cardinal basically will be for the high priority market; therefore the costs should be borne by them.

Public Staff witness Davis proposed to increase rates for every class on a flat per dekatherm basis. Mr. Davis testified that all classes of customers will receive benefits from Cardinal. He stated that the additional system capacity will not only enable PSNC to better meet its peak requirements, but also will allow for less curtailment of interruptible industrial customers. Mr. Davis, through cross-examination by CUCA, testified that the peak day analysis for the test year used by all parties did not allocate any usage to Rate Schedule 150 (Interruptible Industrial) and did not include the additional peak day capacity to be provided by Cardinal. He indicated that the peak day analysis (as used by all parties) did include Rate Schedule 145 (Industrial) customers and PSNC's firm customers. Because PSNC currently has enough capacity to serve all but the Rate Schedule 150 customers on peak day, the addition of 40 thousand dekatherms per day would necessarily mean fewer interruptions for Rate Schedule 150 customers in the short-term. This was further confirmed by the fact that based on PSNC's projected peak day send out and planned additions, it would be some time after the 1996-1997 winter before the initially planned capacity of Cardinal will be fully utilized. Witness Davis therefore maintains that increases on a flat per dekatherm basis are appropriate. Mr. Davis also testified that this would be reevaluated in PSNC's next rate case as growth continues in the residential market and less of the additional capacity is used by Rate Schedule No. 150 customers.

PSNC's proposed allocation would place the entire burden of Cardinal on residential ratepayers. PSNC would not only place no costs at all on the large general service customers, but also none on the small general services customers. The Public Staff, with its per dekatherm allocation, would place a significant

burden on the large general services customers with no evidence in this record that the burden is appropriate. Neither of these allocation methods has a firm foundation in rate design theory. CUCA's suggestion that a peak day allocation factor should be used at least offers a theoretical basis. Its shortfall is that it gives the large industrial customers use of the pipeline without having to contribute to the cost of its construction. The Commission notes that the Cardinal Pipeline is a transmission line. Both the Public Staff and PSNC allocated transmission pipelines using a peak and average allocation factor. The peak and average approach to allocating Cardinal's costs is consistent with the approaches taken by PSNC and the Public Staff in spreading the costs of other transmission lines. The use of a peak and average allocation factor will spread the initial costs of Cardinal and reduce the potential for rate shock if and when the issue of rolling in Cardinal's costs is considered in future rate cases. The Commission finds that, for purposes of allocating the cost of Cardinal in this proceeding, the peak and average allocation factor shown on lines 40 and 41 of Revised Larsen Exhibit A, page 1 of 12, is appropriate.

When Cardinal is completed and in service, the record in this proceeding will be re-opened for the sole purpose of receiving evidence as to Cardinal's in-service status, the actual costs incurred in constructing Cardinal and the updated costs of operating Cardinal. The hearing will be scheduled to occur as soon as possible after this testimony is filed.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., is authorized to adjust its rates and charges effective for service rendered on and after the date of this Order so as to produce an annual level of revenue of $308,292,974 from its retail customers (including other operating revenues of $1,089,225) based upon the adjusted test year level of operations found reasonable herein. This amount represents an increase of $10,763,226 more than would be produced from the rates in effect prior to this Order, based upon the test year level of operations.

2. That an increase in the returned check fee from $15.00 to $20.00 is approved effective on and after the date of this Order.

3. That an increase in the after-hours service reconnection fee from $15.00 to $20.00 is approved effective on and after the date of this Order.

4. That changes to the General Rules and Regulations are approved as discussed herein and shall be effective for service rendered on and after the date of this Order. The Company shall file the revised General Rules and Regulations as approved herein not later than ten days after the date of this Order.

5. That PSNC shall file appropriate tariffs and riders in conformity with the provisions of this Order, including the requirements set forth in Appendix A attached hereto, properly adjusted for all approved increments and decrements. These tariffs and riders shall be filed within ten days from the date of this Order, and shall be effective for service rendered on and after the date of this Order until such time that new tariffs are approved after Cardinal is placed into service.

6. That PSNC is required to prefile as soon as possible after Cardinal is placed into service the testimony it will rely on during the hearing when the record in this docket is re-opened to receive evidence as to Cardinal's in-service status, the actual costs incurred in constructing Cardinal and the updated costs of operating Cardinal. The hearing will be scheduled as soon as possible after this testimony is filed.

7. That the depreciation rates stipulated to by PSNC and the Public Staff and set forth in Appendix B attached hereto are hereby approved.

8. That PSNC shall prepare a notice for its customers of the rate changes ordered in this docket and in Docket No. G-5, Sub 334 and Docket No. G-5, Sub 332 and shall give notice to its customers by appropriate bill insert in the next billing cycle.

9. That PSNC shall file its next general rate case in compliance with the Commission's Order in Docket No. G-100, Sub 44, which details the requirements set forth for the G-1 Rate Case Information Report.

10. That PSNC shall record the FAS 112-Postemployment Benefits transition obligation in a deferred debit account for financial accounting purposes and amortize this deferred debit over a three-year period.

11. That the Company shall refund the supplier refund claim of right claim of right credit by recording a $731,503 credit in its deferred gas cost account.

12. That the MGP costs that are approved for recovery in this proceeding be transferred to a separate account and that the Company credit the account each month to reflect the monthly amortization of the costs to expenses.

13. That PSNC shall file annual reports on the progress of its MGP investigation and remediation efforts on or before October 1 of each year.

ISSUED BY ORDER OF THIS COMMISSION.
This the 7th day of October 1994.

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

APPENDIX A
DOCKET NO. G-5, SUB 327
RATE DESIGN INSTRUCTIONS

1. Rates shall be designed that produce the $10,763,226 increase in revenues approved in this order.

2. The company shall allocate the revenue increase of $10,763,226 approved in this order by rate classes as follows:

CUSTOMER CLASS	RATE SCHEDULE(S)	REVENUE CHANGE
RESIDENTIAL (YEAR AROUND)	105	7.0%
RESIDENTIAL (HEAT ONLY)	110	7.0%
SM. GEN. SERVICE (YEAR AROUND)	125	3.0%
SM. GEN. SERVICE (HEAT ONLY)	130	7.0%
LG. GEN. SERVICE	145/175	1.38%
LG. GEN. SERVICE INTERRUPTIBLE	150/180	-2.20%

3. The percent increase or decrease by customer class may vary slightly, but must round to the percent shown in the table above to the decimal place indicated in the table.

4. Rate Schedules proposed by the Company as modified in this Order shall be used.

5. Facilities charges and miscellaneous fees as approved elsewhere in the Order shall be used.

6. Summer-winter differentials as proposed by the Company shall be used.

7. Base cost of gas of $2.75 per dekatherm shall be used.

8. Demand charges and contract demand levels shall be as proposed by the Company except as modified in this Order.

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC. for an Adjustment of its Rates and Charges	))))	Docket No. G-5, Sub 327

STIPULATION BETWEEN PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC. AND THE PUBLIC STAFF REGARDING DEPRECIATION

Public Service Company of North Carolina, Inc. ("PSNC") and the Public Staff of the North Carolina Utilities Commission, through their undersigned counsel, hereby agree as follows:

1. PSNC's general rate case filing of March 9, 1994 included an adjustment of $2,141,497.00 to adopt revised depreciation rates as proposed by its witness Russell. The proposed depreciation rates were from the Company's latest depreciation study, which was prepared by Mr. Russell and filed by PSNC on June 1, 1992 in compliance with Commission Rule R6-80.

2. PSNC and the Public Staff have agreed that current depreciation rates should continue to be used except for account numbers 376 (Distribution Mains) and 380 (Distribution Services). The depreciation rates agreed to by the Public Staff and PSNC are 2.81% and 4.43% for Accounts 376 and 380, respectively. The negative salvage values included in the depreciation rate calculations for these accounts currently are -15% (Account 376) and -30% (Account 380); the parties stipulate and agree that the depreciation rates for distribution mains and distribution services should be based upon salvage values of -35% (Account 376) and -55% (Account 380). All depreciation rates will continue to be calculated based upon the average service life method.

3. The effect of implementing these limited changes is an increase in annual depreciation expense of $1,529,373.00, as compared to the $2,141,497.00 contained in PSNC's filing. These numbers are based on plant totals at December 31, 1993. Subject to approval by the Commission, PSNC shall begin using the changed rates for distribution mains and distribution services indicated above as of the business month during which a final order in this docket becomes effective.

4. The parties acknowledge that this stipulation is a result of negotiation and compromise; accordingly, the agreements reached do not necessarily reflect the respective views of the parties as to the proper treatment or level of the matters which are the subject

of the stipulation. Except as needed to carry out the terms of a Commission order based upon this stipulation, the parties have agreed that none of the positions, treatments, or other matters reflected in this stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matter in issue.

Dated: July 27, 1994.

William A. Davis, II
Counsel for Public Service Company
of North Carolina, Inc.

Vickie Moir
Counsel for Public Staff of the
North Carolina Utilities Commission

DOCKET NO. G-9, SUB 300
DOCKET NO. G-9, SUB 306
DOCKET NO. G-9, SUB 308

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-9, Sub 300

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges to Track Changes in Its Wholesale Cost of Gas

Docket No. G-9, Sub 306

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges to Track Changes in Its Wholesale Cost of Gas

Docket No. G-9, Sub 308

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges to Track Changes in Its Wholesale Cost of Gas

ORDER ON REMAND REQUIRING REFUNDS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 2, 1993

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

APPEARANCES:

FOR PIEDMONT NATURAL GAS COMPANY, INC.:

Jerry W. Amos, Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 26000, Greensboro, North Carolina 27420

FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:

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

FOR THE PUBLIC STAFF:

Antoinette R. Wike, Chief Counsel, Public Staff - N.C. Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

FOR THE ATTORNEY GENERAL:

Margaret A. Force, Associate Attorney General, and Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: This Order is being issued following proceedings on remand resulting from the reversal by the Court of Appeals of the Commission's Order of October 31, 1990, in Docket No. G-9, Subs 300 and 306, and the Commission's Order of November 21, 1990, in Docket No. G-9, Sub 308.

In Docket No. G-9, Subs 300 and 306, Piedmont Natural Gas Company, Inc. (Piedmont) filed a Petition to recover costs associated with new pipeline service from the Transcontinental Gas Pipeline Corporation (Transco) Southern Expansion project. Piedmont sought to recover these costs outside a general rate case. In Docket No. G-9, Sub 308, Piedmont sought to recover costs associated with new pipeline service from the Columbia Gas Transmission Company (Columbia). This Petition was also filed outside a general rate case. Both of these proceedings relied upon a ratemaking formula that had been approved in earlier proceedings (not in a general rate case) by a Commission Order of February 13, 1990.

The Commission issued an Order in Docket No. G-9, Subs 300 and 306, on October 31, 1990, and the Commission issued an Order in Docket No. G-9, Sub 308 on November 21, 1990. The Orders approved rate increases for Piedmont. The Carolina Utility Customers Association (CUCA) appealed these Orders to the Court of Appeals. The Court of Appeals reversed the Commission Orders by opinions reported at 106 N.C. App. 218 (1992) and 106 N.C. App. 306 (1992).

On remand, Piedmont filed a letter and proposed order on December 9, 1992. Piedmont asserted that no refunds are due as a result of the Court of Appeals opinions. On December 30, 1992, CUCA filed Motions for Refund in these dockets asking the Commission to order refunds. The Public Staff filed a Motion and Response on February 23, 1993, setting forth its calculation of refunds due. Piedmont filed a letter on February 24, 1993, agreeing to the refunds calculated by the Public Staff provided that no refunds be required to parties contesting the Public Staff's calculation. The Attorney General filed a Motion Requesting Refunds on March 1, 1993.

Various other responses and filings have been made in these dockets, but they will not be summarized in detail here.

Settlement negotiations ensued among Piedmont, CUCA, the Public Staff, and the Attorney General. On June 30, 1993, Piedmont filed a letter reporting that it had reached an agreement with the Public Staff but it had not reached an agreement with the other parties. Piedmont asked the Commission to establish a procedural schedule for determining the matters in controversy.

The Commission issued its Order on Remand Scheduling Hearing on July 27, 1993.

A hearing was held as scheduled on November 2, 1993. The following witnesses testified: Ware F. Schiefer, Senior Vice President of Piedmont, Ann H. Boggs, Director of Gas Accounting for Piedmont, James G. Hoard, Supervisor of the Natural Gas Section of the Accounting Division of the Public Staff, and J. Bertram Solomon of GDS Associates, Inc. Following the hearing, the parties filed briefs and proposed orders.

Based upon the evidence and the record in these proceedings, the Commission makes the following:

FINDINGS OF FACT

1. The Commission issued an Order on February 13, 1990, in Docket No. G-9, Subs 289, 291, and 296, none of which was a general rate case. The February 13, 1990 Order amended a ratemaking formula of Piedmont. Part of the new formula provided for Piedmont to recover certain costs of replacing more expensive gas suppliers and providing additional supplies of gas through additional pipeline capacity. Another part of the new formula provided for a demand charge true-up through operation of a deferred account.

2. The February 13, 1990 Order was appealed by CUCA. The Court of Appeals found that CUCA was not an aggrieved party because the February 13, 1990 Order actually reduced rates. The Court of Appeals went on to note that the new ratemaking formula:

> would allow Piedmont to increase its rates in the future to the extent necessary to offset previous reductions under this order. . . . While under this order Piedmont may file, and in fact has filed to make subsequent increases, those proposed increases are not before us. The subsequent proposed increases were effected through later filings in separate dockets which are subject to appellate review at an appropriate time. Those orders are not before us in this appeal.

State ex rel. Utilities Commission v. CUCA, 104 N.C. App. 216, 218-219 (1991), discretionary review denied, 330 N.C. 618 (1992).

3. Piedmont decided to subscribe to new pipeline service from the Transcontinental Gas Pipeline Corporation (Transco) Southern Expansion project. The new service began on November 1, 1990. Part of this service was additional capacity. Part of this service replaced service that Piedmont previously obtained from Cabot Corporation. Certain Cabot demand charges were already reflected in Piedmont's rates by previous orders of the Commission.

4. On October 1, 1990, Piedmont filed a Petition in Docket No. G-9, Subs 300 and 306, to recover certain Southern Expansion costs, as permitted by the formula approved in the February 13, 1990 Order. The Commission issued an Order on October 31, 1990, authorizing a rate increase of 4.09¢ per dt for service rendered from November 1, 1990 through December 31, 1990, and further providing that on and after January 1, 1991, the 4.09¢ increase would terminate and rates would instead be increased by 2.97¢ per dt.

5. Piedmont also decided to subscribe to new pipeline service from the Columbia Gas Transmission Company (Columbia) beghnning December 1, 1990. The Columbia service replaced service that Piedmont previously obtained from South Carolina Pipeline Corporation; it did not involve additional capacity. South Carolina Pipeline had not been charging any separately stated demand charges.

6. On November 1, 1990, Piedmont filed a Petition in Docket No. G-9, Sub 308, to recover Columbia costs, as permitted by the formula approved by the Commission in the February 13, 1990 Order. On November 21, 1990, the Commission issued an Order approving an increase in rates of 2.12¢ per dt effective December 1, 1990, to recover the Columbia costs.

7. CUCA appealed both the October 31, 1990 Order and the November 21, 1990 Order. The Court of Appeals reversed and vacated these Orders. State ex rel. Utilities Commission v. CUCA, 106 N.C. App. 218 (1992) and State ex rel. Utilities Commission v. CUCA, 106 N.C. App. 306 (1992). The Court of Appeals reasoned as follows:

> These filings reflect decisions by Piedmont's management to make fundamental changes in its sources of supply of natural gas and to access substantial additional volumes of natural gas. While these decisions may be arguably laudable, having substantial long-range benefits for Piedmont's customers and the economy of this State, the rate changes generated by these decisions are simply not of the nature of those to be allowed under G.S. 62-133(f). The factors underlying Piedmont's application in these dockets -- additional pipeline capacity, and alternative supply sources -- are not distinguishable from those factors at issue in State ex rel. Utilities Commission v. C.F. Industries, Inc., 39 N.C. App. 477, 250 S.E.2d 716 (1979) where we disapproved of and disallowed a G.S. 62-133(f) rate change order and held that such rate changes must be considered and passed upon in a general rate case proceeding pursuant to G.S. 62-133(a)-(e). Such is our decision here, and therefore the order of the Commission of 31 October 1990 under appeal must be and is Reversed and vacated.

106 N.C. App. 220-221. The Supreme Court denied review in both cases at 332 N.C. 671 (1992).

8. On December 21, 1990, Piedmont filed an application for a general rate case in Docket No. G-9, Sub 309. As part of its application, Piedmont requested reapproval of the ratemaking formula in the February 13, 1990 Order as interim relief in the rate case and reapproval to recover as interim rates in the rate case the amounts previously approved in the Commission's October 31, 1990 Order in Docket No. G-9, Subs 300 and 306, and the Commission's November 21, 1990 Order in Docket No. G-9, Sub 308. Piedmont requested interim relief in order to obtain additional authority to collect the amounts previous approved.

9. On February 5, 1991, the Commission issued an Order allowing interim rate relief which (1) reapproved the ratemaking formula previously approved in the February 13, 1990 Order as interim relief in the rate case and (2) reapproved the rate adjustments in the October 31, 1990 and November 21, 1990 Orders as interim relief in the rate case.

10. The purpose of the present Order is to determine the amount of refunds due customers as a result of the reversal by the Court of Appeals of the October 31, 1990 Order and the November 21, 1990 Order.

11. The Public Staff and Piedmont contend that the amount of refunds should be $473,501 plus interest at 10%. They use the period of November 1, 1990, through February 4, 1991. Their calculation seeks to identify the additional firm pipeline capacity costs collected by Piedmont.

12. CUCA and the Attorney General contend that the amount of refunds is $1,547,456 plus interest at 10%. They use the same period to calculate refunds. Their calculation is based on monies collected for replacement and additional capacity.

13. The Commission finds and concludes that Piedmont should refund all monies collected pursuant to the authority of the October 31, 1990 Order and November 21, 1990 Order for the period November 1, 1990, through February 4, 1991. These include the rate increases authorized by the Orders multiplied by volumes during the refund period and certain demand charge true-up activity undertaken by authority of the Orders. The Commission calculates the amount of refunds as $1,303,937 without interest.

14. The refunds required herein should include interest at the rate of 10%.

15. The refund plan should be as follows:

All customers whose average daily usage exceeds 300 dekatherms per day during the periods the monies were collected from customers shall receive a lump sum refund by check.

The refunds for all other customers entitled to refunds shall be determined by customer class with each such customer receiving a bill credit based upon the customer's class percentage contribution during the relevant period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-9

These findings recount the proceedings of the Commission and the Court of Appeals in the relevant dockets. The evidence in support of these findings is found in the testimony presented at the hearing on remand, the official records and files of the Commission, and the opinions of the Court of Appeals.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-13

The evidence in support of these findings is found in the testimony and exhibits of witnesses Schiefer, Boggs, Hoard and Solomon.

The calculation of refunds agreed to by the Public Staff and Piedmont is found in the testimony of witness Hoard, when he was called to testify for the Public Staff, and in the Public Staff's Motion filed on February 23, 1993, which was presented in evidence as Attorney General Cross Exhibit 7. The calculation

is also supported by Piedmont's letter of February 24, 1993, in which it accepted this calculation as a settlement with the Public Staff, and by the testimony of Piedmont witnesses. The settlement refund amount is $473,501 plus interest at 10%.

The calculation of refunds presented by the Attorney General and CUCA is found in the testimony and exhibits of witness Hoard, when he was called as a witness for the Attorney General, and witness Solomon, who was presented as a witness for CUCA. The calculation is found in Attorney General Hoard Exhibit 1, Schedules A-E, as discussed and corrected in witness Hoard's testimony and in Exhibit JBS-1 and in the testimony of witness Solomon. Their refund amount is $1,547,456 plus interest at 10%.

First, the Commission must consider the effect of the settlement between Piedmont and the Public Staff. The Commission has previously dealt with how a settlement between some, but not all, parties to a proceeding should be handled. Such a situation arose in Piedmont's general rate case in Docket No. G-9, Sub 309. The Commission stated the following in its Order of July 22, 1991, in that docket:

> Neither the Attorney General nor CUCA joined in the stipulation. The Commission received the stipulation in evidence, but the Commission proceeded with the hearing in order to allow all parties an opportunity to be heard. The Commission has considered the stipulation along with all other testimony and exhibits received at the hearing. The Commission has weighed the terms of the stipulation in the context of the entire record, and the Commission has proceeded to determine the Company's rates under the standards of G.S. 62-133 and other applicable statutes on the basis of the entire record. See generally, Mobile Oil Corporation v. Federal Power Commission, 417 U.S. 283, 312-314, 94 S. Ct. 2328, 2348, 41 L. Ed. 2d 72, 97-98 (1974).

In the present case, the Commission has considered the settlement between Piedmont and the Public Staff, along with all other evidence. The Commission has considered the entire record in reaching this decision. The Commission has decided to adopt neither the settlement calculation nor the calculation of the Attorney General and CUCA.

We begin by analyzing why the Court of Appeals reversed our Orders of October 31, 1990, and November 21, 1990. In each case, Piedmont subscribed to new pipeline service. Some of the service replaced service previously obtained from other suppliers; some of the service added to Piedmont's pipeline capacity. Piedmont did not file a general rate case to recover these costs. In each case, Piedmont sought to recover the costs of the new service through a PGA, or purchased gas adjustment, proceeding under G.S. 62-133(f). The Court of Appeals held that such costs--costs resulting from management decisions to change the Company's source of natural gas supply or to access additional volumes of natural gas--cannot be reflected in rates through a PGA proceeding. Such costs must be reflected in rates through a general rate case. The Court did not hold that Piedmont's decisions were imprudent or that the new services were not needed. It simply held that rate changes to recover the costs of these decisions and services must be made in a general rate case. Thus, the Commission's task on

remand is to determine what rate changes resulted from the Orders of October 31, 1990, and November 21, 1990, and to refund the incremental amounts that Piedmont collected as a result of these Orders.

The October 31, 1990 Order dealt with new Southern Expansion service. It authorized a rate increase of 4.09¢ per dt for service rendered from November 1, 1990 through December 31, 1990, and a rate increase of 2.97¢ per dt on and after January 1, 1991. The 4.09¢ per dt increase was reduced to 2.97¢ per dt as of January 1, 1991, because part of the Southern Expansion capacity replaced Cabot capacity as of January 1, 1991. This gives us one component of the refunds, as follows:

Month	Prorated Volumes	Authorized Recovery Rate	Amount
November 1990	5,021,032	$ .0409	$205,360
December 1990	6,099,633	$ .0409	$249,475
January 1991	8,296,505	$ .0297	$246,406
February 1991	1,046,682	$ .0297	$ 31,086
Total	20,463,852		$732,327

The November 21, 1990 Order approved a rate increase of 2.12¢ per dt effective December 1, 1990, to recover for the new service from Columbia. In order to reverse the effect of this Order and to refund the amounts unlawfully collected under the Order, we must multiply the rate increase by the volumes during the refund period. Thus, another component of the refunds can be calculated by multiplying this rate increase by the volumes during the refund period, as follows:

Month	Prorated Volumes	Authorized Recovery Rate	Amount
November 1990	5,021,032	$ 0	$0
December 1990	6,099,633	$ .0212	$129,312
January 1991	8,296,505	$ .0212	$175,886
February 1991	1,046,682	$ .0212	$ 22,190
Total	20,463,852		$327,388

The last component of the refunds relates to the deferred account. The deferred account operated as a device to permit Piedmont to "true-up" overrecoveries or underrecoveries of its demand charges. The February 13, 1990 Order authorized procedures whereby, on a monthly basis, Piedmont determined the difference between (a) the aggregate monthly portion of annual demand charges included in the most recently approved PGA and (b) the Company's actual monthly portion of annual demand charges. In other words, Piedmont compared the base amount of demand charges contained in its rates and the amount of demand charges which the Company actually incurred. The difference was recorded in the demand charge deferred account. Witnesses Hoard and Solomon testified that the appropriate treatment for the entries made to the deferred account for Southern Expansion and Columbia costs during the refund period is to treat any underrecovery as having been recouped from customers and to treat any

overrecovery as having been refunded to customers. Since the base amount during the refund period came out of the Orders of October 31, 1990 and November 21, 1990, it is appropriate to make corrections to the deferred account activity to account for the Southern Expansion and Columbia costs during the refund period. The entries to the deferred account during the refund period are uncontroverted. The entries show a $286,312 underrecovery of Southern Expansion costs booked to the deferred account and a $42,090 overrecovery of Columbia costs booked to the deferred account, which, when netted against each other, produce a refund of $244,222 related to the operation of the deferred account.

The three components of the Commission's calculation, excluding interest, are as follows:

Southern Expansion collections:	$ 732,327
Columbia collections:	$ 327,388
Corrections to the deferred account:	$ 244,222
Total:	$1,303,937

CUCA witness Solomon testified that his calculation includes "direct charges and the operation of the Company's deferred account as well as the Cabot-related collections for which no Cabot costs were incurred." The Commission rejects the calculation of the Attorney General and CUCA insofar as they propose to refund monies associated with Cabot costs which were approved in Piedmont's general rate case in Docket No. G-9, Sub 278, and in other prior proceedings. The calculation of the Attorney General and CUCA is based on the premise that all rates associated with the recovery of Southern Expansion and Columbia costs should be refunded. Their calculation multiplies the applicable volumes during the refund period times not only the rate increases authorized by the Commission in the two Orders that have been reversed, but also what was embedded in Piedmont's rates in prior proceedings to recover certain costs of the Cabot service which was replaced by the Southern Expansion service. Since these Cabot-related costs were included in Piedmont's rates in either a general rate case or other prior proceedings, and not as a result of the two Orders reversed by the Court of Appeals, there is no justification for refunding them. As stated earlier, the Commission will require a refund of the incremental rate increases authorized by the Orders of October 31, 1990 and November 21, 1990.

The Commission also rejects the settlement refund amount proposed by Piedmont and the Public Staff. The theory underlying the settlement calculation is that Piedmont should absorb Southern Expansion and Columbia costs (where they were not built into the cost of service in a general rate case) only to the extent they represent an increase in total pipeline capacity, i.e., that Piedmont should make refunds only for additions to capacity. We disagree. The calculation of the settlement refund amount is premised on an overall capacity replacement arrangement. The calculation determines the ratio of the pipeline capacity of Southern Expansion and Columbia that replaced South Carolina Pipeline and Cabot. Such percentage is then multiplied by the full rate, expressed in cents per dt, associated with the new service to determine a replacement rate. The excess of the costs recovered in rates over the replacement rate is deemed to be the excess rate. The excess rate is then multiplied by the applicable volumes during the refund period to arrive at the excess costs to be refunded. This calculation does not conform to our interpretation as to what is required by the Court of Appeals' opinions. Further, one of the main arguments that

Piedmont presents in its proposed order to support the settlement calculation goes like this: if the Attorney General and CUCA's calculation is reduced to correct certain "errors," their calculation produces refunds less than the settlement calculation; therefore, the settlement refund amount is reasonable. But the only way Piedmont can achieve this is by , among other things, applying a shorter refund period and a lower interest rate to the Attorney General and CUCA's calculation than to the settlement calculation, and the Commission specifically rejects these "corrections."

Piedmont raised several objections to the method by which the Attorney General and CUCA calculated their refund amount. We will consider Piedmont's arguments as they might relate to the Commission's calculation.

The refund period begins on November 1, 1990, and ends with the effective date of the Commission's Order of February 5, 1991, approving interim rates in Piedmont's general rate case in Docket No. G-9, Sub 309. The settlement between Piedmont and the Public Staff uses a refund period of November 1, 1990, through February 4, 1991. The settlement assumes that the interim rate Order of February 5, 1991, was effective on the date issued. However, Piedmont argues that if the settlement refund amount is rejected, the period of refund should be shortened; it argues that the interim rate Order should be interpreted as relating back to the date on which Piedmont filed its general rate case application, which was December 21, 1990. The Commission rejects this argument. First, as general practice, Commission orders are interpreted as effective on the date issued unless another date is specified in the order or required by law. The interim rate Order does not specify an effective date, and it should therefore be interpreted as effective upon issuance. Second, it is clear from the Order as a whole that the Commission intended it to be effective upon issuance. Nothing in the Order even suggests otherwise. There was a dissent, and it specifically interpreted the Order as effective upon issuance. The dissent noted that Piedmont was trying to protect itself in case the Commission's October 31, 1990 and November 21, 1990 Orders were reversed. The dissent stated, "With interim relief, Piedmont will be protected from today's date forward even if it loses the appeals." (Emphasis added.) Third, we note that, until recently, Piedmont itself interpreted the interim rate Order as effective upon issuance. Piedmont filed a letter with the Commission on December 9, 1992, stating its initial position on remand. Piedmont stated, "The effect of these two general rate case orders [i.e., the interim rate Order and the final Order] is to terminate any refund obligation of Piedmont which may result from the Court's reversal of the Sub 306 and Sub 308 orders as of February 5, 1991." (Emphasis added.) Fourth, Piedmont never asked for interim relief to begin with the filing date of its general rate case application. When it filed on December 21, 1990, Piedmont proposed rates to be effective 30 days later on January 21, 1991. (G.S. 62-134(a) requires 30 days' notice before a utility changes rates.) When it asked for interim relief, Piedmont asked for interim relief during the "suspension period." The Commission issued an Order on January 18, 1991, suspending the proposed rates, but the suspension period did not begin until the proposed effective date of January 21, 1991. Fifth, the Commission can only change rates before the 30-day notice period "for good cause shown in writing. . . under such conditions as it may prescribe." G.S. 62-134(a). Finally, the Commission questions whether it could

lawfully, over objection, made interim relief effective back to December 21, 1990, by an order that was not issued until February 5, 1991. For all these reasons, the Commission concludes that the appropriate refund period is November 1, 1990 through February 4, 1991.

Piedmont makes several "fairness" arguments. It argues that the costs at issue were expended to reduce customers' cost of gas and to expand service. This argument misses the point. The Court of Appeals itself noted that Piedmont's decisions "may be arguably laudable having substantial long-range benefits for Piedmont's customers and the economy of this State," but the issue is not the wisdom of Piedmont's decisions. The issue is the legality of the procedures by which Piedmont sought to recover the costs generated by its decisions. Piedmont argues that it would have filed a general rate case to recover these costs, instead of the present proceedings, had CUCA timely perfected its appeal of the Commission's February 13, 1990 Order. (CUCA did not file its proposed record on appeal on time due to the death of its attorney. CUCA later obtained an extension of time and perfected the appeal.) Whatever the reason Piedmont chose not to file a general rate case, Piedmont clearly had notice that the legality of the ratemaking formula in the Commission's February 13, 1990 Order was an issue. Both the Attorney General and CUCA expressed concerns about the legality of the formula when it was presented to the Commission, and two Commissioners dissented on grounds that the Order was illegal. Piedmont also argues that on remand the Commission should consider that it could have recovered South Carolina Pipeline demand costs, which were higher than the Southern Expansion and Columbia costs. The Commission interprets its present task as refunding the rate changes that resulted from the Orders that have been reversed, and, in doing so, we cannot give Piedmont credit for decisions it might have made, but did not. Piedmont never incurred the South Carolina pipeline demand costs.

Piedmont argues that a refund related to the deferred account amounts to a double refund because monies taken out were subsequently returned through normal operation of the deferred account. This argument forgets that as of February 5, 1991, the deferred account true-up and the Southern Expansion and Columbia rate increases had been authorized as interim relief in a general rate case. Deferred account activity from that date forward cannot be netted against activity before February 5.

Piedmont also argues that since only CUCA appealed the Orders, other customers are entitled to no refunds at all, other than what Piedmont has agreed to provide in its settlement with the Public Staff. Piedmont cites several authorities for the proposition that a party who elects not to appeal may obtain no benefit from an appeal by another party. None of the authorities cited by Piedmont involve public utility rates. Public utility rates are affected with the public interest, and the Commission is charged with setting just and reasonable rates for all. G.S. 62-2. Further,

> [a] rate has not been lawfully established simply because the Commission has ordered it. If the Commission makes an error of law in its order from which there is a timely appeal the rates put into effect by that order have not been "lawfully established" until the appellate courts have made a final ruling on the matter.

State ex rel. Utilities Commission v. Conservation Council, 312 N.C. 59, 67, 320 S.Ed. 679 (1984). A utility must refund the proceeds of rates that were unlawfully charged. Id. at 68. CUCA's appeals challenged the Commission's Orders on grounds that are applicable to all ratepayers, not on a basis that might apply solely to particular customers. The Court of Appeals opinions do not limit the effect of the decisions to particular customers or groups of customers. All customers are entitled to refunds.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the testimony of witnesses Schiefer, Boggs, Hoard and Solomon.

G.S. 62-130(e) provides,

> In all cases where the Commission requires or orders a public utility to refund moneys to its customers which were advanced by or overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable; provided, however, that such rate of interest applicable to said refund shall not exceed ten percent (10%) per annum.

The amount of refunds ordered by the Commission must bear interest in order to compensate Piedmont's customers for the loss of their funds from November 1, 1990, until the refunds are made. Piedmont agreed to interest of 10% as part of its settlement with the Public Staff. However, Piedmont takes the position that if the Commission rejects the settlement refund amount, the interest rate should be 6% instead of 10%. The Attorney General and CUCA support interest at the rate of 10%.

The Commission has historically ordered 10% interest on most utility refunds. One Commissioner has recently indicated that the Commission should move away from 10% interest in light of present economic conditions (see concurring opinion to the Commission's September 10, 1993 Order in Docket No. G-5, Sub 279), but the Commission believes that 10% is appropriate in this case. First, 10% interest is what the Commission has recently ordered both North Carolina Natural Gas Corporation (NCNG) and Public Service Company of North Carolina, Inc. (Public Service) to pay on the refunds that they have made in connection with their Southern Expansion costs. Both NCNG and Public Service recovered certain costs, outside general rate cases, for new services that they obtained from Transco's Southern Expansion project, and, like Piedmont, both have been required to make refunds. The Commission approved refund plans for both NCNG and Public Service in Docket No. G-21, Sub 289 and Docket No. G-5, Sub 279, and both plans provided for interest at the rate of 10%. The Public Service refund plan was approved as recently as September 10, 1993. In the interest of maintaining consistent treatment, as near as possible, for the three companies, the Commission finds that the present refunds should bear interest at the rate of 10%. Further, the refund period in this case goes back to late 1990, when economic conditions were different from the present and when interest rates were generally higher.

The calculation of interest through the date of this Order amounts to $489,982. If refunds are substantially delayed for any reason, interest shall be added through the date refunds are in fact made.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Witness Solomon, in his prefiled testimony, testified that he believed it would be most appropriate to make direct refunds by check to the affected customers in the exact amount of their overpayment plus appropriate interest. Piedmont witness Boggs testified that Piedmont opposed such a refund proposal. She testified that the administrative costs of writing a refund check, mailing and reconciling its back account for each of its customers would be substantial and, accordingly, it was for those reasons the Commission had rejected similar requests in the past. Witness Solomon, in later testimony, acknowledged that it probably would be administratively more efficient to make refunds to smaller customers and residential customers through a billing credit and he would not be opposed to that.

Based upon the foregoing, the Commission concludes that it is appropriate to require a refund plan identical to that recently ordered for NCNG when it was required to refund its overcollections for Southern Expansion and Columbia costs. Such refund plan is as follows:

> All customers whose average daily usage exceeds 300 dekatherms per day during the periods the monies were collected from customers shall receive a lump sum refund by check.
>
> The refunds for all other customers entitled to refunds shall be determined by customer class with each such customer receiving a bill credit based upon the customer's class percentage contribution during the relevant period.

Such credits shall be based upon consumption during a similar period and a report should be filed when the refunds are completed.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont shall make refunds of $1,303,937 plus interest at the rate of 10% as hereinabove provided, beginning with its next billing cycle and

2. That Piedmont shall report to the Commission upon completion of the refund plan authorized herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of March 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Docket No. G-9, Sub 340

In the Matter of Application of Piedmont Natural Gas Company, Inc., for Approval of FAS 106 Ratemaking Treatment or, in the Alternative, for a General Increase in its Rates and Charges	)	ORDER APPROVING SETTLEMENT

HEARD IN: Mecklenburg Criminal Court Building, Charlotte, North Carolina, on February 1, 1994; Guilford County Courthouse, Greensboro, North Carolina, on February 2, 1994; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on February 8, 1994.

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioner Allyson K. Duncan, and Commissioner Judy F. Hunt.

APPEARANCES:

For The Applicant:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, Post Office Box 26000, Greensboro, North Carolina 27420

For The Public Staff:

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

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

BY THE COMMISSION. On August 26, 1993, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) filed a petition in Docket No. G-9, Sub 340 requesting as primary relief authority for deferred accounting treatment of certain post-retirement benefits other than pensions (PBOPs) to comply with Statement of Financial Accounting Standards No. 106 (FAS-106). As alternative relief, Piedmont requested a general increase in rates and permission to place a portion of that increase in effect on an interim basis on November 1, 1993, to permit it to recover its additional PBOP costs related to FAS-106.

On September 8, 1993, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in Docket No. G-9, Sub 340, and on September 28, 1993, the Commission issued an Order granting the petition.

On September 22, 1993, the Commission suspended the proposed rates for a period of 270 days from the proposed effective date of September 25, 1993. On October 1, 1993, the Commission issued an Order denying the requested deferred accounting treatment and the request for emergency relief. On October 8, 1993, Piedmont filed a request for reconsideration of the Commission's October 1, 1993

Order. On October 12, 1993, the Commission issued an Order setting the matter for hearing and requiring Piedmont to give notice of the hearing. In that Order, the Commission also established dates for the prefiling of direct testimony by the intervenors and for the prefiling of rebuttal testimony by Piedmont. On November 3, 1993, the Commission issued an Order denying Piedmont's request for reconsideration.

On December 23, 1993, the Commission issued an Order in Docket No. G-9, Sub 339 authorizing Piedmont to recover 100% of its prudently incurred gas costs during the period of review in that docket. In order to "true-up" Piedmont's gas costs deferred accounts, Piedmont was directed to reduce its rates to all sales customers purchasing gas under Rates 101, 102, 103 and 104 by $.0699 per dt. and to all transportation customers transporting gas under Rate Schedules 113 and 114 by $.0994 per dt. effective 30 days from the date of the Order and continuing for 12 months.

On January 11, 1994, Piedmont, the Public Staff and CUCA filed a joint motion for approval of a settlement agreement that would settle all matters in Docket No. G-9, Sub 340. Under the terms of the proposed settlement, rates to customers purchasing gas under Rate Schedules 101 and 102 would be increased by an amount approximately equal to the reduction in rates required in Docket No. G-9, Sub 339. To avoid having a rate decrease in Docket No. G-9, Sub 339 and a rate increase in Docket No. G-9, Sub 340, the parties have agreed in the proposed settlement to provide for this offset through entries to Piedmont's demand gas cost deferred Account No. 253.

On January 19, 1994, the Commission issued an Order suspending the prefiling of testimony in Docket No. G-9, Sub 340. On January 20, 1994, the Commission also issued an Order in Docket No. G-9, Sub 340 modifying its suspension Order to permit the settlement agreement to become effective February 1, 1994, subject to the public hearings in Docket No. G-9, Sub 340 and the Commission's final Order. Also on January 20, 1994, the Commission issued an Order in Docket No. G-9, Sub 339 staying the effect of decretal paragraph 4 of its December 23, 1993 Order in that docket pending further Order of the Commission.

On February 1, 1994, the matter came on for hearing as scheduled. At the hearing in Charlotte, Louise Sellers and Graham Keith testified as public witnesses.

On February 2, 1994, the hearing was continued in Greensboro, at which time, Mike Aiken and Peter Reichard testified as public witnesses.

On February 8, 1994, the case in chief came on for hearing as scheduled in Raleigh, at which time the prefiled testimony and exhibits of the following witnesses were offered and accepted into evidence in support of the settlement agreement: (1) John H. Maxheim, President, Chairman of the Board and Chief Executive Officer of Piedmont; (2) Barry L. Guy, Vice President and Controller of Piedmont; (3) Dr. Donald A. Murry, Economist with C. H. Guernsey & Company and Professor of Economics at the University of Oklahoma; (4) Bill R. Morris, Director of Rates of Piedmont; (5) Chuck W. Fleenor, Vice President of Gas Supply of Piedmont; and (6) Ware F. Schiefer, Senior Vice President of Marketing and Gas Supply of Piedmont.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

1. The Company is engaged in the business of transporting, distributing and selling gas in 42 North Carolina communities.

2. In its application in this docket, the Company is seeking an increase in its rates and charges for natural gas service to its North Carolina customers.

3. The Company is a public utility within the meaning of G.S. 62-3(23).

4. The Commission has jurisdiction over, among other things, the rates and charges of public utilities, including the Company.

5. The Commission concludes that the Company is properly before the Commission for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

6. The only parties submitting evidence in this case with respect to revenue, expenses and rate base used a test period of the twelve months ended May 31, 1993, updated for the most part through December 31, 1993, and the settlement agreement was based upon the same test period.

7. The Commission concludes that the appropriate test period for use in this proceeding is the twelve months ended May 31, 1993, updated primarily through December 31, 1993.

8. On January 11, 1994, Piedmont, the Public Staff and CUCA filed a joint motion for approval of a settlement agreement that would settle all matters in this docket. A copy is attached to this Order as Exhibit A.

9. Although the settlement will only be in effect for nine months, it is based upon an increase in annual revenues of $2,029,310.

10. As required by G.S. 62-133(b)(1), the Commission has ascertained the reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost which has been consumed by depreciation expense, all as set forth in Exhibit B. The Commission concludes that these amounts are appropriate for use in this docket.

11. As required by G.S. 62-133(b)(2), the Commission has estimated the Company's probable revenue under the present and proposed rates, all as set forth in Exhibit C. The Commission concludes that these amounts are reasonable for use in this docket.

12. As required by G.S. 62-133(b)(3), the Commission has ascertained the Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, as is set forth in Exhibit C. The Commission concludes that these amounts are reasonable for use in this docket.

13. As required by G.S. 62-133(b)(4), the Commission has fixed the rate of return on the cost of the property ascertained pursuant to finding and conclusion 12 above as will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors. This amount is set forth on Exhibit B. The Commission concludes that this amount is fair and reasonable and will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

14. In determining the expenses set forth in Exhibit C, the Commission has allowed the Company to recover the full amount of its post-retirement other than pension costs in the amount of $1,443,951. The Commission concludes that the recovery of these post-retirement other than pension costs by the Company is just and reasonable.

15. In determining the expenses set forth in Exhibit C, the Commission has also allowed the Company to recover approximately $80,000 of environmental clean up costs; however, the allowance of these expenses shall not affect the Company's right to continue to defer such costs as they are incurred in the future or any other party's right to challenge the recovery of such costs as they are incurred in the future. The Commission concludes that the recovery of these test period environmental cleanup costs by the Company is just and reasonable.

16. For the purpose of this docket only, the gas in storage included in rate base does not include capitalized demand and storage charges. The Commission concludes that this treatment of capitalized demand and storage charges is just and reasonable for the purpose of the settlement.

17. Under the terms of the settlement, gas throughput is stated as 68.9 Bcf. The Commission concludes that for the purpose of this settlement this throughput is just and reasonable.

18. The Commission concludes that no changes in Piedmont's weather normalization adjustment (WNA) should be made as a result of this Order.

19. Under the settlement, the parties agreed that all filings by the Company, including gas cost true-up filings, under the Company's gas cost recovery procedures will not be changed as a result of this settlement and will be based on the same allocation of gas costs among rate schedules and between

states and will include the same volumes of unaccounted for gas approved in Docket No. G-9, Sub 309. The Commission finds this provision of the settlement to be fair and reasonable.

20. Under the settlement, the Company will accomplish the increase in the annual level of revenue by debiting its demand gas cost deferred Account No. 253 by $133,333.33 per month during the period of February 1, 1994 through October 31, 1994. To avoid any changes in existing rates, the rate reductions approved in Docket No. G-9, Sub 339 for Rate Schedules 101 and 102 will be used to offset the rate increases in this docket. The rate reductions ordered in Docket No. G-9, Sub 339 for all rate schedules other than Rate Schedules 101 and 102 will become effective for service rendered on and after February 1, 1994 and will remain in effect for 12 months.

21. The Commission concludes that the increase in the annual level of revenue, the method of recovering that increase through the demand gas cost deferred account, and the rates that result from that method of recovery are just and reasonable and should be approved.

22. The settlement provides that, with the exception of the matters referred to in finding and conclusion 14 above, the provisions of the settlement do not necessarily represent the position of any party to the settlement, will not be precedent in any future rate case filed by the Company and may not be cited as precedent by any party. The Commission finds this provision of the settlement to be fair and reasonable.

23. The Commission finds and concludes that the settlement is fair and reasonable and should be approved.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 1-5

The findings of fact and conclusions set forth in findings and conclusions 1-5 are jurisdictional and were not contested by any party. They are supported by the Company's verified application and the testimony and exhibits of the various witnesses and the N.C.U.C. Form G-1 that were filed with the application. On February 7, 1994, the Company filed affidavits of publication stating that notice of the hearing was published in various newspapers in the Company's service area as required by the Commission's Order of October 12, 1993.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 6-7

The Company filed its application and exhibits using a test period of the twelve months ended May 31, 1993. In its Order of October 12, 1993, the Commission ordered the parties to use a test period of the twelve months ended May 31, 1993, with appropriate adjustments. The settlement agreement is based upon the test period ordered by the Commission, and this test period was not contested by any party.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 8-9

These findings and conclusions are supported by official files of the Commission and the settlement agreement attached to this Order as Exhibit A.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 10

The reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost which has been consumed by depreciation expense, is set forth in Exhibit B. The amounts shown on Exhibit B are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 11

The probable revenues under the Company's present and proposed rates are set forth in Exhibit C. The amounts shown on Exhibit C are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are reasonable and appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 12

The Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, is set forth in Exhibit C. The amounts shown on Exhibit C are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 13

The rate of return on the cost of the Company's used and useful property is set forth on Exhibit B. This rate of return is the result of negotiations among the parties and is not opposed by any party. The Commission has carefully reviewed this return and concludes that for the duration of the settlement it will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 14

FAS 106 was issued by the Financial Accounting Standards Board (FASB) in December 1990 and requires adoption by companies effective for fiscal periods beginning after December 15, 1992. Under FAS 106, companies must accrue the costs of medical insurance, life insurance, and other benefits offered to its retirees on a current basis rather than expense them when the costs are actually paid. The effective date of FAS 106 for Piedmont is November 1, 1993. The settlement agreement provides for the Company to recover the full amount of its

post retirement benefits other than pension costs in the amount of $1,443,951. No party has opposed the recovery of this amount, and the Commission concludes that the recovery of these post retirement benefits other than pension costs is just and reasonable.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 15

The expenses set forth in Exhibit C include approximately $80,000 of environmental clean up costs. No party opposed the recovery of these costs. The Commission concludes that the recovery of these costs under the facts of this docket is fair and reasonable; however, the allowance of these expenses shall not affect the Company's right to continue to defer such costs as they are incurred in the future or any other party's right to challenge the recovery of such costs as they are incurred in the future.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 16

In computing the rate base in this case, the parties to the settlement agreed that for the purpose of this docket only, the gas in storage included in rate base does not include capitalized demand and storage charges. No party opposed this treatment of gas in storage for the purpose of this docket only; however, no party will be bound by this treatment of gas in storage in future rate cases. The Commission concludes that this treatment of capitalized demand and storage charges is just and reasonable for the purpose of the settlement.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 17

Under the terms of the settlement, gas throughput is stated as 68.9 Bcf. No party opposed this throughput level. Since the additional revenue requirement will be recovered through the deferred account, the gas throughput level does not affect the rate increase; therefore, the Commission concludes that for the purpose of this settlement this throughput is just and reasonable.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 18

In the Company's last general rate case, Docket No. G-9, Sub 309, the Commission approved a weather normalization formula (WNA). Under the provisions of the WNA clause, certain changes in the "R Factor" must be made when rates are adjusted in general rate cases. Since no changes in the Company's billed rates will result from this Order the parties have agreed in the settlement, and the Commission agrees, that no changes in Piedmont's WNA should be made as a result of this Order.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 19

Under the settlement, the parties agreed that all filings by the Company, including gas cost true-up filings, under the Company's gas cost recovery procedures will not be changed as a result of this settlement and will be based on the same allocation of gas costs among rate schedules and between states and will include the same volumes of unaccounted for gas approved in Docket No. G-9, Sub 309. This provision is required in order to protect the Company's right to realize the additional revenue provided by this Order; therefore, the Commission finds this provision of the settlement to be fair and reasonable.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 20-21

Under the settlement, the Company will accomplish the increase in the annual level of revenue by debiting its demand gas cost deferred Account No. 253 by $133,333.33 per month during the period of February 1, 1994 through October 31, 1994. To avoid any changes in existing rates, the rate reductions approved in Docket No. G-9, Sub 339 for Rate Schedules 101 and 102 will be used to offset the rate increases in this docket. The rate reductions ordered in Docket No. G-9, Sub 339 for all rate schedules other than Rate Schedules 101 and 102 will become effective for service rendered on and after February 1, 1994 and will remain in effect for 12 months. Unless changed by subsequent Order of the Commission, the effect of this procedure on rates billed to customers during the period of February 1, 1994 through October 31, 1994 will be as follows:

Rate Schedules 101 and 102:	No increase and no decrease in billed rates.
Rate Schedules 103 and 104:	Rates reduced $.0699 per dt. during the annual period ending January 31, 1995.
Rate Schedules 113 and 114:	Rates reduced $.0994 per dt. during the annual period ending January 31, 1995.

No party has opposed this procedure or the resulting rates; therefore, the Commission concludes that these procedures and rates are fair and reasonable. The Commission's decision; however, is without prejudice to any party to seek any change in rates or rate design in future rate proceedings.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 22

The settlement provides that, with the exception of the matters relating to FAS-106, the provisions of the settlement do not necessarily represent the position of any party to the settlement, will not be precedent in any future rate case filed by the Company and may not be cited as precedent by any party. The Commission finds this provision of the settlement to be fair and reasonable and, with the exception noted above, no party will be bound by any position taken in the settlement in any future rate proceeding filed by the Company.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 23

The settlement will provide $1,200,000 of additional revenue to the Company during the nine month settlement period and it will do so without increasing existing billed rates. The Company intends to file another rate case to be effective not later than November 1, 1994, and the Commission will have another opportunity to examine its rates at that time. The Commission has previously found that the amounts provided in the settlement for rate base, revenues, expenses and rate of return are fair and reasonable and that the resulting rates are fair and reasonable; therefore, the Commission finds and concludes that the settlement is fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is hereby authorized to adjust its rates and charges in accordance with the settlement agreement attached to this Order as Exhibit A effective February 1, 1994, and the settlement agreement is approved.

2. That Piedmont is hereby authorized to debit its demand gas cost deferred Account No. 253 by $133,333.33 per month during the period February 1, 1994 through October 31, 1994, as provided in the settlement.

3. That Decretal Paragraph 4 of the Commission's December 23, 1993 Order in Docket No. G-9, Sub 339 is hereby amended to the extent necessary to permit Piedmont to use the rate reductions approved in Docket No. G-9, Sub 339 for Rate Schedules 101 and 102 to offset the rate increases in Docket No. G-9, Sub 340 during the period February 1, 1994 through October 31, 1994. The rate reductions ordered in Docket No. No. G-9, Sub 339 for Rate Schedules 101 and 102 will become effective for service rendered on and after November 1, 1994 and continue for service rendered through January 31, 1995. The rate reductions ordered in Docket No. G-9, Sub 339 for all rate schedules other than Rate Schedules 101 and 102 will become effective for service rendered on and after February 1, 1994 and will remain for service rendered through January 31, 1995.

4. That Piedmont shall send the notice attached hereto as Appendix A to its customers as a bill insert in its next billing cycle after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION
This the 10th day of February 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

CONSENTED TO:

Piedmont Natural Gas Company, Inc.

By: _____
Jerry W. Amos
Its Attorney

The Public Staff

By: _____
Paul L. Lassiter
Its Attorney

Carolina Utility Customers Association, Inc.

By: _____
Sam J. Ervin IV
Its Attorney

State of North Carolina
Before the Utilities Commission

Docket No. G-9, Sub 339

In the Matter of:	)
	)
Application of Piedmont Natural Gas Company, Inc.,	)
for Annual Review of Gas Costs Pursuant to G.S.	)
62-133.4(c) and Commission Rule R1-17(k)(6)	)

Docket No. G-9, Sub 340

In the Matter of:	)
	)
Application of Piedmont Natural Gas Company, Inc.,	)
for Approval of FAS 106 Ratemaking Treatment or,	)
in the Alternative, for a General Increase in its Rates	)
and Charges	)

Joint Motion for Approval of Settlement Agreement and Procedures for Implementing Same

Piedmont Natural Gas Company, Inc. (Piedmont), the Public Staff and Carolina Utility Customers Association, Inc. (CUCA) hereby respectfully request the Commission to approve the following Settlement Agreement and, in support hereof, show the Commission the following:

Procedural Background

On December 23, 1993, the Commission issued an order in Docket No. G-9, Sub 339 authorizing Piedmont to recover 100% of its prudently incurred gas costs during the period of review in that docket. In order to "true-up" Piedmont's gas costs deferred accounts, Piedmont was directed to reduce its rates to all sales customers purchasing gas under Rates 101, 102, 103 and 104 by $.0699 per dt. and to all transportation customers transporting gas under Rate Schedules 113 and 114 by $.0994 per dt. effective 30 days from the date of the order and continuing for 12 months.

On August 26, 1993, Piedmont filed a petition in Docket No. G-9, Sub 340 requesting as primary relief authority for deferred accounting treatment of certain post-retirement benefits other than pensions (PBOPs) to comply with Statement of Financial Accounting Standards No. 106 (FAS-106). As alternative relief, Piedmont requested a general increase in rates and permission to place

a portion of that increase in effect on an interim basis on November 1, 1993 to permit it to recover its additional PBOP costs related to FAS-106.

On September 22, 1993, the Commission suspended the proposed rates in Docket No. G-9, Sub 340 for a period of 270 days from the proposed effective date of September 25, 1993. On October 1, 1993, the Commission issued an order denying the requested deferred accounting treatment and the request for emergency relief. On September 30, 1993, the Commission issued an order setting the matter for hearing and requiring Piedmont to give notice of the hearing. In that order, the Commission also established dates for the prefiling of direct testimony by the intervenors and for the prefiling of rebuttal testimony by Piedmont.

The Settlement

The Public Staff and CUCA, the only intervenors in Docket No. G-9, Subs 339 and 340, and Piedmont have held a number of discussions to settle both of these dockets and have agreed to settle these dockets on the following terms and conditions subject to approval of the Commission, and their execution of this motion reaffirms their agreement to the settlement:

1. For purposes of this settlement, the "settlement period" shall be the period beginning February 1, 1994 and ending October 31, 1994. Piedmont presently intends to file a general rate case on or before April 1, 1994 to be effective not later than November 1, 1994. Among other things, this new rate case will include rate design testimony.

2. Piedmont will be entitled to increase its annual level of revenues in Docket No. G-9, Sub 340 by $2,029,310. The parties propose that the rate reductions approved in Docket No. G-9, Sub 339 for Rate Schedules 101 and 102 be used to offset the rate increases in Docket No. G-9, Sub 340. To accomplish this rate increase, Piedmont will debit its demand gas cost deferred Account No. 253 by $133,333.33 per month during the settlement period. Except as provided in the previous sentence, Piedmont will not make any further adjustments to its deferred Account No. 253 under Docket No. G-9, Subs 339 or 340 with respect to Rate Schedules 101 and 102. The rate reductions ordered in Docket No. G-9, Sub 339 for all rate schedules other than Rate Schedules 101 and 102 will become effective for service rendered on and after February 1, 1994 and will remain in effect for 12 months. Unless changed by subsequent order of the Commission, the effect of this procedure on rates billed to customers during the settlement period will be as follows:

Rate Schedules 101 and 102: No increase and no decrease in billed rates.

Rate Schedules 103 and 104: Rates reduced $.0699 per dt. during the annual period ending January 31, 1995.

Rate Schedules 113 and 114: Rates reduced $.0994 per dt. during the annual period ending January 31, 1995.

3. Piedmont's overall rate of return on rate base will be stated as 10.06 %.

4. The order approving this settlement will state the following:

a. Piedmont is allowed the full amount of its test period PBOP costs ($1,443,951 annually, including an adjustment to the test period of $945.069 required by FAS 106).

b. The allowed expenses include approximately $80,000 of environmental clean up costs; however, the allowance of these expenses shall not affect Piedmont's right to continue to defer such costs as they are incurred in the future or any other party's right to challenge the recovery of such costs as they are incurred in the future.

c. For the purposes of determining rate base for the purposes of this settlement only, gas in storage does not include capitalized demand and storage charges.

d. With the exception of the matters referred to in paragraph 4a, the provisions of this settlement do not necessarily represent the position of any party to this settlement, will not be precedent in any future rate cases filed by Piedmont and may not be cited as precedent by any party. Each party to this settlement reserves the right to take any position that party deems appropriate in a future proceeding.

e. Throughput will be stated at 68.9 Bcf.

f. No changes will be made in the WNA.

5. Notwithstanding any other provision of this Settlement Agreement, including paragraph 4e, all filings, including gas cost true-up filings, under Piedmont's gas cost recovery procedures will not be changed as a result of this settlement and will be based on the same allocation of gas costs among rate schedules and between states and will include the same volumes of unaccounted for gas approved in Docket No. G-9, Sub 309.

6. Subject to the approval of the Commission, the parties agree to implement the Settlement Agreement through the following procedures:

a. On or before January 15, 1994, the Commission will issue (1) an order in Docket No. G-9, Sub 339 staying the effect of decretal paragraph 4 pending further order of the Commission and (2) an order in Docket No. G-9, Sub 340 suspending the dates for the filing of testimony by intervenors and the filing of rebuttal testimony by Piedmont pending further order of the Commission.

b. On or before January 31, 1994, the Commission will approve an order modifying its suspension order of September 22, 1993 to the extent necessary to permit the parties to implement the provisions of paragraph 2 of this Settlement Agreement to become effective February 1, 1994.

c. On February 1, 2 and 8, the Commission will hold the public hearings previously scheduled for the sole purpose of receiving evidence from public witnesses. Any party shall have the right to cross-examine public witnesses as permitted by the Commission's rules.

d. As soon as practicable after the conclusion of the public hearings, the Commission will issue its order on the settlement. If the Commission should not approve the settlement, the Commission will set dates for the filing of testimony and for further hearings. The parties agree to present a consent order approving the settlement to the Commission for its consideration on or before February 1, 1994..

7. The foregoing settlement is the result of give and take negotiations among the parties and represents a compromise believed to be in the public interest. Each provision of the settlement is dependent upon all provisions of the settlement being approved without modification; therefore, no provision of the settlement is binding on any party until the Commission has issued an order approving all provisions of the settlement without modification.

8. The parties to this settlement agree to use their best efforts to obtain the Commission's approval of the settlement effective February 1, 1994.

Proposed Orders

Attached hereto for the Commission's consideration are the following exhibits:

Exhibit A: A proposed order in Docket No. G-9, Sub 339 staying the effect of decretal paragraph 4 pending further order of the Commission.

Exhibit B: A proposed order in Docket No. G-9, Sub 340 suspending the dates for the filing of testimony by intervenors and the filing of rebuttal testimony by Piedmont pending further order of the Commission.

On or before January 31, 1994, the parties will submit (1) a proposed consent order approving this settlement pending public hearings and (2) a proposed consent final order.

Prayer for Relief

For the reasons stated above, the parties to this motion respectfully request the Commission to approve the Settlement Agreement without modification and to adopt the procedures set forth in paragraph 6 above.

Piedmont Natural Gas Company, Inc.

By: _____
Its Attorney

The Public Staff

By: _____
Its Attorney

Carolina Utility Customers Association, Inc.

By: _____
Its Attorney

SCHEDULE II
PIEDMONT NATURAL GAS COMPANY
DOCKET NO. G-9, SUB 340
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended May 31, 1993

Item	Amount
Gas plant in service	$492,218,956
Accumulated depreciation	(116,770,707)
Net gas plant in service	375,448,249
Allowance for working capital	10,807,007
Accumulated deferred income taxes	(60,727,036)
Original cost rate base	$325,528,220
Rates of return:	
Present rates	9.70%
Approved rates	10.06%

SCHEDULE I
PIEDMONT NATURAL GAS COMPANY
DOCKET NO. G-9, SUB 340
STATEMENT OF NET OPERATING INCOME FOR RETURN
For the Test Year Ended May 31, 1993

Item	Present Rates	Approved Increase	Approved Rates
Gas operating revenue	$331,106,289	$2,029,310	$333,135,599
Operating revenue deductions:			
Cost of gas	202,897,175		202,897,175
Operation and maintenance	56,352,675	5,164	56,357,839
Depreciation	12,070,465		12,070,465
General taxes	16,324,797	65,232	16,390,029
State income taxes	2,399,869	153,335	2,553,204
Federal income taxes	9,495,651	631,954	10,127,605
Total operating revenue deductions	299,540,632	855,685	300,396,317
Net operating income for return	$ 31,565,657	$1,173,625	$ 32,739,282

APPENDIX A

Docket No. G-9, Sub 340

In the Matter of Application of Piedmont Natural Gas Company, Inc., for Approval of FAS 106 Ratemaking Treatment or, in the Alternative, for a General Increase in its Rates and Charges	))))))	PUBLIC NOTICE

On August 26, 1993, Piedmont Natural Gas Company, Inc. (Piedmont) filed a petition in Docket No. G-9, Sub 340 requesting as primary relief authority for deferred accounting treatment of certain post-retirement benefits other than pensions (PBOPs) to comply with Statement of Financial Accounting Standards No. 106 (FAS-106). As alternative relief, Piedmont requested a general increase in rates and permission to place a portion of that increase in effect on an interim basis on November 1, 1993 to permit it to recover its additional PBOP costs related to FAS-106. The Commission denied the requested deferred accounting treatment and the request for interim relief and set the matter for hearing.

Following the scheduled hearings, the Commission issued an Order allowing Piedmont to recover approximately $1.2 million of additional revenue during the period February 1, 1994 through October 31, 1994. This additional revenue will permit Piedmont to recover its additional FAS-106 costs and will be recovered through a debit to Piedmont's demand gas cost deferred account. Piedmont had previously been ordered in Docket No. G-9, Sub 339 to reduce rates on a temporary basis to return certain monies in its deferred account. Since the rate increase approved in Docket No. G-9, Sub 340 to customers purchasing gas under Rate Schedules 101 and 102 will be increased by an amount approximately equal to the reduction in rates required in Docket No. G-9, Sub 339, the Commission has authorized Piedmont to offset the increase and the decrease. As a result, there will be no change in billed rates to customers purchasing gas under Rate Schedules 101 and 102, until November 1, 1994, at which time the previously ordered rate reductions will take place unless otherwise ordered by the Commission. Customers purchasing gas under other rate schedules will receive the temporary rate reduction previously ordered in Docket No. G-9, Sub 339 effective February 1, 1994.

ISSUED BY ORDER OF THE COMMISSION
This the 10th day of February 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 351

Before the North Carolina Utilities Commission

In the Matter of Application of Piedmont Natural Gas Company, Inc., for (1) a General Increase in its Rates and Charges to Cover the Costs (Including a Return on Investment) of Additional Plant Constructed to Expand and Improve Natural Gas Services in North Carolina and (2) Approval of a New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636.	)	ORDER APPROVING SETTLEMENT

HEARD IN: Guilford County Courthouse, Greensboro, North Carolina, on August 30, 1994 and on October 13, 1994; Mecklenburg Criminal Court Building, Charlotte, North Carolina, on August 31, 1994 and on October 13, 1994; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on September 7, 1994

BEFORE: Commissioner Allyson K. Duncan, Presiding, Commissioner Laurence A. Cobb, and Commissioner William W. Redman, Jr.

APPEARANCES:

For the Applicant:

Jerry W. Amos, Post Office Box 26000, Greensboro, North Carolina 27420

For the Public Staff:

Paul L. Lassiter, Gina C. Holt and James D. Little, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General and J. Mark Payne, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27514

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

BY THE COMMISSION. On March 31, 1994, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) filed a petition in Docket No. G-9, Sub 351, requesting a general increase in its rates and charges for natural gas service, approval of changes in its rate design and approval of changes in its North Carolina Service Regulations.

On March 15, 1994, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in Docket No. G-9, Sub 351, and on March 18, 1994, the Commission issued an order granting the petition.

On June 10, 1994, the North Carolina Attorney General filed notice of intervention.

On April 27, 1994, the Commission declared Piedmont's application to be a general rate case pursuant to G.S. § 62-137 and suspended the proposed rates for a period of 270 days from the proposed effective date of May 1, 1994. In that order, the Commission also set the matter for hearing, required Piedmont to give notice of the hearing, and established dates for the prefiling of direct testimony by the intervenors and for the prefiling of rebuttal testimony by Piedmont. On August 31, 1994, the Commission scheduled additional public hearings.

On August 30, 1994, the matter came on for hearing as scheduled. At the hearing in Greensboro, Bob Leak, Roderick Laurence Crenshaw and John Neal Davis, III, testified as public witnesses.

On August 31, 1994, the hearing was continued in Charlotte, at which time Malcom Everett, Jim Richardson and Caroline Myers testified as public witnesses.

On September 7, 1994, the case in chief came on for hearing as scheduled in Raleigh, at which time the Commission was advised that the Company, the Public Staff and CUCA had entered into a stipulation resolving all issues in this proceeding. The Commission was further advised that the Attorney General did not oppose the stipulation and agreed not to appeal any order of the Commission approving the stipulation in this case. The stipulation was offered into evidence and explained to the Commission. A copy of the stipulation is attached to this order as Exhibit A.

At the hearing, the prefiled testimony and exhibits of the following witnesses were offered and accepted into evidence in support of the stipulation:

For the Company: (1) John H. Maxheim, Chairman of the Board, President, and Chief Executive Officer of Piedmont; (2) Barry L. Guy, Vice President and Controller of Piedmont; (3) Ware F. Schiefer, Senior Vice President of Marketing and Gas Supply of Piedmont; (4) Chuck W. Fleenor, Vice President of Gas Supply of Piedmont; (5) Ann H. Boggs, Director of Gas Accounting of Piedmont; (6) Malcolm R. Ketchum, Vice President of Reed Consulting Group: (7) Sanford D. Hickok, Vice President and Managing Director of Executive Compensation of Hay Management Consultants, a member of Hay Group, Inc.; and (8) Dr. Donald A. Murry, Economist with C. H. Guernsey & Company and Professor of Economics at the University of Oklahoma.

For the Public Staff: (1) Windley E. Henry, Staff Accountant; (2) James G. Hoard, Supervisor of the Natural Gas Section of the Accounting Division; (3) Jan A. Larsen, Utilities Engineer of the Natural Gas Division; (4) Eugene H. Curtis, Jr., Director of the Natural Gas Division; and (5) John R. Hinton, Public Utilities Financial Analyst of the Economic Research Division.

For CUCA: (1) Donald W. Schoenbeck, a consultant in the field of public utility regulation and a member of Regulatory & Cogeneration Services, Inc.; and (2) Kevin W. O'Donnell, Senior Financial Analyst with Booth & Associates, Inc.

For the Attorney General: Bruce Nicholson, Environmental Engineer with the Remediation Branch of the Superfund Section, Division of Solid Waste Management, North Carolina Department of Environment, Health and Natural Resources.

On October 13, 1994, further public hearings were held in Greensboro and in Charlotte. No witnesses appeared.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings, the stipulation, the agreement of the Attorney General not to oppose the stipulation and not to appeal an order approving the stipulation, and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

1. The Company is engaged in the business of transporting, distributing and selling natural gas in 42 North Carolina communities.

2. In its application in this docket, the Company is seeking an increase in its rates and charges for natural gas service to its North Carolina customers.

3. The Company is a public utility within the meaning of G.S. § 62-3(23).

4. The Commission has jurisdiction over, among other things, the rates and charges of public utilities, including the Company.

5. The Commission concludes that the Company is properly before the Commission for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

6. The only parties submitting evidence in this case with respect to revenue, expenses and rate base used a test period of the twelve months ended December 31, 1993, updated for the most part through July 31, 1994, and the stipulation was based upon the same test period.

7. The Commission concludes that the appropriate test period for use in this proceeding is the twelve months ended December 31, 1993, updated primarily through July 31, 1994.

8. The stipulation executed by Piedmont, the Public Staff and CUCA is unopposed by any party. The stipulation settles all matters in this docket.

9. The stipulation provides for an increase in annual revenues of $5,200,000.

10. As required by G.S. § 62-133(b)(1), the Commission has ascertained the reasonable original cost of the Company's property used and useful, or to be used

and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost which has been consumed by depreciation expense, all as set forth in Schedule II of the stipulation. The Commission concludes that these amounts are appropriate for use in this docket.

11. As required by G.S. § 62-133(b)(2), the Commission has determined the Company's end-of-period pro forma revenues under the present and proposed rates, as is set forth in Schedule II of the stipulation. The Commission concludes that these amounts are reasonable for use in this docket.

12. As required by G.S. § 62-133(b)(3), the Commission has ascertained the Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, as is set forth in Schedule II of the stipulation. The Commission concludes that these amounts are reasonable for use in this docket.

13. As required by G.S. § 62-133(b)(4), the Commission has fixed the rate of return on the cost of the property ascertained pursuant to paragraph 10 above as will enable the Company by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors. This amount is set forth on Schedule II of the stipulation. The Commission concludes that this amount is fair and reasonable and will enable the Company by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

14. The level of adjusted sales and transportation volumes used in the stipulation is 69,615,706 dekatherms which is composed of the following:

Gas Supply	64,937,221
Transportation Supply	5,568,325
Lost & Unaccounted for	(811,466)
Company Use	(78,374)
Adjusted Sales and Transportation	69,615,706

The Commission concludes that for the purpose of the stipulation this level of adjusted sales and transportation volumes are reasonable.

15. The Commission concludes that the rates set forth in Schedule III of the stipulation under the column "Proposed Rate" will produce the revenues shown in Schedule II to the stipulation under the column entitled "After Adjustments for Proposed Rates." The Commission further concludes that the proposed rates are just and reasonable to all customer classes.

16. In the stipulation, the parties stipulate and agree that the Company shall be permitted to increase its rates on the "in service" date of Cardinal Pipeline Company, L.L.C. (Cardinal), in accordance with the previous agreement between the Company, Public Service Company of North Carolina, Inc. (PSNC) and the Public Staff in Docket No. G-37, and that the increase shall be apportioned among rate schedules using the same methodology approved by final decision (as defined in the stipulation) in Public Service Company of North Carolina, Inc., Docket No. G-5, Sub 327. The Commission concludes that this provision of the stipulation is just and reasonable and should be approved. The Commission will reopen the record in this proceeding when Cardinal is in service solely for the purpose of receiving testimony stating that Cardinal is in service and providing the actual cost involved in the construction of the project and the updated costs of operating the project. The Commission will approve rates by separate order at that time.

17. The Commission concludes that the fixed gas costs that should be embedded in the proposed rates and used in true-ups of fixed gas costs for periods subsequent to October 31, 1994, in proceedings under Rule R1-17(k) are those fixed gas costs set forth in Schedule IV attached to the stipulation.

18. The Commission concludes that the "R" values and heat factors that should be used in the Company's Weather Normalization Adjustment (WNA) for periods subsequent to October 31, 1994, are those "R" values and heat factors set forth in Schedule V attached to the stipulation and that Rate Schedule 103 customers should not be subject to the Company's WNA provisions.

19. The Commission concludes that the Company's proposal to amend its procedures for rate adjustments under G.S. § 62-133.4 as set forth in the Company's N.C.U.C. Service Regulations to provide that adjustments to rates under such procedures shall be made on the applicable apportionment percentage rather than on a flat per dekatherm basis is just and reasonable.

20. The Commission concludes that the Firm Transportation Agreement, Interruptible Transportation Agreement and Balancing Agreement filed by Piedmont on October 13, 1994, are just and reasonable and should be approved subject to the provisions of paragraphs 8, 9, 10 and 11 of the stipulation.

21. The Commission finds and concludes that all of the provisions of the stipulation are fair and reasonable under the circumstances of this proceeding and should be approved.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 1-5

The findings of fact and conclusions set forth in Findings and Conclusions 1-5 are jurisdictional and were not contested by any party. They are supported by the Company's verified application and the testimony and exhibits of the various witnesses and the N.C.U.C. Form G-1 that was filed with the application.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 6-7

The Company filed its application and exhibits using a test period of the twelve months ended December 31, 1993. In its order of April 27, 1994, the Commission ordered the parties to use a test period of the twelve months ended

December 31, 1993, with appropriate adjustments. The stipulation is based upon the test period ordered by the Commission, and this test period was not contested by any party.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 8-9

These findings and conclusions are supported by the stipulation attached to this order as Exhibit A.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 10

The reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost that has been consumed by depreciation expense, is set forth in Schedule II of Exhibit A. The amounts shown on Schedule II of Exhibit A are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 11

The probable revenues under the Company's present and proposed rates are set forth in Schedule II of Exhibit A. The amounts shown on Schedule II of Exhibit A are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are reasonable and appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 12

The Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, is set forth in Schedule II of Exhibit A. The amounts shown on Schedule II of Exhibit A are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 13

The rate of return on the cost of the Company's used and useful property is set forth on Schedule II of Exhibit A. This rate of return is the result of negotiations among the parties and is not opposed by any party. The Commission has carefully reviewed this return and concludes that it will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 14

The level of adjusted sales and transportation volumes used in the stipulation is 69,615,706 dekatherms. This volume level is derived as follows:

Gas Supply	64,937,221
Transportation Supply	5,568,325
Lost & Unaccounted for	(811,466)
Company Use	(78,374)
Adjusted Sales and Transportation	69,615,706

This throughput level is the result of negotiations among the parties and is not opposed by any party. The Commission has carefully reviewed this throughput level and concludes that it is a fair and reasonable approximation of the Company's pro forma adjusted sales and transportation volumes.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 15

The computation of revenues under the proposed rates is set forth on Schedule III of Exhibit A. These computations show that the proposed rates will produce the revenues used by the Commission in its determination of the revenue increase granted in this order. The rates approved herein provide an overall increase to the Company of 1.51%. These rates result in an increase for residential customers of 4.29%, an increase for commercial customers of 1.61%, a decrease for firm industrial customers of 0.39% and a decrease for interruptible customers of 3.84%. These rates are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these rates and concludes that they are just and reasonable to all customer classes.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 16

The Commission has previously approved an agreement between the Company, Public Service, and the Public Staff in Docket No. G-37 that permits the Company to increase its rates on the "in service" date of Cardinal. The Company proposed that the rate increase be apportioned among all rate schedules in an equal per unit amount. The Public Staff supports the Company's proposal. CUCA argues that the cost of the new pipeline should be assigned to the various customer classes based on a design-day demand allocation factor and that the rate increase should be similarly apportioned. The issue of the proper allocation of Cardinal costs and the proper apportionment of the rate increase is before the Commission in Public Service Company of North Carolina, Inc., Docket No. G-5, Sub 327. The Public Staff and CUCA are parties to the Public Service docket and agree in the stipulation to be bound by the decision in the Public Service docket. Piedmont also agrees to be bound by the Commission's decision in the Public Service docket. Based on the agreement of the parties, the Commission concludes that it is fair and reasonable to allocate costs and to apportion the Cardinal rate increase in this docket in the same manner as such costs are allocated and such rate increase is apportioned in the Public Service docket.

When Cardinal is completed and in service, the record in this proceeding will be re-opened for the sole purpose of receiving evidence as to Cardinal's in-service status, the actual costs incurred in constructing Cardinal and the

updated costs of operating Cardinal. A hearing will be scheduled to occur as soon as possible after this testimony is filed, and the Commission will issue a separate order approving rates following the hearing. The rate change will be effective as of the date the separate order is issued.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 17

Under the Commission's procedures for truing-up fixed gas costs in proceedings under Rule R1-17(k), it is necessary and appropriate to determine the amount of fixed gas costs that are embedded in the rates approved herein. In the stipulation, the parties agree that for the purpose of this proceeding and future proceedings under Rule R1-17(k) the appropriate amount of fixed costs for each rate schedule is the amount set forth in Schedule IV of the stipulation. The Commission has carefully examined these amounts and concludes that they are just and reasonable.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 18

Under the Company's WNA, it is necessary and appropriate to determine the "R" values and heat factors that will be used in the Company's WNA. In the stipulation, the parties agree that the "R" values and heat factors that should be used in the Company's WNA are those "R" values and heat factors set forth in Schedule V of the stipulation. Company witness Fleenor testified that Rate Schedule 103 customers appear to be statistically insensitive to temperature changes on a monthly basis and should not be subject to the WNA. Public Staff witness Curtis agrees that Rate Schedule 103 customers should not be subject to the WNA, and the stipulation does not provide any "R" values or heat factors for Rate Schedule 103. The Commission has carefully reviewed the "R" values and heat factors and concludes that they are appropriate and in compliance with the rates approved herein and with the other provisions of this order.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 19

Company witness Fleenor testified that it is no longer appropriate to add or remove fixed gas costs under Piedmont's PGA on an equal per unit basis because firm customers are allocated higher fixed gas costs than interruptible customers. Witness Fleenor testified that it is more appropriate to add or subtract future changes in fixed gas costs on a pro rata basis. Exhibit CWF-7 contains the revised PGA language proposed by witness Fleenor. Public Staff witness Curtis testified that the Public Staff has no objection to this change. No other party offered any testimony on this change and, after careful review, the Commission concludes that the change is appropriate and should be approved.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 20

On June 17, 1994, the Company furnished drafts of the Firm Transportation Agreement, Interruptible Transportation Agreement and Balancing Agreement to the other parties. Public Staff witness Curtis testified that the Public Staff reviewed these agreements and advised Piedmont of its comments. CUCA witness Schoenbeck made certain recommendations to change the language of these agreements. CUCA's concerns are addressed and resolved in paragraphs 8, 9, 10 and 11 of the stipulation. On October 13, 1994, Piedmont filed revised agreements to address the comments of the Public Staff and to comply with the

stipulation. The Commission has carefully reviewed the agreements and concludes that they should be approved subject to the provisions of paragraphs 8, 9, 10 and 11 of the stipulation.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 21

For the reasons set forth in the foregoing paragraphs, the Commission concludes that the stipulation provides a just and reasonable resolution of all the issues in this case, will allow the Company a reasonable opportunity to earn a fair return, and provides just and reasonable rates to all customer classes. Therefore, the Commission finds and concludes that all of the provisions of the stipulation, taken together, are fair and reasonable under the circumstances of this proceeding and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is hereby authorized to adjust its rates and charges in accordance with the stipulation attached to this order as Exhibit A effective on service rendered on and after November 1, 1994, and the stipulation is approved.

2. That Piedmont shall file appropriate tariffs to comply with paragraph 1 of this order within ten (10) days from the date of this order.

3. That prior to increasing its rates to recover costs associated with Cardinal, Piedmont shall file revised tariffs consistent with this Commission's orders in Docket G-37, in Docket G-5, Sub 327, and in this docket. Those rate schedules shall reflect the allocation of the additional Cardinal costs using the method approved by the Commission in Docket G-5, Sub 327. In addition, Piedmont shall file with those tariffs a schedule of "R" values to reflect the increase in margin associated with the increase.

4. That in the true-up of fixed gas costs for periods subsequent to October 31, 1994, in proceedings under Rule R1-17(k), Piedmont shall use the fixed gas costs set forth in Schedule IV attached to the stipulation.

5. That for periods subsequent to October 31, 1994, and prior to the effective date of the filing required by paragraph 3 of this order, Piedmont shall use the "R" values and heat factors set forth in Schedule V attached to the stipulation.

6. That Piedmont shall file revised N.C.U.C. Service Regulations to reflect the changes in its procedures for rate adjustments under G.S. § 62-133.4 approved herein.

7. That the Firm Transportation Agreement, Interruptible Transportation Agreement and Balancing Agreement filed with the Commission on October 13, 1994, are approved effective November 1, 1994, subject to the provisions of paragraphs 8, 9, 10 and 11 of the stipulation.

8. That Piedmont shall send the notice attached hereto as Appendix A to its customers as a bill insert in the next billing cycle after the date of this order.

9. That Piedmont is required to prefile as soon as possible after Cardinal is placed into service the testimony it will rely on during the hearing when the record in this docket is re-opened to receive evidence as to Cardinal's in-service status, the actual cost incurred in constructing Cardinal and the updated costs of operating Cardinal. The hearing will be scheduled as soon as possible after this testimony is filed.

ISSUED BY ORDER OF THE COMMISSION
This the 19th day of October, 1994.

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

APPENDIX A

DOCKET NO. G-9, SUB 351

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., for (1) a General Increase in its Rates and Charges to Cover the Costs (Including a Return on Investment) of Additional Plant Constructed to Expand and Improve Natural Gas Services in North Carolina and (2) Approval of a New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636.	)	PUBLIC NOTICE

The North Carolina Utilities Commission issued an Order allowing Piedmont Natural Gas Company, Inc. (Piedmont), to increase its rates and charges by approximately $5.2 million annually, or 1.51% overall, effective November 1, 1994.

Piedmont's application for a rate increase was filed with the Commission on March 31, 1994. In its application, Piedmont requested an increase of approximately $10.4 million annually. The increase approved by the Commission was the result of a stipulation entered into, or not opposed by, the parties to the proceeding, including the Public Staff of the North Carolina Utilities Commission.

In its application, Piedmont stated that the rate increase was needed because it has been adding customers, making capital improvements in its utility properties and obtaining new long-term capital from the sales of securities at unprecedented levels. The reasons cited by Piedmont in support of its request for a rate increase were to allow it to maintain its facilities and services in accordance with the reasonable requirements of its customers, to compete in the market for capital funds on fair and reasonable terms and to produce a fair profit for its stockholders.

The Commission notes that the increase to specific classes of customers will vary in order to have each customer class pay its fair share of the cost of providing service.

A typical year-round residential customer's annual bill will increase approximately 3.87% based on 910 therms of gas usage.

A subsidiary of Piedmont Natural Gas Company, Inc., and Public Service Company of North Carolina, Inc., have entered into an agreement to jointly construct an intrastate pipeline called Cardinal Pipeline, which is expected to be completed in December 1994. When Cardinal is completed and put in service, the record in the rate case will be re-opened, a further hearing will be held to consider evidence regarding the cost of the Cardinal Pipeline, and Piedmont's rates will be adjusted accordingly. The rate changes noted above exclude the effect of the Cardinal Pipeline.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of October, 1994.

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

DOCKET NO. G-9, SUB 351

Before the North Carolina Utilities Commission

In the Matter of Application of Piedmont Natural Gas Company, Inc., for (1) a General Increase in its Rates and Charges to Cover the Costs (Including a Return on Investment) of Additional Plant Constructed to Expand and Improve Natural Gas Services in North Carolina and (2) Approval of a New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636.	ERRATA ORDER

BY THE COMMISSION: On October 19, 1994, the Commission issued its Order Approving Settlement in this docket. Through inadvertence, the stipulation of the parties which was approved by the Order and which should have been attached to the Order as Exhibit A, was omitted.

The Commission finds good cause to issue the present Errata Order with Exhibit A attached hereto.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of October 1994.

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

For Stipulation and Schedules see Official Copy of Order in Chief Clerk's Office.

DOCKET NO. G-5, SUB 332

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD: August 9, 1994, at 10:00 a.m., Commission Hearing Room, Dobbs Building, 420 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, Tharrington, Smith, and Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For the Public Staff:

Vickie L. Moir and Gisele L. Rankin, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Attorney General:

Margaret A. Force, Assistant Attorney General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27626

BY THE COMMISSION: On June 1, 1994, Public Service Company of North Carolina, Inc., (PSNC or Company) filed the direct testimony and exhibits of Franklin H. Yoho, Senior Vice President - Marketing and Gas Supply for PSNC, and Danny G. Smith, Senior Financial Accountant, relating to the annual prudence review of PSNC's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On July 1, 1994, the Commission issued its Order scheduling a public hearing for August 9, 1994, setting dates for pre-filed testimony and intervention in this docket and ordering PSNC to publish notice.

On July 12, 1994, the Attorney General filed Notice of Intervention. On July 21, 1994, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene which was allowed by the Commission on July 28, 1994.

The Public Staff filed the direct testimony of James G. Hoard, Supervisor of the Natural Gas Section, Accounting Division, and Jeffrey L. Davis, Staff Engineer, Natural Gas Division on July 25, 1994.

The Stipulation of PSNC and the Public Staff was filed on August 9, 1994. PSNC witnesses Franklin H. Yoho and Danny G. Smith and Public Staff witnesses James G. Hoard and Jeffrey L. Davis testified at the public hearing on August 9, 1994.

On August 12, 1994, PSNC filed a corrected Schedule 8 to the testimony of Danny G. Smith.

On September 14, 1994, PSNC filed Affidavits of Publication evidencing the publishing of the notice required by the Commission.

Based on the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. PSNC is a public utility as that term is defined in Chapter 62 of the North Carolina General Statutes.

2. PSNC is engaged in the purchase, distribution and sale of natural gas (and in some instances, the transportation of customer-owned gas) to approximately 275,000 customers in central and western North Carolina.

3. PSNC has filed with the Commission and submitted to the Public Staff all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the twelve months ended March 31, 1994.

5. During the period of review, PSNC incurred gas costs of $162,182,317, and received $168,489,257 in recovery of gas costs through its rates. This resulted in an overrecovery of $6,306,940, which is added to the balance owed to customers of $986,460 in PSNC's deferred gas cost accounts at the beginning of the test year and is offset by the $5,318,842 of negotiated losses during the year.

6. At March 31, 1994, PSNC had a net credit balance of $1,930,158 in its deferred accounts, consisting of a debit balance of $2,792,293 in the sales only deferred account and a credit balance of $4,772,451 in the all customers deferred account.

7. The Public Staff took no exceptions to PSNC's accounting for gas costs and recoveries during the period of review.

8. PSNC has properly accounted for its gas costs during the period of review.

9. PSNC has transportation and supply contracts with the interstate pipelines which transport gas directly to PSNC's system and long term supply contracts with other suppliers.

10. The Public Staff and PSNC have entered into a stipulation, a copy of which is attached as Appendix A, in which the Public Staff acknowledged that prior to filing its testimony in this docket, it obtained sufficient information from PSNC to adequately review the prudence of the Company's gas costs. In connection with future prudence reviews, PSNC has agreed that with respect to future long-term supply arrangements, PSNC will make available to the Public Staff written information pertaining to potential sources of gas supply evaluated by the Company but not selected provided the information is protected as stated in the stipulation. The Public Staff and PSNC will attempt through further discussions and an on-site visit to reach an understanding on certain information regarding each source of short term gas supply that was evaluated but not selected by the Company. The Public Staff and PSNC further agreed either may seek a further Commission order if agreement is not reached.

11. Based on information reviewed by the Public Staff, PSNC has made prudent gas purchasing decisions, and the gas costs incurred by PSNC during the period of review were prudently incurred.

12. PSNC should be permitted to recover 100% of its prudently incurred gas costs.

13. PSNC requested Commission approval to collect the amount owed PSNC while simultaneously refunding the amounts due customers beginning with the first billing cycle of the month that follows the issuance date of the Commission's Order in this docket.

14. The rate changes associated with the balances in the Company's deferred accounts at March 31, 1994, the end of the review period in this proceeding, would be a temporary increment of $0.0706/dt to rates paid by sales only customers and a temporary decrement of $0.0976/dt to the rates paid by all customers.

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

The evidence for these findings of fact is contained in the official files and records of the Commission and the testimony of PSNC witness Yoho. These findings are essentially informational, procedural or jurisdictional in nature and are facts uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact is contained in the testimony of PSNC witnesses Yoho and Smith, and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

G.S. 62-133.4 requires that PSNC submit to the Commission information and data for a historical twelve-month test period which information and data include PSNC's actual cost of gas, volumes of purchased gas, sales volumes, negotiated

sales volumes and transportation volumes. In addition to such information, Commission Rule R1-17(k)(6)(c) requires that there be filed weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Witness Yoho testified that Commission Rule R1-17(k)(6) required PSNC to submit to the Commission on or before June 1, 1994, the required information based on a twelve-month test period ending March 31, 1994. Witness Yoho testified that PSNC complied with the filing requirements of G.S. 62-133.4 (c) and Commission Rule R1-17(k)(6) and an examination of witness Yoho's and Smith's testimony and exhibits confirms the same. Witness Smith also testified that PSNC filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accounting of the computations required by Commission Rule R1-17(k)(5)(c). Public Staff witness Hoard confirmed that the Public Staff had reviewed the filings and that they comply with the Rules.

The Commission concludes that PSNC has complied with all the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the twelve month review period ended March 31, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-8

The evidence supporting these findings of fact is found in the testimony of PSNC witness Smith and Public Staff witness Hoard.

PSNC witness Smith testified that PSNC billed customers $168,489,257 for gas costs, and incurred gas costs of $162,182,317 during the review period. Witness Smith's exhibit shows that the $6,306,940 ($168,489,257 less $162,182,317) overrecovery of gas costs during the period was added to the $986,460 deferred gas cost balance owed to customers at the beginning of the period, and offset by the $5,318,842 of negotiated margin losses that occurred during the review period.

PSNC witness Smith testified that at the end of the twelve-month period, PSNC had a credit balance of $1,930,158 in its deferred accounts. This credit balance consists of a debit balance of $2,792,293 in the commodity deferred account (sales customers only) and a credit balance of $4,772,451 in the demand deferred account (all customers).

Witness Hoard testified that the Public Staff had examined PSNC's accounting for gas costs during the review period and determined that PSNC had properly accounted for its gas costs.

Based upon the testimony and exhibits of the witnesses, the monthly filings by PSNC as required by Commission Rule R1-17(k)(5)(c) and the findings of fact set forth above, the Commission concludes that PSNC has properly accounted for gas costs during the period of review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-12

The evidence supporting these findings of fact is found in the testimony of PSNC witnesses Yoho and Smith and Public Staff witness Davis.

Witness Yoho testified that the most appropriate description of PSNC's gas supply policy is a "best cost" supply strategy. Witness Yoho testified that in developing the Company's gas supply strategy, there are three areas of emphasis: supply security, operational flexibility, and cost of gas.

Witness Yoho stated that the first and foremost area of concern is security of gas supply. He testified that to maintain the necessary supply security for the Company's firm customers, all of PSNC's firm interstate pipeline transportation capacity is backed up either by supply contracts providing delivery guarantees or by storage. He stated that the rationale for this requirement is driven by the fact that during design peak conditions, interruptible markets would most likely be curtailed. Witness Yoho testified that the Company has executed long-term supply agreements and supplemental short-term supply agreements with a variety of suppliers including producers, interstate pipeline affiliates, and independent marketers. He further testified that by developing a diversified portfolio of capable long-term and short-term suppliers, increased security of gas supply is achieved. He testified that potential suppliers are evaluated on a variety of factors including past performance and gas deliverability capability.

Witness Yoho testified that the second area of concern is the necessity of maintaining the operational flexibility of the Company's gas supply portfolio. He testified such flexibility is required because of the daily changes in PSNC's market as a result of weather, operating schedules of industrial customers, and the impact of fluctuating alternate fuel prices.

Witness Yoho testified that the third area of emphasis is cost. Mr. Yoho stated that PSNC is committed to acquiring the most cost effective supplies of natural gas available for its customers while maintaining the necessary security and flexibility to serve its market.

Witness Yoho also testified that PSNC executed service agreements with CNG Transmission Corporation (CNG) which became effective November 1, 1993. He testified that while Transcontinental Gas Pipe Line Corporation (Transco) is still the Company's primary interstate pipeline supplier, the contract with CNG is for 30,000 dt/day of additional capacity. He further testified that the Company also executed agreements with the following interstate pipelines which deliver gas into CNG's system: Texas Eastern, Tennessee Gas Pipeline, and Texas Gas Transmission.

Public Staff witness Davis testified that the Public Staff served PSNC with data requests relating to the Company's gas purchasing philosophies, customer requirements, and gas portfolio mixes. Witness Davis testified that even though the scope of NCUC Rule R1-17(k) is limited to a historical test year, he also considered other information such as design day estimates, forecasted load duration curves, forecasted gas supply needs, projections of capacity additions and supply changes, and changes in customer load profiles. Witness Davis further testified that based on his review of PSNC's gas supply contracts, information on how commodity or variable costs were determined, reservation fees, and the Company's gas procurement philosophies, it was his opinion that PSNC's purchasing practices were reasonable and prudent.

Before the commencement of the hearing, the Public Staff and PSNC entered into a stipulation regarding how information is to be provided in the future pertaining to suppliers of natural gas who submit proposals to PSNC but are not selected to provide supplies. In connection with future prudence reviews, PSNC has agreed that with respect to future long-term supply arrangements, PSNC will make available to the Public Staff written information pertaining to potential sources of gas supply evaluated by the Company but not selected provided the information is protected as stated in the stipulation. Long-term supply arrangements are defined as contracts for a term of more than one year. In regard to potential sources of shorter-term supplies that are not selected, PSNC and the Public Staff have agreed to attempt, through further discussions and an on-site visit, to reach an agreement as to the appropriate information to be made available in future review periods. The Public Staff and PSNC further agreed that either may seek a further Commission order if agreement is not reached.

The Commission concludes that the gas costs incurred by PSNC during the review period ended March 31, 1994, were reasonable and prudently incurred, and PSNC should be permitted to recover 100% of its prudently incurred gas costs. The Commission is also of the opinion that the stipulation between PSNC and the Public Staff should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

Witness Smith testified that PSNC requests Commission approval to collect the amount owed the Company while simultaneously refunding the amounts due to its customers beginning with the first billing cycle of the month that follows the issuance date of the Commission's Order in this docket. Witness Smith testified that the increment to collect the March 31, 1994 balance due from sales only customers of $2,792,293 over the succeeding annual period would be $0.0706/dt. He also testified that the decrement to refund the balance due to all customers of $4,772,451 would be $0.0976/dt. Witness Smith further testified that transportation customers would receive the full benefit of the decrement whereas the rate of sales customers would decrease by the net of the decrement and the increment, which is $0.0270/dt.

Public Staff witness Davis testified that he was in agreement with the proposed temporary increment and the temporary decrement proposed by the Company.

The Commission believes that the proposed temporary increment and the temporary decrement are just and reasonable to collect and simultaneously refund the balances in the gas deferred accounts until further order by the Commission.

IT IS THEREFORE ORDERED as follows:

1. That PSNC's accounting for gas costs and recoveries during the twelve-month period of review ended March 31, 1994, be, and the same hereby is, approved;

2. That PSNC be, and it hereby is, authorized to recover 100% of its gas costs incurred during the twelve-month period of review ended March 31, 1994, as the same are reasonable and prudently incurred;

3. That the stipulation agreed upon by PSNC and the Public Staff and attached as Appendix A is hereby approved;

4. That PSNC shall increase the rates to sales only customers by $0.0706 per dekatherm to collect the amount currently due to the Company related to the sales only deferred gas account beginning with the first billing cycle of the month following the date of this Order;

5. That PSNC shall decrease the rate to all customers by $0.0976 per dekatherm simultaneously with Ordering Paragraph 4 above to refund to customers the current amount due them by the Company related to the all customers deferred gas account beginning with the first billing cycle of the month following the date of this Order; and

6. That PSNC shall give notice to all its customers of the change in rates approved herein in conjunction with the notice of the rate changes approved in Docket No. G-5, Sub 327.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of October 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

In The Matter Of The Application Of Public Service Company Of North Carolina For Annual Review Of Gas Costs Pursuant To G.S. 62-133.4(c) And Commission Rule R1-17(k)(6)	))))))	DOCKET NO. G-5, SUB 332

STIPULATION

Public Service Company of North Carolina, Inc. ("PSNC" or the "Company") and the Public Staff of the North Carolina Utilities Commission hereby agree as follows:

1. The Public Staff acknowledges that prior to filing its testimony in the above-captioned proceeding, it obtained sufficient information from PSNC to adequately review the prudence of PSNC's gas costs. The terms of this stipulation shall supersede the recommendation contained in the Testimony of Jeffrey L. Davis (filed July 25, 1994) at page 4, line 24, through page 5, line 7.

2. PSNC agrees in connection with future prudence reviews that, with respect to future long-term supply arrangements (defined as contracts having a term of more than one year), PSNC will make available to the Public Staff written information pertaining to potential sources of gas supply evaluated by the Company but not selected, including requests for proposals and proposals received in response, provided this information is protected by the same confidentiality agreements and protective orders to which executed contracts are subject. Such information will not be used in any way that might lead to its disclosure or its becoming part of the evidence of record without first obtaining the Company's consent to such use or obtaining a Commission order permitting such use.

3. With respect to potential sources of shorter-term supplies that are not selected, PSNC and the Public Staff will attempt, through further discussions and an on-site visit, to reach an understanding as to the appropriate form and extent of information to be made available in future review periods.

Either party may seek a further Commission order in the event agreement is not reached."

4. This agreement is without prejudice to the right of either party to seek the modification of any of the foregoing terms and conditions upon appropriate application to the commission.

DATED August 8 1994.

William A. Davis, II
~~Counsel~~ for Public Service Company
of North Carolina, Inc.

Gisele L. Rankin
Counsel for Public Staff of the
North Carolina Utilities Commission

DOCKET NO. G-21, SUB 323

In the Matter Application of North Carolina Natural Gas Corporation for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	)	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 12, 1994, at 10:00 a.m.

BEFORE: Commissioner Judy Hunt, Presiding, Chairman Ralph A. Hunt and Commissioner Laurence A. Cobb

APPEARANCES:

For North Carolina Natural Gas Corporation:

Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland and Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Margaret A. Force, Associate Attorney General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27626

For the Public Staff:

Antoinette R. Wike, Chief Counsel and Gina C. Holt, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 31, 1994, North Carolina Natural Gas Corporation (NCNG or Company) filed the direct testimony and exhibits of John M. Monaghan, Jr., Vice President of Gas Supply and Transportation for NCNG, and Gerald A. Teele, Senior Vice President and Chief Financial Officer of NCNG, relating to the annual prudence review of NCNG's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On February 2, 1994, the Commission issued its Order scheduling a public hearing for April 12, 1994, setting dates for pre-filed testimony and intervention in this docket and ordering NCNG to publish Notice of these matters in a form of notice attached to the Commission's Order.

On February 28, 1994, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene which petition was allowed by the Commission on March 8, 1994.

On March 30, 1994, the Public Works Commission of the City of Fayetteville (PWC) filed a Petition to Intervene, which was allowed by the Commission on March 31, 1994.

The Public Staff filed the direct testimony of Julie G. Perry, Staff Accountant, and Jeffrey L. Davis, Utilities Engineer, on March 28, 1994. CUCA did not pre-file testimony in this proceeding. PWC did not pre-file testimony or make an appearance in this proceeding. NCNG witnesses John M. Monaghan and Gerald A. Teele and Public Staff witnesses Julie G. Perry and Jeffrey L. Davis testified at the public hearing on April 12, 1994. NCNG filed Affidavits of Publication evidencing the publishing of the notices required by the Commission and such Affidavits were entered into evidence at the start of the hearing.

Based on the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility as that term is defined in Chapter 62 of the North Carolina General Statutes.

2. NCNG is engaged primarily in the purchase, distribution and sale of natural gas (and in some instances, the transportation of customer-owned gas) to more than 129,000 customers in south central and eastern North Carolina.

3. NCNG has filed with the Commission and submitted to the Public Staff all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the twelve months ended November 30, 1993.

5. During the period of review, NCNG incurred gas costs of $110,664,843, and received $115,933,234 in recovery of gas costs through its rates. This resulted in an overrecovery of $5,268,391, which offset the unrecovered balance of $9,870,616 in NCNG's deferred gas cost accounts at the beginning of the test year.

6. During the period from August through November 1993, NCNG transported 3,657,608 dekatherms (dts) and recorded net compensation of $249,992 pursuant to buy/sell agreements. The Company credited 90% of the net compensation from these transactions to its all customers deferred account.

7. At November 30, 1993, NCNG had a net credit balance of $8,830 in its deferred accounts, consisting of a debit balance of $396,755 in the commodity deferred account and a credit balance of $405,585 in the demand deferred account.

8. The Public Staff took no exceptions to NCNG's accounting for gas costs and recoveries during the period of review.

9. NCNG has properly accounted for its gas costs during the period of review.

10. NCNG has transportation and supply contracts with the interstate pipelines which transport gas directly to NCNG's system and long term supply contracts with 10 other suppliers.

11. The Public Staff requested NCNG to provide certain information regarding each source of gas supply that was evaluated by the Company but not selected. NCNG refused to provide this information. In future proceedings, NCNG shall provide such information to the Public Staff and Attorney General pursuant to the confidentiality provisions ordered herein.

12. Based on information reviewed by the Public Staff, NCNG has made prudent gas purchasing decisions, and the gas costs incurred by NCNG during the period of review were prudently incurred.

13. NCNG should be permitted to recover 100% of its prudently incurred gas costs.

14. At the time of the hearing, NCNG did not propose to change its rates.

15. As of the date of the hearing NCNG had a temporary increment of $.0642/dt for sales only customers and a temporary decrement of $.0886/dt for all customers approved by the Commission in Docket No. G-21, Sub 315, effective November 1, 1993. By order issued May 3, 1994, in Docket No. G-21, Sub 327, the Commission approved the elimination of the $.0642/dt sales only increment and an increase in the all customers decrement to $.1424/dt.

16. The rate changes associated with the balances in the Company's deferred accounts at November 30, 1993, the end of the review period in this proceeding, would be a temporary increment of $.0126/dt to rates paid by sales only customers and a temporary decrement of $.0093/dt to rates paid by all customers. Removing the current temporaries and replacing them with the temporaries associated with the November 30, 1993, deferred account balances would result in an increase in sales only rates of $.1457/dt and an increase in transportation rates of $.1331/dt.

17. It is just and reasonable to continue the current temporary increments and decrements until further order of the Commission.

18. The Public Staff recommended and NCNG concurred that the test period should be changed so that it ends on October 31 of each year. In order to accommodate the shift in test periods, the next test period for NCNG would only be for eleven months ended October 31, 1994. The twelve-month test period would resume with the year ended October 31, 1995. The Commission has issued an Order in Docket No. G-100, Sub 58, proposing to change Commission Rule R1-17(k)(6)(a) to effect the Public Staff recommendation.

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

The evidence for these findings of fact is contained in the official files and records of the Commission and the testimony of NCNG witness Monaghan. These findings are essentially informational, procedural or jurisdictional in nature and are facts uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact is contained in the testimony of NCNG witness Monaghan and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

G.S. 62-133.4 requires that NCNG submit to the Commission information and data for a historical twelve-month test period that includes NCNG's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition to such information, Commission Rule R1-17(k)(6)(c) requires that there be filed weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Witness Monaghan testified that Commission Rule R1-17(k)(6) required NCNG to submit to the Commission on or before February 1, 1994, the required information based on a twelve-month test period ending November 30, 1993. Witness Monaghan testified that NCNG complied with the filing requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k)(6) and an examination of witnesses Monaghan's and Teele's testimony and exhibits confirms the same. Witness Teele also testified that NCNG filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accountings of the computations required by Commission Rule R1-17(k)(5)(c). Public Staff witness Perry confirmed that the Public Staff had reviewed the filings and that they complied with the rule.

The Commission concludes that NCNG has complied with all the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the twelve month review period ended November 30, 1993.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 9

The evidence supporting these findings of fact is found in the testimony of NCNG witness Teele and Public Staff witness Perry.

NCNG witness Teele testified that at the beginning of the twelve-month period, NCNG had a credit balance of $8,830 in its deferred accounts. This credit balance consists of a debit balance of $396,755 in the commodity deferred account (sales customers only) and a credit balance of $405,585 in the demand deferred account (all customers).

Witness Perry also testified that NCNG entered into buy/sell agreements starting in August 1993. During the period from August through November 1993, the Company transported 3,657,608 dts and recorded gross compensation of $510,791 and net compensation of $249,992 pursuant to these agreements. Witness Perry concluded that as a result of the buy/sell arrangements, the contracting end users, the firm market ratepayers, and the Company shareholders have benefitted. The firm market ratepayers received approximately $225,000, or 90%, of the net compensation from such transactions as a credit balance in the demand deferred account, which helped to mitigate the impact of the $3.7 million increase in charges for Firm Transportation (FT) service from Transcontinental Gas Pipe Line Corporation (Transco) that resulted primarily from the shift to the Straight Fixed Variable rate design methodology.

Witness Perry testified that the Public Staff had examined NCNG's accounting for its gas costs during the review period and determined that NCNG had properly accounted for its gas costs.

Based upon the testimony and exhibits of the witnesses, the monthly filings by NCNG as required by Commission Rule R1-17(k)(5)(c) and the findings of fact set forth above, the Commission concludes that NCNG has properly accounted for gas costs during the period of review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 - 13

The evidence supporting these findings of fact is found in the testimony of NCNG witnesses Monaghan and Teele and Public Staff witness Davis, and in the Commission's official files in this docket.

Witness Monaghan testified that the primary objective of NCNG's Board of Directors' gas supply acquisition policy is to insure that the Company has adequate volumes of competitively priced natural gas to meet the peak day demands of all firm customers on its system and to provide the maximum service possible to all customers during other times throughout the year. Witness Monaghan testified that NCNG takes steps to keep its gas costs as low as possible commensurate with its gas supply acquisition policy, which gives due consideration to price, security of supply, and flexibility of supply arrangements. In order to implement its policy, witness Monaghan testified that NCNG has a "portfolio mix" of long-term supply contracts, maintains backup peak-day gas supplies, requires that long-term contracts provide for periodic renegotiation, and requires that firm gas supplies be acquired primarily to meet peak season firm requirements. In addition, NCNG participates in matters before the Federal Energy Regulatory Commission (FERC), works closely with its industrial and municipal customers to negotiate rates or arrange transportation, and has its internal Gas Supply, Gas Control, and Industrial Marketing departments meet regularly. Witness Monaghan testified that NCNG also keeps informed about natural gas supply, closely monitors the energy markets, and communicates with its pipelines and gas suppliers.

NCNG sells or transports gas to two markets, firm and interruptible. Its firm market is principally residential, commercial and small industrial customers. NCNG's firm market also includes customers who have firm contracts for the purchase or transportation of certain volumes of gas and demand charges in their rates, including NCNG's four municipal customers. Witness Monaghan testified that NCNG believes that spot market purchases are more appropriate in the summer months when it is serving primarily an interruptible market.

Witness Monaghan testified that to ensure that new long-term gas supplies acquired as a result of Columbia Gas Transmission Corporation's (Columbia's) restructuring of services under FERC Order 636 on November 1, 1993, were obtained at a competitive cost, and also to provide market intelligence to be used in negotiations under three of NCNG's existing long-term contracts, NCNG sent a request for long-term proposals (RFP) to 15 suppliers, and received proposals from 14 suppliers in response to the RFP. NCNG has long-term supply and transportation contracts with Transco, which is essentially available on demand, and storage services provided by Transco and Columbia, as well as other long-term suppliers.

Witness Monaghan testified that Order 636 had a negligible impact on services provided by Transco, because Transco has operated its system as a fully unbundled transportation system since 1989. He also testified that NCNG also has 10 long-term supply contracts, including the Transco FS sales service contract, representing a total firm supply of 182,607 dekatherms per day for winter delivery and lesser amounts in the remainder of the year.

Public Staff witness Davis testified that the Public Staff served NCNG with data requests to which NCNG did not respond in full. During its investigation, the Public Staff requested NCNG to identify each potential source of gas supply that it added during the winter season and explain why the supplier was selected. NCNG responded to this request. The Public Staff also requested NCNG to identify each source of gas supply that it evaluated but did not select, describe the price and other contract terms offered, and explain why the supplier was not selected. According to NCNG's response, which is on file with the Commission, the Company sent a RFP to 15 suppliers in the spring of 1993 and received proposals from 14 suppliers in response. The Company also received unsolicited proposals from one of its existing long-term suppliers and from two other suppliers. The 17 proposals offered a total of 17 discrete options from which to choose. No further information was provided. Mr. Davis recommended that the Company's RFPs and responses be made available for review by the Public Staff under the same confidentiality agreements currently in effect for contract review. Although the Public Staff has reviewed NCNG's gas purchase and transportation contracts and compared them to similar contracts entered into by other gas utilities in North Carolina, meaningful and thorough review of proposals that are accepted logically requires access to RFPs and proposals that are rejected. According to Mr. Davis, prices and supply contracts entered into by utilities around the country are helpful tools to the Public Staff; however, they do not provide detailed information or terms which impact a company's decision to contract with a supplier or transporter, such as the reservation charges or "fixed premiums" which are a large part of NCNG's efforts to control the overall cost of gas.

Witness Monaghan testified that the gas supply proposals, which contain information considered commercially sensitive by the suppliers, are submitted on a confidential basis, and that the suppliers were not informed in advance that proposals submitted but not accepted might be subject to inspection or disclosure. Witness Monaghan admitted that suppliers whom NCNG has dealt with accept the fact that executed contracts are subject to inspection by the Public Staff. Witness Monaghan also stated that the Company could change its practices and inform its suppliers prospectively when it requests proposals that they might be subject to regulatory inspection.

Witness Monaghan argued that disclosure of the commercially sensitive information in the proposals might be detrimental to NCNG's ability to obtain competitive supplies, and that NCNG feared some suppliers would not even submit bids at all if they knew the proposals which were not accepted would be subject to review. However, Mr. Monaghan admitted that the foregoing reasons for refusing to turn over the RFP proposals were the same reasons that had been given in Docket No. G-100, Sub 47, for treating NCNG's actual contracts as confidential or proprietary. The Commission has taken judicial notice of its Orders in Docket No. G-100, Sub 47, dated February 21, 1989, March 29, 1989, and April 23, 1993. Under these orders, contracts are not filed with the Commission or the Public

Staff, but are made available for inspection by certain authorized representatives of the Attorney General and Public Staff who have signed a confidentiality agreement. The contracts remain in the custody of the Company or an authorized representative of the Company, and members of the Commission Staff do not have access, nor have they ever sought access, to these contracts. Witness Monaghan admitted that there have been no occasions since 1989 where the Public Staff has disclosed information contained in the contracts in violation of the confidentiality agreements or protective order.

Notwithstanding NCNG's refusal to provide information related to the gas supply sources that were not selected, Public Staff witness Davis reviewed the remaining responses to the data requests posed to NCNG, NCNG's testimony and exhibits in this docket, the monthly information submitted by NCNG on gas costs for the review period, gas purchase and transportation contracts, reservation or fixed cost fees, gas purchasing philosophies, customer requirements, gas portfolio mixes, design day estimates, forecasted gas supply needs, customer load profile changes, and projections of capacity additions and supply changes. Mr. Davis testified that in the Public Staff's opinion, NCNG's purchasing practices were reasonable and prudent.

The Commission concludes that the gas costs incurred by NCNG during the review period ended November 30, 1993, were reasonable and prudently incurred, and NCNG should be permitted to recover 100% of its prudently incurred gas costs.

The Commission finds that NCNG's arguments in support of its refusal to provide to the Public Staff the requested information regarding the procurement process are unconvincing. It is implausible that a supplier who accepts the fact that if its proposal is selected by NCNG, it will be subject to review by the Public Staff under strict confidentiality and protective orders, will decline to submit a proposal for the mere reason that its unaccepted proposal would be subject to review under the same confidentiality agreements. The executed contracts are protected by strict confidentiality agreements and protective orders. Witness Monaghan admitted that NCNG is concerned with the prospect of the Public Staff's second-guessing its decisions, but this concern does not negate the Public Staff's statutory right, on behalf of the consuming public, to look at all relevant factors necessary to render a complete and accurate opinion regarding whether NCNG's purchases were prudent. Indeed, under G.S. 62-34, the Public Staff has the same authority as the Commission and its staff to examine the books and records of public utilities.

The Commission believes that information related to the RFPs and the proposals received by NCNG are relevant to a thorough and complete analysis and review of the prudence of NCNG's gas purchasing practices. Therefore, the Commission will order that in subsequent review periods, NCNG shall provide to the Public Staff any and all information pertaining to potential sources of gas supply that were evaluated by the Company but not selected, including its RFPs and proposals received in response, provided this information is protected by the terms and conditions of the confidentiality agreements and protective orders to which the executed contracts are subject. Further, in light of NCNG's concern that disclosure of information in such RFPs and proposals might compromise its bargaining position, the Commission hereby specifically orders that the Public Staff and Attorney General not use any information in such RFPs or proposals in any way that might lead to its disclosure or to its becoming part of the evidence

of record without first obtaining the Company's consent to such use or filing a motion with the Commission and obtaining a Commission order permitting such use. NCNG may so advise potential suppliers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 17

NCNG witness Teele testified that NCNG has in its sales rates an increment of $.0642/dt for the deferred gas costs-sales customers only account effective November 1, 1993, and a rate decrement of $.0886/dt for the deferred gas costs-all customers account effective November 1, 1993. The temporaries were approved in connection with the Company's Purchased Gas Adjustment (PGA) filing in Docket No. G-21, Sub 315. The increment and decrement were proposed to be in rates for twelve months ending October 31, 1994.

Witness Teele testified that because the net deferred account balance is close to zero and because of the volatility in commodity costs and expected overcollection of fixed costs this winter, NCNG recommends that the current increments and decrements and the rates presently in place remain the same. He did state, however, that NCNG may file an application to lower its rates effective May 1, 1994. The Commission takes official notice of the Company's application in Docket No. G-21, Sub 327, to eliminate the $.0642/dt sales only increment and increase the all customers decrement to $.1424/dt. These changes were approved by order issued May 3, 1994.

Public Staff witness Davis testified that the rate changes associated with the deferred account balances at November 30, 1993, the end of the annual review period, would be a temporary increment of $.0126/dt to rates paid by sales only customers and a temporary decrement of $.0093/dt to rates paid by transportation customers. He stated that if the temporary increments and decrements in effect at the time of the hearing were removed and replaced with those associated with the deferred account balances, the result would be increases to sales only and transportation customers of $.0277/dt and $0.0793/dt, respectively. He further stated that under NCNG's proposal, customers would receive refunds of current overcollections as well as the refunds required by G.S. 62-133.4. Therefore, the Public Staff believed that NCNG's proposal was reasonable and did not recommend a rate change in this proceeding.

The Commission concludes that witness Davis's analysis remains valid. Based on the calculations shown in his testimony (Tr. p. 129, ll. 5-20), replacing the $.1424/dt per dekatherm temporary decrement with the temporary increment and decrement associated with the deferred account balances would result in rate increase of $.1457 per dekatherm for sales only customers and $.1331 per dekatherm for transportation customers. Such changes are clearly inappropriate at this time. The Commission concludes that the recommendation of the Company and the Public Staff not to change rates is just and reasonable and that the current temporaries should remain in effect until further order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Public Staff witness Davis recommended that NCNG's historical twelve-month test period as set forth in NCUC Rule R1-17(k)(6)(a) be changed. Witness Davis testified that the Company's present test year, which ends November 30, presents problems for investigation and evaluation, because it involves a "split winter".

Witness Davis further explained that NCNG's winter period is considered to be November through March, but when the current test period is used, the Public Staff does not get to analyze a full winter. The Public Staff recommended, and NCNG concurred, that the problem be corrected in two steps. First, the next test period should be only eleven months to accommodate the shift in test periods, such that NCNG's test year would be the eleven months ended October 31, 1994. Second, the test year shift would be completed in 1995 and would continue thereafter with the twelve months ended October 31.

The Commission believes that it is reasonable to change NCNG's test year as provided in NCUC Rule R1-17(k)(6)(a) as recommended by the Public Staff and to change the hearing date for NCNG. The hearing date for the present proceeding was changed at NCNG's request due to the proximity of the Easter holiday. Since the present test year was adopted in a rulemaking proceeding in Docket No. G-100, Sub 58, the Commission believes it appropriate to deal with this change in that docket. The Commission has issued an Order in that docket to change NCUC Rule R1-17(k)(6)(a) to effect the Public Staff recommendation.

IT IS THEREFORE ORDERED as follows:

1. That NCNG's accounting for gas costs and recoveries during the twelve-month period of review ended November 30, 1993, be, and the same hereby is, approved.

2. That NCNG be, and it hereby is, authorized to recover 100% of its gas costs incurred during the twelve-month period of review ended November 30, 1993, as the same are reasonable and prudently incurred.

3. That NCNG produce for review by the Public Staff and the Attorney General any and all information related to potential sources of gas supply that the Company evaluated but did not select during the next and all future review periods, including its RFPs and the proposals relating to the RFPs, subject to the confidentiality agreements and protections imposed hereinabove.

4. That the increments and decrements in NCNG's rates, which are presently in place, remain unchanged until further order of the Commission.

5. That the Commission has issued an order in Docket No. G-100, Sub 58, proposing to change NCNG's test year as provided in NCUC Rule R1-17(k)(6)(a) to the twelve months ending October 31 and that, assuming the change is adopted in that docket, an eleven-month review period for the next prudence review is authorized to accommodate the transition.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of June 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

MOTOR TRUCKS - AUTHORITY GRANTED COMMON CARRIER

DOCKET NO. T-2143, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Merritt Trucking Company, Inc., Post Office Box 18346, Greensboro, North Carolina 27419 - Application for Common Carrier Authority	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, July 19, 1994, at 9:30 a.m.

BEFORE: Ralph A. Hunt, Presiding; Commissioners William W. Redman, Jr., Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For the Applicant:

Theodore C. Brown, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Merritt Trucking Company, Inc.

For the Protestants:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 1351, Raleigh, North Carolina 27602-1351
For: Santee Carriers, Inc., and Southern Bulk Haulers, Inc.

BY THE COMMISSION: On May 13, 1994, Commission Hearing Examiner Barbara A. Sharpe entered a Recommended Order in this docket granting in part the application for common carrier authority filed by Merritt Trucking Company, Inc. (Merritt or Applicant). By the Recommended Order, the Applicant was granted irregular route common carrier authority as follows:

Transportation of Group 21, commodities in bulk, in tank trucks except lime and fly ash, statewide.

On May 31, 1994, the Protestants filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

An oral argument was scheduled for Tuesday, July 19, 1994, to consider the Protestants' exceptions.

Upon call of the matter for oral argument at the appointed time and place, both the Applicant and the Protestants were represented by counsel who offered oral argument in support of their respective positions.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding, the Commission concludes that all of the findings of fact, conclusions, and decretal paragraphs contained in the Recommended Order dated May 13, 1994, in this docket are fully supported by the record; that the Recommended Order should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions filed by the Applicant should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by the Protestants with respect to the Recommended Order entered in this docket on May 13, 1994, be, and the same are hereby, denied.

2. That the Recommended Order Granting Application in Part entered in this docket by Hearing Examiner Barbara A. Sharpe on May 13, 1994, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of July 1994.

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

DOCKET NO. T-2689, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Puryear Transport, Inc., 5844 Lease Lane, Raleigh, North Carolina 27613 - Application for Common Carrier Authority	)))	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 4, 1994, at 9:30 a.m.

BEFORE: Commissioner Ralph A. Hunt, Presiding; Chairman John E. Thomas, and Commissioners William W. Redman, Jr., Charles H. Hughes, and Allyson K. Duncan

APPEARANCES:

For the Applicant:

Robert W. Kaylor, Bode, Call & Green, Attorneys at Law, Post Office Box 6338, Raleigh, North Carolina 27628-6338
For: Puryear Transport, Inc.

For the Protestants:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 1351, Raleigh, North Carolina 27602-1351
For: Eagle Transport Corporation; Kenan Transport Company, Incorporated; Wendell Transport Corporation; and A.C. Widenhouse, Inc.

BY THE COMMISSION: On December 6, 1993, Commission Hearing Examiner Barbara A. Sharpe entered a Recommended Order in this docket granting in part the application for common carrier operating authority filed by Puryear Transport, Inc. (Applicant). By the Recommended Order, the Applicant was granted irregular route common carrier authority as follows:

Transportation of Group 21, Specification No. 2 oil, in bulk, in tank trucks, from Lee County to all points in North Carolina.

On December 14, 1993, the Applicant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order entered in this docket on December 15, 1993, the Commission scheduled an oral argument for Tuesday, January 4, 1994, at 9:30 a.m. to consider the Applicant's exceptions.

Upon call of the matter for oral argument at the appointed time and place, both the Applicant and the Protestants were represented by counsel who offered oral argument in support of their respective positions.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding, the Commission concludes that all of the findings of fact, conclusions, and decretal paragraphs contained in the Recommended Order dated December 6, 1993, are fully supported by the record; that the Recommended Order should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions filed by the Applicant should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by Puryear Transport, Inc., with respect to the Recommended Order entered in this docket on December 6, 1993, be, and the same are hereby, denied.

2. That the Recommended Order Granting Applicant, In Part entered in this docket by Hearing Examiner Barbara A. Sharpe on December 6, 1993, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of January 1994.

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

Commissioner Charles H. Hughes dissents. Commissioner Hughes would reverse the Recommended Order and grant the application.

Commissioners Laurence A. Cobb and Judy Hunt did not participate in deciding this case.

DOCKET NO. P-31, SUB 125

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Lexington Telephone Company - Denton and Thomasville to Lexington Extended Area Service	)	ORDER ESTABLISHING EAS RATE ADDITIVES AND AUTHORIZING POLLING

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, June 2, 1993, at 9:30 a.m.

BEFORE: Commissioner Julius A. Wright, presiding; Commissioners William W. Redman, Jr., Sarah Lindsay Tate, Charles H. Hughes, Laurence A. Cobb, and Allyson K. Duncan (Commissioners Tate and Wright did not participate in decision-making process.)

APPEARANCES:

For Lexington Telephone Company:

F. Kent Burns and Daniel C. Higgins, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27608

For AT&T Communications, Inc.:

William A. Davis, II, Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This matter arose with the submission of resolutions adopted by the Davidson County Board of Commissioners, the Thomasville Area Chamber of Commerce, the Cities of Lexington and Thomasville, the Town of Denton, and petitions bearing approximately 3,500 signatures expressing support for two-way, nonoptional extended area service (EAS) between Lexington Telephone Company's (Lexington or Company) Lexington exchange and ALLTEL Carolina Inc.'s (ALLTEL) Denton exchange as well as between the Lexington exchange and North State Telephone Company's (North State) Thomasville exchange. The Public Staff brought the matter before the Regular Commission Staff Conference on April 6, 1992, and stated its belief that the facts demonstrated sufficient community of interest and broad-based support to justify pursuing the EAS proposal.

By Order issued April 10, 1992, the Commission required Lexington and North State to conduct cost studies and ALLTEL to apply its EAS matrix tariff to develop local rate increases for their respective exchanges. The cost study results and EAS tariff results were to be provided to the Commission within 90 days.

On December 14, 1992, the Public Staff again brought the matter to the Regular Commission Staff Conference. The Public Staff stated that it accepted ALLTEL's EAS rate additives for the Denton exchange but had made several changes in Lexington's and North State's cost studies and recalculated its own rate additives, which it considered de minimis; for the Lexington and Thomasville exchanges. Lexington and North State did not agree with the rate additives calculated by the Public Staff. On January 12, 1993, the Commission issued an Order requiring the Public Staff to file its Lexington and North State cost studies and supporting workpapers. The Public Staff filed its cost study revisions and supporting workpapers on January 16, 1993. On February 25, 1993, the Commission issued an Order setting the matter for hearing to determine the appropriate rate additives for Thomasville and Lexington, stating that it found sufficient community of interest to authorize polling once the appropriate EAS rate additives were established.

On April 8, 1993, North State advised the Commission that it and the Public Staff had reached agreement on rate additives for Thomasville, which, in the context of this proceeding, would be considered de minimis. North State therefore requested that it be excused from the hearing. By Order issued April 15, 1993, the Commission excused North State from the hearing and approved the EAS rate additives applicable to the Thomasville exchange, reserving the question of whether these additives would be considered de minimis to a later point in the proceeding.

When the matter came on for hearing, essentially two issues were before the Commission:

1. What are the incremental equipment costs that Lexington will incur to provide the proposed Denton and Thomasville to Lexington EAS arrangement?

2. Will Lexington sustain serious financial distress if the Commission fails to consider lost toll and access revenues (hereinafter, toll and access revenues combined are referred to as toll revenues) in determining the EAS rate additives applicable to the Lexington exchange?

Additionally, Lexington also raised two other issues at the time of the hearing:

1. Will Commission Rule R9-7 be unconstitutional if applied so as to deny Lexington recovery of the toll revenue lost from providing the proposed EAS arrangement?

2. If the subject EAS arrangement is implemented, should it be expanded to include Lexington's Welcome and Southmont exchanges?

Lexington presented the testimony and exhibits of B. Earl Hester, Jr., Vice President and Assistant General Manager: Dale T. Snider, General Accounting Manager; and Joel O. Williams, President of Mid-South Consulting Engineers, Inc. The Public Staff presented the testimony and exhibits of Robert A. Goetz and John T. Garrison, Jr., engineers with the Communications Division of the Public Staff, and John Robert Hinton, a financial analyst with the Economic Research Division.

On January 14, 1994, Lexington filed a motion to stay further proceedings and suspend deliberation in this docket. The primary reason cited was the advent of the defined-radius plan proposals being addressed in Docket No. P-100, Sub 126. In this spirit, Lexington had filed proposed revisions to its tariffs to establish a Lexington expanded local calling plan, a type of defined-area plan.

On January 28, 1994, the Public Staff filed a Response to Motion to Stay Further Proceedings in which it opposed Lexington's motion. The Public Staff noted that Lexington has proposed expanded local calling in the past but that the Commission had proceeded with the EAS proposal. The Public Staff also noted and opposed North State's January 24, 1994, request in Docket No. P-100, Sub 126, that the Commission defer action on its exchanges involved in this docket pending its proposed revisions in the Triad Regional Calling Plan.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in the matter, the Commission makes the following

FINDINGS OF FACT

1. The scope of the EAS proposal should be limited to toll-free calling between Lexington and Denton and between Lexington and Thomasville.

2. Apart from any consideration of whether lost toll and access revenues should be reflected in developing the applicable Lexington EAS rate additives, in all other respects the cost study procedures advocated by the Public Staff are reasonable and appropriate for use in this proceeding to determine Lexington's incremental costs of providing EAS.

3. The net annual toll and access revenue loss that should be anticipated by Lexington as of the subject EAS cutover date is $600,969.

4. The EAS rate additives applicable to the Lexington exchange should reflect the inclusion of 50% of the loss of toll and access revenues resulting from implementation of the Denton and Thomasville to Lexington EAS arrangement in order to avoid placing Lexington in serious financial distress.

5. The legal and constitutional arguments raised by Lexington concerning Commission Rule R9-7 are flawed and erroneous.

6. The appropriate EAS rate additives applicable to the Company's Lexington exchange are as follows:

SERVICE	RATE
One Party Residence	$ 0.90
One Party Business	$ 2.29
Key Trunk	$ 2.86
PBX Trunk	$ 4.60

7. The appropriate EAS rate additives applicable to ALLTEL's Denton exchange are as follows:

SERVICE	RATE
One Party Residence	$ 3.02
One Party Business	$ 7.41
Key Trunk	$11.10
PBX Trunk	$14.81

8. The appropriate EAS rate additives applicable to North State's Thomasville exchange are as follows:

SERVICE	RATE
One Party Residence	$ 0.17
One Party Business	$ 0.39
Key Trunk	$ 0.42
PBX Trunk	$ 0.63

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in the testimony and exhibits of Lexington's witness Hester and Public Staff witness Garrison.

The Commission Order, issued on February 25, 1993, setting this matter for hearing found that a sufficient community of interest and broad-based support had been demonstrated to authorize polling regarding the proposal of toll-free calling between Lexington and Denton and Lexington and Thomasville. The purpose of the hearing scheduled for June 2, 1993, was for making a determination of the appropriate level of the EAS rate additives for the Company's Lexington subscribers and North State's Thomasville subscribers.

On April 12, 1993, Lexington prefiled the direct testimony of witness Hester; therein the Company took the position that the scope of the Lexington and Denton and Lexington and Thomasville EAS inquiry should be expanded to include the Company's Welcome and Southmont exchanges.

At the hearing, witness Hester provided the community of interest factors (CIFs) for Southmont to Denton and from Welcome to Thomasville. Although witness Hester did not know the CIFs for Southmont to Thomasville and from Welcome to

Denton, witness Garrison provided an estimate of the CIFs for these two routes as well as the CIFs from Denton to Southmont and Welcome. The CIFs for the additional routes are as follows:

ROUTE	CIF
Southmont to Denton	1.74
Southmont to Thomasville	1.47
Denton to Southmont	0.74
Denton to Welcome	0.17
Welcome to Denton	0.24
Welcome to Thomasville	1.08

Information from which to determine the CIFs from Thomasville to Southmont and Welcome was not available. The only percentage making calls (PMCs) available for these additional routes is from Denton to Southmont, which is 13%. From the information available to the Commission, the additional routes proposed by Lexington do not meet the calling criteria set out in Rule R9-7 for intra-county EAS proposals which require a CIF of 2.0 for residential customers or a combined residential/business CIF of 2.5 with a PMC of 25% or greater.

The Commission can find no special circumstances in this case. Lexington is the only party to the proceeding who has recommended that the scope of the EAS proposal be expanded. The proposal was formally instituted a year before Lexington proposed its expansion in witness Hester's testimony. During that time, Lexington had ample opportunity to request inclusion of its Southmont and Welcome exchanges. Moreover, the Commission has received no broad-based support from affected customers to add Southmont and Welcome to the EAS proposal.

Based on the foregoing, the Commission concludes that the scope of the EAS proposal should be limited to toll-free calling between Lexington and Denton and between Lexington and Thomasville. Thus, the Southmont and Welcome exchanges will not be included in the subject EAS arrangement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence supporting this finding of fact is contained in the testimony and exhibits of Lexington witness Williams and Public Staff witnesses Goetz, Garrison and Hinton.

The cost study rate additives for the subject EAS arrangement as developed by the Public Staff, based on incremental equipment costs, are $0.18 for residential service and $0.47 for business service. Lexington witness Williams, a consultant with Mid-South Consulting Engineers, Inc., developed corresponding rate additives of $0.47 for residential service and $1.20 for business service. These foregoing EAS rate additives are all calculated exclusive of any consideration of toll revenue loss and they indicate a wide difference between the parties as to what the appropriate rate additives, exclusive of lost toll revenues, should be. Such differences are due, respectively, to the parties varying opinions as to what are the proper factors/assumptions to be used in performing an appropriate cost study for purposes of this proceeding. In general, Lexington and the Public Staff had different opinions with respect to the following factors/assumptions: average busy hour, stimulation factor, traffic

projections, trunk requirements, trunk additions, central office (CO) digital port costs, digital trunk controller (DTC) and network module equipment, embedded equipment costs and discount rates.

With regard to the issue of average busy hour, witness Williams identified the busy hour for toll traffic between Lexington and Thomasville and Lexington and Denton by examining two weeks of Company billing data and choosing the busiest hour of usage for each route during the two-week period. The busy hour used for the Lexington-Thomasville route was 8:00-9:00 p.m. on May 14, 1992; the busy hour used for the Lexington-Denton route was 8:00-9:00 p.m. on May 13, 1992.

To make its determination of the average busy hour, the Public Staff used the Southern Bell Telephone and Telegraph Company (Southern Bell) method of busy hour EAS Centum Call Seconds (CCS - 100 seconds of usage on a telephone facility) determination, which uses toll messages measured during a typical 30-day period of the year which should exclude days when the traffic is expected to be unusually high or low such as Christmas and Mother's Day.

In Lexington's cost study, witness Williams used a stimulation factor of 6.0 to convert estimated toll traffic in CCS at cutover to estimated EAS CCS at cutover. Witness Williams testified that actual EAS traffic stimulation factors could vary from 1.5 to 12.0 or higher, although the average in most cases was 3.0 to 5.0. Witness Williams indicated that the route to Thomasville would be greatly affected by the furniture market and might cause peaks of traffic greater than his projection and the fact that Lexington is the county seat would also tend to increase stimulation. Based on this reasoning, witness Williams stated that the stimulation on this route would therefore be somewhat higher than the average of 3.0 to 5.0 as seen on most EAS upgrades and thus he believed 6.0 to be an appropriate stimulation factor.

Public Staff witness Goetz testified that he used a Southern Bell formula for his traffic calculations which incorporated a stimulation factor of 5.0. The Public Staff provided information which documented Southern Bell's experiences with EAS traffic stimulation on 15 separate trunk group offerings which included large metropolitan exchanges and/or county seat exchanges. Such data showed that Southern Bell had used stimulation factors ranging from 3.0 to 10.0 since February 1985, with 5.0 being employed exclusively since July 1987 and in every case, using its standard conversion factors and a stimulation factor of 5.0, Southern Bell overestimated the number of EAS trunks required at cutover. The only other telephone company with more exchanges involved in EAS proposals (including county seat or countywide calling proposals) over the past five years is Carolina Telephone Company (Carolina). Witness Goetz testified that Carolina had used stimulation factors in the range of 3.0 to 5.0 during this same period of time. Based on the foregoing, witness Goetz believed a stimulation factor of 5.0 was more appropriate than the factor of 6.0 used by the Company.

Further, with regard to the issues of traffic projection, trunk requirements, and trunk additions, a determination of two-way EAS CCS levels for each route had to be calculated in order to compute the number of two-way trunks required to carry the anticipated EAS traffic loads. In this regard, witness Williams argued that there was no basis to determine if the Southern Bell formula used by witness Goetz to determine the CCS requirement is valid. Witness Williams' concern was that such formula assumed a duration of 220 seconds per

call, whereas the actual length for calls to Thomasville was 40 seconds greater and the actual length for calls to Denton was 50 seconds greater. Further, witness Williams took issue with witness Goetz's use of a 50% factor to account for ring, no answer and busy conditions, instead of using a 30% factor as he recommended.

Public Staff witness Goetz stated that he was unaware of how the conversion factors used by Southern Bell were specifically determined, beyond the information that Southern Bell has provided in past EAS studies submitted to the Commission, but that he understood the factors had been obtained through years of studies. On redirect examination, witness Goetz testified that to the best of his knowledge, the Commission had never rejected the factors that Southern Bell uses in its EAS studies. Further, as noted by the Public Staff, the important point is that the formulas and factors used will closely approximate those that will exist at cutover. Witness Goetz provided an Exhibit No. 3, captioned "Southern Bell - EAS Trunk Group Data", as evidence showing that the Southern Bell formula is not likely to underestimate the traffic levels that will occur. Such exhibit provided data, for 15 different Southern Bell EAS offerings occurring between 1985-1992, which showed that in all the Southern Bell offerings the number of trunks installed was much greater than the number of trunks actually required. According to witness Goetz, witness Williams' procedures tend to produce higher traffic levels than those employed by Southern Bell, and may result in placement of trunk quantities which significantly exceed the actual requirements.

The Company and the Public Staff agreed on a 10% EAS growth rate after cutover, and the Company did not object to the traffic tables which the Public Staff used to translate EAS traffic levels into trunk requirements.

Based on the foregoing, the Commission finds that the Public Staff's methodology for determining the average busy hour is reasonable and appropriate for use in this proceeding. The Commission believes that the Public Staff's method of using toll messages which exclude days of unusually high or low traffic for an average busy hour is reasonable and appropriate. The Commission also agrees with the Public Staff that a stimulation factor of 5.0 is a fair standard considering the common use among other telephone companies of a factor of 5.0 or less. Further, the Commission believes that, for purposes of this proceeding, the Southern Bell formula produces reasonable traffic and trunk projections. The Commission therefore finds the incremental trunk requirements specified by the Public Staff for the cutover year and subsequent years to be reasonable.

Regarding the issues of CO digital port costs/DTC and network module equipment, witness Williams provided costs for new central office equipment which included CO digital ports and DTC and network equipment and testified that these represent costs for projected central office additions that will be required at an earlier date than would otherwise be required as a result of EAS traffic.

Public Staff witness Goetz testified that he did not oppose inclusion of DTC and network module costs in the study, but he argued that Lexington's cost study unfairly required EAS to bear the full cost of DTC and network module equipment that would be predominantly used for non-EAS purposes. According to witness Goetz, the cost of Lexington's 1994 DTC placement was assigned to EAS, despite the fact that only three of the 20 available circuits would be used to satisfy

EAS requirements. For all years except 1993, witness Goetz took costs per DS-1 port in a fully-equipped network module with a bay and in a fully-equipped DTC with a bay and multiplied them by the DS-1 port requirements for the Lexington-Thomasville and Lexington-Denton EAS. He followed the same procedure in computing the 1993 network module cost, but noted that there would be embedded DTC bay equipment in place during 1993 and excluded the DTC bay cost from the 1993 equipment calculations.

The Commission concurs with the Public Staff that Lexington's recommended allocation of DTC and network module equipment improperly shifts the burden of the EAS and non-EAS costs onto the EAS arrangement. The Commission believes that the Public Staff's methodology for computing the costs of the DTC and network module equipment is reasonable and those results should be included as a cost to the provision of the subject EAS.

As to the issue of embedded costs, Lexington contends that it is entitled under Rule R-9-7(e)(2) to recover the embedded cost of investments previously used to provide toll service but which will be used for EAS rather than toll upon implementation of EAS. The Commission finds that the record shows there is spare capacity on toll facilities between Lexington and Thomasville and between Lexington and Denton. This capacity is currently available to carry traffic along these routes as well as to the rest of the world, and it will remain available for the same purpose after EAS is implemented. The fact that overall toll traffic will be temporarily reduced at cutover only means that the Company will not have to add circuits as soon as it otherwise would. It does not mean, and Rule R-9-7(e)(2) does not provide, that the cost of these circuits is an incremental cost of providing EAS. The Commission therefore concludes that the embedded CO switch usage cost shown in Lexington's cost study does not satisfy the definition of embedded toll investment being reused for EAS, and thus should be excluded from the subject EAS cost study.

The one remaining issue between the Company and the Public Staff is the appropriate discount rate to employ to determine the present worth of each year's revenue requirement in the EAS cost study based upon a ten-year present worth analysis. Lexington witness Williams' cost study employed a 10.49% rate of return on the related EAS investment and a 12% discount rate. However, on cross examination witness Williams testified that he would have to defer to someone else to address the appropriateness of such rates, but thereafter, Lexington did not provide any such witness.

Public Staff witness Garrison used a rate of 10.41% as his return on investment and also as his discount rate in his cost study as recommended by witness Hinton. Witness Hinton's recommended discount rate of 10.41% was calculated based upon a pro forma capital structure consisting of 47% long-term debt, 1% preferred stock and 52% common equity and with corresponding related cost rates of 8.74%, 5.81% and 12%, respectively.

Based on the evidence presented in regard to the appropriate discount rate and based upon our previously discussed general conclusions to agree with the Public Staff regarding other major factors at issue in the cost study, the Commission finds that for purposes of this proceeding only, on balance, the

Public Staff's cost study factors/assumptions are overall more reasonable than Lexington's with one exception. That exception relates to the issue of toll loss recovery which is addressed subsequently, specifically, in the Evidence and Conclusions for Finding of Fact No. 4.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Hester and Public Staff witness Garrison.

Witness Hester testified that the Company's toll revenue loss related to the Denton and Thomasville to Lexington EAS arrangement would be $485,041, annually, based upon the Company's actual toll revenue figures. Witness Garrison testified that the subject EAS related toll revenue loss would be $600,969, annually, based upon a calculation that reflects the manner in which Lexington receives monies from the intraLATA toll pool, as well as the interLATA access and billing and collection rates applied to the actual messages and minutes used in its cost study.

In this proceeding, the evidence of record does not contain any direct explanation of how Lexington's actual toll revenue loss figures were calculated. The Public Staff stated that it considered the Company's calculation of the actual toll revenue loss to be equivalent to its billed toll revenues which would be incorrect, especially, since Lexington receives both intraLATA toll pool revenues and foreign exchange revenues based on settlements.

Witness Garrison testified that the manner in which Lexington receives monies from the intraLATA toll pool is the result of a settlement. This settlement approach imputes access charges on the minutes of use Lexington reports to the pool based upon the traffic sensitive rates plus amounts for network and operator surcharges plus a residual distribution minutes of use charge. Likewise, witness Garrison testified that foreign exchange revenues received by Lexington are also the result of settlements. Further, witness Garrison testified that his interLATA access and billing and collection revenues reflect Lexington's rates times the minutes of use and messages used in the Public Staff's study. Therefore, the interLATA access and billing and collection amounts calculated by the Public Staff would be consistent with the messages and minutes used in its cost study. Additionally, the Public Staff's calculation of the accounting and commercial savings to be experienced by Lexington also reflects the messages used in its cost study.

Based upon the foregoing, the Commission believes that Lexington's toll revenue loss calculation would be inappropriate for use in this proceeding. The Commission therefore concludes that a net toll revenue loss of $600,969, as calculated by the Public Staff, reflects the base minutes and messages used in the cost study and is a reasonable determination of the net toll loss that will be experienced by Lexington as of the EAS cutover.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the testimony and exhibits of Lexington's witnesses Hester and Snider and Public Staff witness Hinton. Lexington and the Public Staff have opposing recommendations on what is

the appropriate amount of lost toll revenues, resulting from implementation of the Denton and Thomasville to Lexington EAS arrangements, to be charged to subscribers receiving the extended area service as a permanent component of their recurring monthly rate, in addition to the incremental cost of providing the EAS arrangement, in order to avoid placing the Company in serious financial distress. Lexington's recommendation is that the EAS rate additives established in this proceeding should reflect the inclusion of 100% of the subject lost toll revenues in order to avoid serious financial distress. The Public Staff disagrees with Lexington in this regard and recommends that the EAS rate additives not reflect any inclusion of the subject lost toll revenues, since such revenue loss would not, in the Public Staff's opinion, place Lexington under serious financial distress.

Commission Rule R9-7(e)(1) states, in part, as follows:

> "...As a general rule, the Commission has not authorized telephone companies to consider lost toll revenues in developing applicable EAS charges. The Commission will continue to follow this general policy in future EAS cases unless it can be clearly demonstrated in a particular case that a failure to consider lost toll revenues will in fact result in serious financial distress to the LEC and, in turn, to its remaining local customers..."

The Commission's Rules, including Rule R9-7, do not set forth specific standards or guidelines to be followed in determining the existence or absence of "serious financial distress". In this proceeding, Lexington and the Public Staff have presented widely differing approaches as to how the Commission should make such a determination. Lexington's approach results in a recommendation that the EAS rate additives include 100% of the subject lost toll revenues, whereas, the Public Staff's approach would exclude 100% of the subject lost toll revenues from the calculation of the appropriate EAS rate additives.

Lexington contends that the following factors should be considered in assessing the issue of serious financial distress:

(1) the amount of the instant toll revenue loss in comparison to the revenue increase allowed Lexington at the time of its last general rate increase,

(2) the amount of the after-tax toll revenue loss in comparison to the Company's current level of operating income, and

(3) the impact of the toll revenue loss on the level of earnings the Company can reasonably be expected to achieve measured in terms of the overall rate of return and return on common equity.

As indicated above, Lexington stated that the Commission should consider the subject toll revenue loss in comparison to the revenue increase allowed Lexington at the time of its last general rate increase for the purpose of assessing the existence of serious financial distress. Lexington last received a general rate increase of $1,111,433 on June 14, 1982. A comparison of the toll revenue loss of $600,969 to the $1,111,433 increase in local service revenues granted in Lexington's last general rate case, reflects that this specific toll revenue loss

represents over half of Lexington's last allowed rate increase. Thus, Lexington stated that the toll revenue loss is a significant amount which would subject the Company to serious financial distress if lost.

As noted above, Lexington further contends that the Commission should consider the subject after-tax toll revenue loss in comparison to Lexington's current level of operating income in resolving the issue as to the existence of serious financial distress. In its brief, Lexington stated that the portion of its net income which is represented by the amount of toll to be lost is approximately 12%. That impact was also stated by witness Hinton on cross-examination during the hearing. Lexington concluded that a revenue loss of this magnitude can only be described as serious. Refinement of the after-tax toll revenue loss as a percentage of operating income yields a factor of 11.06%, rather than 12%; this factor of 11.06% is based upon a comparison of the subject after-tax toll revenue loss of $365,265, as determined by the Public Staff, in comparison to the Company's 1992 calendar year level of operating income of $3,302,819. Using either 11.06% or 12%, the comparison clearly reveals that the toll revenue loss is financially significant.

Finally, in resolving the issue as to the existence of serious financial distress, Lexington contends that the Commission should consider the impact of the toll revenue loss on the level of earnings it is currently achieving measured in terms of the overall rate of return and return on common equity. In developing the aforesaid returns, Lexington witness Snider made several pro forma adjustments to its 1992 actual level of earnings for known and quantifiable changes that the Company would experience in 1993, as follows:

(1) $69,622 increase in revenues for the EAS rate additives proposed by the Public Staff, as revised, assuming the EAS was implemented,

(2) $125,473 reduction in revenues for a prior year overbilling of special access charges to AT&T,

(3) $303,162 reduction in revenues for the termination of its operator services contract with AT&T,

(4) $460,176 reduction in revenues for changes in its switching system services and transmission facilities services contracts with AT&T,

(5) $485,041 reduction in revenues for the estimated toll loss from implementation of the EAS arrangement,

(6) $45,486 reduction in revenues for its revised billing and collection agreement with AT&T,

(7) $206,000 reduction in revenues for the nonrecurring circuit installation charge paid by AT&T, and

(8) $115,000 reduction in expenses to recognize the laying off of temporary operators.

According to the direct testimony of witness Snider, Lexington's calendar year 1992 actual operations yielded a return on common equity of 13.09% and the

overall return on rate base was 12.48%, based upon the Company's calendar year 1992 actual capital structure. Adjusting Lexington's calendar year 1992 actual operations, such that all of witness Snider's pro forma adjustments as cited above are included, will result in a return on common equity of 9.35% and an overall return on rate base of 9.17%. Further, if all of the foregoing pro forma adjustments are considered as proposed by witness Snider, except with one change such that the estimated toll loss from implementation of the EAS arrangement is increased from $485,041 to $600,969, (as determined by the Public Staff) and reflecting Lexington's methodology of adjusting the capital structure for the pro forma change in retained earnings, then the resulting return on common equity will be 9.04% and the overall return on rate base will be 8.90%.

In its brief, Lexington stated the following facts: (1) the Commission, in the most recent telephone rate case at the time of Lexington's filing in this proceeding, had allowed a 12.5% return on common equity; (2) the Public Staff in assessing special amortizations by telephone companies, including Lexington, has been using a 14% return on common equity; and (3) in Lexington's last general rate case, the Commission, by Order issued June 14, 1982, allowed Lexington a 16.25% return on common equity. Based upon the foregoing, Lexington concludes that the returns on common equity for Lexington without full toll loss recovery fall far short of a reasonable return.

Lexington witness Hester testified that the implementation of an EAS rate additive which does not allow the Company to recover an adequate portion of the subject toll revenue loss will force the Company to file a general rate case. Given the cost and time demands entailed in filing a general rate case; Lexington states that this may be the single most pragmatic indicator of the serious financial distress the Company will experience if it is not allowed to recover its toll losses.

Additionally, Lexington stated that if you looked at the toll loss of $535,757 as initially calculated by the Public Staff and based upon the level of access lines of 21,004 in the Lexington exchange, then the toll loss is equivalent to $25.51 per access line per year or $2.13 per month. Thus, since local service rates are residually determined, then the present residential base rate of $7.04 per month would have to be raised by over 20% to recover just the toll loss. Such analysis in the Company's opinion illustrates serious financial distress.

Further, in its brief, Lexington states that the Public Staff's position that a company is not experiencing serious financial distress so long as it can pay the interest on its debt even if the Company could not repay its debts is absurdly unrealistic.

Based on the foregoing, Lexington concludes that the evidence supports an additional increment in the EAS rate additives to recover 100% of the lost toll revenues resulting from implementation of the subject EAS arrangement.

Essentially, the Public Staff contends that, for the purpose of assessing the existence of serious financial distress, the Commission should base its decision primarily on two financial benchmarks, the debt leverage ratio and the fixed charge coverage ratio.

The Public Staff contends that a company will be confronted with serious financial distress if it experiences a significant deterioration in its ability to make scheduled interest payments. Such a condition, according to the Public Staff, would be indicated by a pre-tax fixed charge coverage ratio of less than 2.0 times.

In developing benchmarks for use in assessing the existence of serious financial distress, Public Staff witness Hinton, in lieu of the Company's actual capital structure, employs a pro forma capital structure. The Public Staff states that in view of the lower financing costs of debt capital as compared to equity capital, Lexington's actual capital structure as of December 31, 1992, consisting of 9.33% long-term debt, 3.31% preferred stock and 87.36% common equity, is inappropriate both for setting rates and for determining the existence of serious financial distress in this EAS proceeding.

In developing the capital structure which it considers to be appropriate, the Public Staff essentially uses an average capital structure based on the capital structures of six independent telephone companies and the seven regional Bell Holding Companies. The Public Staff selected those companies because they are primarily involved in providing local exchange service, however, witness Hinton acknowledged on cross-examination that all the companies included in his analysis are also involved in activities other than the provision of local telephone service. The Public Staff's pro forma capital structure is composed of 47% long-term debt, 1% preferred stock, and 52% common equity.

The Public Staff advises that, based on financial criteria published by Standard & Poor's (S&P's), the capital structure which it employs limits debt leverage to a degree such that it meets S&P's standard in that regard in order for a Company's debt issues to receive an "A" bond rating.

Based on its analysis, the Public Staff concludes that the loss of toll revenues associated with the proposed EAS arrangement would not result in serious financial distress to Lexington. The Public Staff bases its conclusion primarily on: (1) the fact that the Company's fixed charge coverage ratios of 21.40 times, calculated using the Company's actual capital structure, and 4.30 times, calculated using the Public Staff's pro forma capital structure, meet or exceed the S&P fixed charge coverage standard, of 3.3 - 5.0 times, which is necessary in order for a company's bonds to qualify for an "A" or greater rating from that bond rating agency and (2) the fact that the Company's debt leverage ratios of 9.33%, based on its actual capital structure, and 47%, based on the Public Staff's pro forma capital structure, are well within the S&P debt leverage guidelines which must be met in order for a company's bonds to qualify for an "A" or greater bond rating. The foregoing ratios calculated by the Public Staff were based on actual operating results for calendar year 1992, adjusted to give effect to the Public Staff's determination of the toll revenue loss, of $600,969, that will be realized upon implementation of the proposed EAS arrangement.

The Public Staff observes that if a utility consistently fails to earn its cost of capital its financial health will eventually erode to a point such that it will be faced with serious financial distress. The Public Staff further states that a company's failure to achieve its cost of capital over a one-year time horizon will not necessarily lead to such a result. With respect to those matters, the Public Staff asserts that such earnings considerations are factors

that should be evaluated in the context of fixed charge coverage and debt leverage ratios. However, witness Hinton provided calculations showing that, if based on actual operating results for the calendar year 1992 adjusted to give effect to the Public Staff's determination of the toll revenue loss of $600,969, the return on common equity will equate to 11.51% using Lexington's actual capital structure and 15.67% using the Public Staff's pro forma capital structure. Witness Hinton concluded that neither of those calculated returns on equity indicate the existence of existing or impending financial distress.

Finally, the Public Staff asserts that it is inappropriate to make pro forma adjustments to the level of earnings the Company is currently achieving as proposed by Lexington. The Public Staff contends that such pro forma adjustments belong in proceedings involving general rate relief and not EAS proceedings. Further, the Public Staff states that there are other mitigating revenue and/or cost-related factors pertaining to the Company's financial condition that Lexington has not considered that should be considered if the Company's financial condition is to be reviewed on a pro forma basis. The Public Staff states that such matters would be reviewed in a general rate case proceeding. The Public Staff further stated that examples of such factors include increased operator service revenues from Lexington's long distance affiliate and the Company's five-year amortization of its transitional obligation under Financial Accounting Standards Board Statement No. 106 (FASB No. 106).

Even though the Public Staff disagreed with the Company's position regarding pro forma adjustments, it performed an analysis including such adjustments. The Public Staff indicated that even under that pro forma scenario the resulting fixed charge coverage and return on common equity benchmarks fail to indicate serious financial distress. Specifically, witness Hinton's analysis in this regard, yielded the following results: a return on common equity of 9.24% and a fixed charge coverage ratio of 20.10 times based on Lexington's actual capital structure and a return on common equity of 11.85% and a fixed charge coverage ratio of 3.7 times based on the Public Staff's pro forma capital structure.

Based on the foregoing, the Public Staff concludes that the evidence does not support an additional increment in the EAS rate additives to cover any portion of Lexington's lost toll revenues arising from implementation of the subject EAS arrangement.

Determination of the appropriate treatment to be accorded toll revenue loss for purposes of this proceeding is an exceedingly difficult undertaking and one that the Commission has not entered into lightly. Indeed, the Commission has given thoughtful and lengthy consideration to the evidence of record in its entirety in resolving the subject toll revenue loss controversy.

For purposes of this proceeding, the Public Staff argued that it was inappropriate for the Commission in its assessment of the Company's financial condition to consider such condition on a pro forma basis. With respect to Lexington's pro forma financial condition as presented by the Company, the Public Staff argued that there were other mitigating factors pertaining to Lexington's financial condition that were not reflected in the Company's pro forma analysis that should be taken into account if said financial condition is to be evaluated on a pro forma basis. The Public Staff cited two examples of such factors, however, it did not quantify the economic impact of its examples. Lexington

contended that the Commission should consider its financial position on a pro forma basis taking into account known, material, and measurable changes in the levels of revenues and costs that the Company could reasonably be expected to experience in the near term.

The Commission agrees with Lexington concerning the use of pro forma data in assessing the financial condition of the Company for purposes of this proceeding. The Commission recognizes, as indicated by the Public Staff, that the nature of this type of proceeding makes it extremely difficult to identify, investigate and litigate all of the probable changes that will affect the Company's financial condition in the near term. However, the Commission concurs with Lexington and so finds and concludes that it would be unfair, unreasonable and inappropriate to totally disregard known and material changes in revenues and costs that will have a significant impact on the Company's financial condition simply because all such changes might not have been identified.

At this juncture, the Commission also notes that there are factors present in the regulated public utility telecommunications environment today which have an all too real potential of adversely affecting Lexington's financial condition, the effects of which have not been quantified and reflected in the record of this proceeding. Such factors include pending legislation at the national level involving local telephone service competition and the matter of intraLATA competition in North Carolina.

As previously discussed, Lexington stated that, in assessing the issue of financial distress, it is appropriate to consider the impact of the toll revenue loss on the level of earnings the Company can reasonably be expected to achieve annually measured in terms of the overall rate of return and return on common equity. The Public Staff takes the position that a company's failure to achieve its cost of capital over a one-year time horizon does not necessarily equate to financial distress. More specifically, the Public Staff asserts that such earnings considerations are factors that should be evaluated in the context of fixed charge coverage and debt leverage ratios, such that an indication of serious financial distress would be indicated by a pre-tax fixed charge coverage ratio of less than 2.0 times. The Commission does not agree with the Public Staff's assertion to the effect that, as long as the fixed charge coverage ratio is at or above 2.0 times, a company is not facing serious financial distress. Such a standard is simply too stringent for purposes of this EAS proceeding. Further, the Commission believes that in an EAS proceeding such as this it is entirely reasonable and appropriate to consider the status of the Company's existing and expected near-term financial condition measured in terms of return on common equity and/or its overall rate of return.

Lexington's calculation of its return on common equity was 9.35% based on the Company's actual level of operations for calendar year 1992 modified to reflect witness Snider's pro forma adjustments. When all of Lexington's pro forma adjustments are considered and the Company's estimated toll revenue loss is increased to the level of loss determined by the Public Staff, the resulting return on common equity is 9.04%. The common equity return of 9.04% is increased to 11.85% when the aforesaid assumptions are changed to include the Public Staff's pro forma capital structure. The foregoing pro forma returns on common equity are all lower than the 12% return on common equity recommended for use by Public Staff witness Hinton for the purpose of performing an analysis of the cost

of the instant EAS proposal. Those pro forma returns on common equity clearly indicate that exclusion of the toll revenue loss from the subject EAS rate additives would have a significant adverse impact on Lexington's existing financial condition.

In summary, Lexington argued that the level of its pro forma return on common equity, the magnitude of the toll revenue loss in comparison to its operating income, and the fact that it will be forced to file a general rate case if it is not allowed to recover the toll revenue loss clearly indicate that it will be placed in serious financial distress if it is not allowed to include all of the toll revenue loss as a component of its EAS rate additives upon implementation of the proposed EAS arrangement. By contrast, the Public Staff argued that, based upon its analysis of fixed charge coverage and debt leverage ratios, there was no indication that Lexington would be placed in serious financial distress should the Commission disallow recovery of 100% of the subject toll revenue loss. After careful consideration of the foregoing and the entire evidence of record, the Commission finds and concludes that it must reject the positions of both parties concerning the appropriate treatment to be accorded the toll revenue loss for purposes of this proceeding.

The toll revenue loss of $600,969 which will be realized by Lexington upon implementation of the proposed EAS arrangement is of immense significance to the Company. On an after-tax basis the effect of that loss equates to an operating income reduction of 11.06% annually. Such percentage is based on Lexington's operating results for the calendar year 1992. On a pro forma basis, the subject toll revenue loss equates to an operating income reduction of 13.63% annually when considering the pro forma adjustments proposed by Company witness Snider. Given the revolutionary changes that are continuing to take place in the telecommunications industry both at the Federal and state level, which in addition to the instant toll revenue loss may further substantially adversely impact the Company's financial well-being, the Commission would be remiss if it failed to compensate Lexington to a reasonable extent for the operating revenue loss it is sure to realize as a result of implementation of the Denton and Thomasville to Lexington EAS arrangement.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that in this particular proceeding it is appropriate to establish EAS rate additives for Lexington that reflect the inclusion of 50% of the toll revenue loss which will be realized by Lexington upon implementation of the Denton and Thomasville to Lexington EAS arrangement. The Commission further finds and concludes that such action is required in order to avoid subjecting Lexington to serious financial distress. The Commission believes that such treatment reflects a fair and reasonable balancing of the evidence presented by both Lexington and the Public Staff. The Commission emphasizes, however, that this decision, to allow recovery of 50% of the toll revenue loss, should not be construed as a change in Commission policy regarding the inclusion of toll revenue loss as a component of EAS rate additives, for that clearly is not the case. Such determinations will continue to be made on a case-by-case basis based on the facts and circumstances present in each case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is found primarily in Lexington's and the Public Staff's - briefs, proposed orders and reply briefs filed in this proceeding.

In general, the legal and constitutional arguments raised by Lexington were as follows:

1. Rule R9-7 is unconstitutionally vague on its face and as applied in this case;

2. Rule R9-7 unreasonably discriminates between matrix and non-matrix companies;

3. Rule R9-7(c) is in conflict with G.S. 62-133;

4. The exclusion of lost toll revenues in establishing EAS rate additives is a taking of the company's property without just compensation; and

5. The burden of proof is not on the Company as to all issues related to the appropriate EAS rate additives.

The Public Staff disagreed with Lexington on all five of these issues.

Based upon a careful review of the evidence set forth in the arguments of Lexington and the Public Staff in this regard, the Commission reaches the following conclusions:

1. The rule is not unconstitutionally vague on its face and as applied in this case.

Our State Court of Appeals has stated the void-for-vagueness doctrine as follows:

> Under the due process clause of the fourteenth amendment to the United States Constitution, a statute is void for vagueness if its terms are so vague, indefinite and uncertain that a person cannot determine its meaning and therefore cannot determine how to order his behavior to meet its dictates. Nestler v. Chapel Hill/Carrboro Bd. of Education, 66 N.C. App. 232, 238 (1984) (citations omitted).

Nestler involved "inadequate performance" as grounds for dismissal of a public school teacher under G.S. 115C-325(e)(1)(a). The court held that inadequate performance is a term that a person of ordinary understanding can comprehend and that, since the employee was advised on several occasions that his performance was inadequate because of his teaching methods, the statute was constitutional as applied to him. Id. The same court has also held that North Carolina's equitable distribution statute, G.S. 50-20, is not unconstitutionally vague, noting that "[t]he United States Supreme Court has recognized that there are certain areas where, by the nature of the problem presented, legislatures simply cannot establish standards with great precision. See Smith v. Goguen, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed. 2d 605 (1974)." Ellis v. Ellis, 68 N.C. App.

634, 636 (1984). In both Nestler and Ellis, which involved civil statutes, the court gave the Legislature a great deal of latitude. This is in accord with the view stated by the United States Supreme Court in Village of Hoffman Est. v. Flipside, Hoffman Est., 455 U.S. 486, 498 (1982):

> The degree of vagueness that the Constitution tolerates--as well as the relative importance of fair notice and fair enforcement--depends in part on the nature of the enactment. Thus, economic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process. (Footnotes omitted; emphasis added).

When the Commission is engaged in rulemaking, it is exercising legislative authority delegated to it by the General Assembly under G.S. 62-30 and -31. State ex rel. Util. Comm. v. Edmisten, 294 N.C. 598, (1978). Rule R9-7 is a codification of Commission policy and practice in EAS cases over many years. It is written in a way that balances the need for consistency with the need for flexibility in dealing with proposals no two of which are the same. Whether the exclusion of lost toll revenues will result in serious financial distress to the utility necessarily depends on the facts and circumstances of each case. The Commission can examine those facts and circumstances and make the finding contemplated by the rule. That is one of the purposes of holding a hearing in the instant case. Nothing more is constitutionally required.

2. The rule does not unreasonably discriminate between matrix and non-matrix companies.

Rule R9-7(e)(1) provides, "Except under unusual and extenuating circumstances, cost studies generally will not be required for those telephone companies who have had EAS matrix plans approved by the Commission." Lexington has not identified any circumstances which would have justified requiring ALLTEL to conduct a cost study in this case. Lexington's position appears to be that its EAS rate additives should be of the same order of magnitude as those produced by application of ALLTEL's matrix tariff and that any differences between cost study rates and matrix rates is unconstitutional.

Lexington misunderstands the constitutional requirements. All that is required to satisfy the requirements of the Equal Protection Clause in economic regulation is that different treatment bear a rational relationship to a legitimate public interest. See State ex rel. Util. Comm. v. Nantahala Power & Light Co., 3265 N.C. 190, 204 (1990), citing New Orleans v. Dukes, 427 U.S. 297 (1976). As noted above, the advantages of matrix tariffs are obvious. They are designed to produce rates that will enable a local exchange company (LEC) to recover the revenue requirements for its combined EAS arrangements without having to go to the effort and expense of conducting a study of the incremental equipment cost on each EAS route. In some instances, a matrix will produce no

EAS rate additive because of existing EAS arrangements. In other instances, the additives can be substantial, as in this case at Denton, which has no EAS to any other exchange. But, the overall result, including ease of administration, is deemed to be reasonable.

The Commission has left it to the LECs to decide whether or not to seek approval of matrix tariffs. In its Order adopting Rule R9-7, the Commission observed that

> an EAS matrix rating system may not be appropriate for application to each local exchange company in North Carolina. For instance, it seems to be the case that matrix rating plans are probably not appropriate for small LECs or for larger LECs with few exchanges and wide divergence in exchange size. Approval of EAS matrix plans must be considered on a company-by-company basis. (North Carolina Utilities Commission Orders and Decisions, 77th Report at 188.)

The Commission has approved matrix tariffs not only for ALLTEL but also for its smaller affiliates, Heins Telephone Company (a three-exchange company) and Sandhill Telephone Company (a two-exchange company). Lexington, on the other hand, has never filed a matrix tariff. That is its choice. The reasons for any inequality in the treatment of matrix and non-matrix companies under the rule are more than sufficient to pass constitutional muster.

3. Rule R9-7(c) is not in conflict with G.S. 62-133.

Our State Supreme Court has clearly held that rates may be changed in rulemaking proceedings under the proper circumstances. See State ex rel. Util. Comm. v. Nantahala Power and Light Co., 326 N.C. 190 (1990) ("Nantahala"). In that case, Nantahala appealed to the Court of Appeals from Orders of the Commission in Docket No. M-100, Sub 113 ("the Tax Docket") requiring it to flow through to ratepayers the benefits of the Tax Reform Act, one of which was to lower the corporate income tax rate from 46% to 34%. The Court of Appeals held that "there is no authority either in our statutes or in our case law that allows rates to be adjusted by a rulemaking process." State ex rel. Util. Comm. v. Nantahala Power and Light Co., 92 N.C. App. 545, 553 (1989). According to the Court of Appeals, the Commission should have handled the matter under G.S. 62-133, -136, or -137 either as a general rate case or as a complaint proceeding. Id. at 551. On appeal and discretionary review, the Supreme Court reversed the Court of Appeals, concluding that its holding in State ex rel. Util. Comm. v. Edmisten, Attorney General, 294 N.C. 598 (1978)("Edmisten III"), provides authority for changing rates in rulemaking proceedings in special circumstances, such as in the Tax Docket. 326 N.C. at 195.

Edmisten III involved an appeal by the Attorney General from Commission Orders pursuant to Rule R1-17(h), authorizing three of the then five North Carolina natural gas local distribution companies (LDCs) to increase rates by a surcharge on all rate schedules and to use the proceeds to participate in exploration and drilling ventures approved by the Commission. By adopting Rule R1-17(h) in Docket No. G-100, Sub 22 (the E&D docket), the Commission had established procedures for participation by the LDCs in E&D programs and for rate adjustments to recover the costs incurred and to account for the revenues received. When the Attorney General filed notice of appeal and exceptions, the

LDCs requested hearings pursuant to G.S. 62-90(c). The Court held that it was not error for the Commission to fail to declare the proceedings to be a general rate case and hold hearings under G.S. 62-133 before increasing rates. 194 N,C. at 608. Nor was it error to allow the increases to go into effect without hearing upon finding, as provided in Rule R1-17(h), that they would not cause the LDCs' rates to exceed the levels most recently approved in general rate cases. 294 N.C. at 609.

In Nantahala, the Court held that it was unnecessary to hold trial-type hearings at all in the Tax docket because,

> 1) the tax reduction affected all utilities uniformly; 2) a large number of utilities were affected, making individual hearings for all inappropriate; and 3) no adjudicative-type facts were in dispute so as to require a trial-type hearing for each individual utility.

326 N.C. at 203. Nantahala had contended that there were adjudicative-types of facts in dispute, including primarily that it was earning less than its authorized rate of return, but the Court ruled that this fact had nothing to do with the change in the tax laws and "should be decided in an individualized proceeding such as a complaint hearing or a general rate case." 326 N.C. at 202.

In Edmisten III, the Court held that it was unnecessary to hold a hearing pursuant to G.S. 62-81, the special procedure for hearings in general rate cases. 294 N.C. at 608. Rule R1-17(h)(4) provided for a hearing on a proposed project if it was not approved or disapproved within 30 days, however, and Rule R1-17(h)(6) provided for a hearing if the Commission found that the proposed increase would result in the LDC's rate of return exceeding the level most recently authorized. These, presumably, would have been trial-type hearings.

Similarly, under Rule R9-7, the Commission may authorize polling for all or part of an EAS proposal and may establish rate additives without hearing if there are no adjudicative facts in dispute. But, if facts related to the EAS proposal are in dispute, such as the incremental equipment costs and appropriate rate additives, the Commission may hold a trial-type hearing as it did in the instant case. There is no conflict, however, between this procedure and the Commission's duty to follow G.S. 62-133 when determining the company's overall revenue requirement and rate of return, just as there was none between that statute and the Commission's rules in Edmisten III and Nantahala.

4. Exclusion of lost toll revenues is not a taking of the company's property without just compensation.

The case cited by the Company, Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), was a general rate case in which the net effect of the rate process on the utility's property was subject to review. That is not true of the instant case. Whether Lexington's rates will be higher or lower than a confiscatory level cannot be determined outside a general rate case. The Company's contention, therefore, is untimely. Moreover, Lexington's assertion in this regard is, at least in part, moot in view of the Commission's decision to allow 50% of lost toll revenue.

5. The burden of proof is on the Company as to all issues related to the appropriate EAS additives.

Burden of proof has two meanings: the burden of persuasion (sometimes called the burden of the issue) and the burden of producing evidence. The burden of persuasion refers to the duty of establishing the truth of a given proposition; the burden of producing evidence (sometimes called the burden of going forward) refers to a party's obligation to meet with evidence a prima facie case against it. 29 Am. Jr. 2d Evidence § 123; 2 H. Brandis, North Carolina Evidence § 202 (2d rev. ed. 1982). The burden of persuasion rests on the party who, as determined by the pleadings or by the nature of the case, asserts the affirmative of an issue. 290 Am. Jr. 2d, supra, at § 127; Brandis, supra, at § 208. For example, under our statutes, the burden is on the utility of proving that its proposed rates are just and reasonable. G.S. 62-75; State ex rel. Util. Comm. v. Southern Ry., 267 N.C. 317, 323 (1975), modified, 268 N.C. 204 (1976); State ex rel. Util. Comm. v. Carolinas Comm. for Indus. Power Rates & Area Dev., Inc., 257 N.C. 560, 568 (1962). It is generally said that the burden of persuasion never shifts, while the burden of producing evidence can pass from side to side throughout a proceeding. 29 A. Jr. 2d, supra, at § 124.

When telephone subscribers initiate an EAS proceeding they are effectively alleging that, because of the community of interest, service between or among their communities should be treated as local rather than long-distance and paid for on a toll-free basis. Toll service under these circumstances is viewed as inadequate and unreasonably discriminatory, and G.S. 62-42 authorizes the Commission to remedy these conditions by directing that changes be made. When an EAS proceeding arises out of a complaint by EAS proponents, the burden of proof is on them. Thus, under Rule R9-7, the burden of proof as to whether EAS is in the public interest rests with the EAS proponents. They have the burden of demonstrating to the initial satisfaction of the Public Staff and, subsequently to the Commission, that there is broad-based support for the proposal. Rule R9-7 requires a threshold showing based on toll calling studies. Letters, resolutions, and petitions may suffice in addition or the Commission may schedule public hearings. The final showing is by a poll of the affected subscribers.

If, in an EAS proceeding, the Commission determines that the calling study results and other support are sufficient to justify polling, and directs a company to conduct a cost study based on incremental equipment costs, the burden of persuasion is on the company as to the reasonableness of the costs and the rate additives proposed. Lexington concedes that it has the burden of proof, i.e., persuasion, as to the inclusion of toll revenue loss in the EAS rate additives. The Company has the burden of persuasion as to the incremental equipment costs as well. The Commission directed the Company to conduct a cost study to determine the appropriate rate additives and file the results. The burden of persuasion, however, did not shift. If the Company had failed to request EAS additives, as can happen in the case of a matrix company with several EAS arrangements already in place, the burden would not be on the Public Staff to develop and support them. There simply would be no increase.

The Commission has held a hearing to determine the appropriate EAS rate additives and correctly rules that the Company has the burden of proving that its proposed rate additives are just and reasonable. Lexington has failed to meet that burden, except as to the 50% of lost toll revenue that the Commission is granting herein.

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

In addition to the evidence supporting the previous findings of fact, these findings of fact are based on the testimony and exhibits of Lexington witness Williams and Public Staff witness Garrison, on the application of ALLTEL's EAS matrix tariff and on the EAS rate additives agreed to by North State and the Public Staff.

Based upon our findings set forth in the foregoing evidence and conclusions regarding the appropriate cost study factors for Lexington and our allowance of 50% toll loss recovery for Lexington, and using the revenue units as calculated by the Public Staff, the Commission finds that the appropriate EAS rate additives applicable to the Company's Lexington exchange are as follows:

SERVICE	RATE
One Party Residence	$ 0.90
One Party Business	$ 2.29
Key Trunk	$ 2.86
PBX Trunk	$ 4.60

For the Denton exchange, ALLTEL proposed that the EAS rate additives should be based upon its EAS matrix tariff. The Public Staff was in agreement with the resulting matrix rates recommended by ALLTEL. The Commission therefore concludes that the appropriate EAS rate additives applicable to ALLTEL's Denton exchange should be as recommended by the parties and are as follows:

SERVICE	RATE
One Party Residence	$ 3.02
One Party Business	$ 7.41
Key Trunk	$11.10
PBX Trunk	$14.81

With regard to North State's Thomasville exchange, the Public Staff performed a cost study to determine the related EAS rate additives and recommended that the resulting rates be considered de minimis. North State agreed with the Public Staff's recommended rate additives and concurred that the rates be considered de minimis. The Commission accepts the rates agreed to by these two parties and thus finds that the appropriate EAS rate additives applicable to North State's Thomasville exchange are as follows:

SERVICE	RATE
One Party Residence	$ 0.17
One Party Business	$ 0.39
Key Trunk	$ 0.42
PBX Trunk	$ 0.63

Additionally, the Commission concludes that the Thomasville exchange EAS rate additives are de minimis and that, pursuant to Rule R9-7(h)(1), no polling will be required.

IT IS, THEREFORE, ORDERED as follows:

1. That the appropriate rate additives for two-way, nonoptional EAS between Lexington's Lexington exchange, ALLTEL's Denton exchange and North State's Thomasville exchange are as follows:

LEXINGTON:

SERVICE	RATE
One Party Residence	$ 0.90
One Party Business	$ 2.29
Key Trunk	$ 2.86
PBX Trunk	$ 4.60

DENTON:

SERVICE	RATE
One Party Residence	$ 3.02
One Party Business	$ 7.41
Key Trunk	$11.10
PBX Trunk	$14.81

THOMASVILLE:

SERVICE	RATE
One Party Residence	$ 0.17
One Party Business	$ 0.39
Key Trunk	$ 0.42
PBX Trunk	$ 0.63

2. That Lexington is authorized to conduct a poll of its Lexington subscribers to determine their desire for two-way, nonoptional EAS to Denton and Thomasville at the appropriate rates as set forth in Ordering Paragraph No. 1.

3. That ALLTEL is authorized to conduct a poll of its Denton subscribers to determine their desire for two-way, nonoptional EAS to Lexington at the appropriate rates as set forth in Ordering Paragraph No. 1.

4. That, upon a favorable vote by both Lexington's and ALLTEL's subscribers in their respective exchanges of Lexington and Denton, a no-protest notice be sent by North State to its Thomasville subscribers at the appropriate rates as set forth in Ordering Paragraph No. 1.

5. That Lexington's petition filed on January 14, 1994, to stay further proceedings and suspend deliberation in this docket and North State's request of January 24, 1994, filed in Docket No. P-100, Sub 126, to defer action with respect to its exchanges involved in this EAS docket are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of June 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioner Laurence A. Cobb concurring.

I concur in the decision in this case but disagree with the finding that the legal and constitutional arguments raised by Lexington are "flawed and erroneous". Had the Commission sustained the rather ludicrous standard for financial distress urged on us by the Public Staff and denied the recovery of lost toll revenue, I am of the opinion that Lexington could have been successful in raising one or more of its arguments on appeal.

Laurence A. Cobb, Commissioner

DOCKET NO. P-55, SUB 925

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Bell Telephone and Telegraph Company Tariff Filing to Establish Rates For Implementation of Caller ID Service	}	ORDER EXTENDING EXPERIMENT PENDING FURTHER ORDER

BY THE COMMISSION: On December 1, 1992, Southern Bell Telephone and Telegraph Company (Southern Bell) began offering Caller ID for a two-year experimental period. This offering complied with the Commission's May 12, 1992, Order Allowing Caller ID With Per-Line and Per-Call Blocking in Docket No. P-55, Sub 925.

Southern Bell has filed a tariff which would extend the experiment from December 1, 1994, to April 12, 1995, the effective date of the Federal Communications Commission's (FCC's) March 29, 1994, order implementing rules regarding interstate blocking options. This order requires that all customers have access to free per-call blocking but not per-line blocking on all interstate calls; effectively preempting the states from requiring per-line blocking for interstate calls.

Since the FCC order, 14 states and two consumer groups have joined the Attorney General of North Carolina in a Petition to Reconsider this order and require that per-line blocking be available to all customers. The National Association of Regulatory Utilities Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) also oppose this order. The order has also been opposed in the Ninth Circuit Court of Appeals by the State of California.

In its May 12, 1992, Order, the Commission required that Southern Bell and other local exchange companies which would offer Caller ID provide certain statistical information on the service at least two months prior to the end of the two-year experimental period. Southern Bell's report of May 12, 1994, indicates that 20.4% of Southern Bell's customers in the areas that have Caller ID available have selected per-line blocking. The comparable figure for Central Telephone Company (Central), based upon its report of March 31, 1994, is 34.22%.

Central was the first company in North Carolina to implement Caller ID and the associated blocking options. In November 1994, Central proposed, the Public Staff recommended, and the Commission allowed Central's Caller ID service and per-line and per-call blocking options to become permanent, with only minor changes in the notice and balloting requirements from the Commission's directives prescribed in the May 12, 1992, Order.

This matter came before the Regular Commission Conference on November 28, 1994. The Public Staff argued that the Commission should make permanent Southern Bell's experimental offerings and those of the other local exchange companies now offering Caller ID on an experimental basis to better solidify its stand on blocking availability. The uncertainty of the outcome of the FCC's docket is not a legitimate reason for postponing action or for modification of the Commission's policy.

The Public Staff, therefore, recommended that the Commission disapprove Southern Bell's tariff and require Southern Bell to file a tariff making Caller ID permanent, following the same provisions of notice and balloting allowed by the Commission for Central Telephone on November 7, 1994. Margaret Force appeared on behalf of the Attorney General in support of the Public Staff's recommendation. Linda Cheatham of Southern Bell argued that extending the experiment would have no negative implications.

On December 1, 1994, the Commission issued an Order Extending Experiment and setting out a schedule for comments.

On December 2, 1994, Southern Bell filed its response in opposition to the Public Staff's recommendation. It reiterated its recommendation that the Caller ID experiment be extended until April 12, 1995.

Southern Bell argued that the high penetration rate for per-line blocking was indicative of the easy availability and required notification of such blocking. Further, Southern Bell asserted that Caller ID is presently not compensatory. Southern Bell also expressed its intent to seek modifications in Caller ID should the FCC not uphold its order. If necessary, it may seek to withdraw the service. The FCC order, as noted before, mandates free per-call blocking for interstate calls, preempts states from requiring different blocking for such calls, but does not directly preempt intrastate aspects of calling number delivery services. Southern Bell stated that, technically, it could not now or in the foreseeable future provide different blocking regimes for interstate and intrastate calls.

Southern Bell suggested that the Public Staff's position herein was at variance with its position in the N11 docket, where the Public Staff urged the Commission to await the FCC ruling on that matter. Southern Bell also suggested that whether to extend the existing experimental tariffs or to make these tariffs permanent is within management discretion.

On December 9, 1994, the Public Staff filed its reply. The Public Staff maintained that the results of the experiment indicate a strong demand for per-line blocking and that making the experiment permanent would reaffirm the Commission's commitment to per-line blocking and reenforce the requests by NARUC and others for the FCC to reconsider its Order.

The Public Staff cited the following statistics on Caller ID:

COMPANY	% PER-LINE BLOCKING	CALLER ID SUBSCRIPTION %
Central	34	2.5
Southern Bell	22	0.5
ALLTEL	13	0.3

The Public Staff argued that, if anything, these figures suggest that the more customers subscribe to per-line blocking, the higher the subscription rate. While clearly there are too many variables to permit certainty as to why this is so, one of the major variables appears to be marketing. Central has adopted a more aggressive marketing approach and it has a higher Caller ID penetration rate. The Public Staff rejected Southern Bell's N11 argument as invalid, given

the difference in circumstances, and suggested that much of the Caller ID costs have already been incurred. Aside from balloting and notification, the costs of continuing Caller ID are low. At any rate, the Public Staff was willing that the notification process require balloting only of new customers and in newly implemented areas, with annual notification by bill insert.

The Public Staff stated that it would not oppose the withdrawal of Caller ID by Southern Bell, but insisted that the blocking options must stay in place for other services such as ISDN, enhanced call return, SMDI and voice mail. The Public Staff concluded by saying that making Caller ID a regular service offering would not preclude any of Southern Bell's options after April 1st.

The Attorney General filed its reply on December 9, 1994. The Attorney General recalled the history of the docket and the concerns of law enforcement, victims' rights advocates, and battered women shelters who believed then, and still believe, that per-line blocking is necessary to protect their health, safety, and privacy. The Attorney General argued that there is no evidence either here or in other states that blocking availability has negatively affected Caller ID penetration rates. If Southern Bell is indeed losing money, it can increase Caller ID rates, more aggressively advertise Caller ID, or request relief from the notice requirements. The Attorney General doubted that Southern Bell would indeed drop the service if thwarted, and he argued that the Commission has the authority to require Southern Bell to offer adequate Caller ID service. The Attorney General cited G.S. 62-32 (supervision powers; rates and service) and G.S. 62-118 (abandonment and reduction of service), together with relevant case law, for this proposition. Thus, continuation of the service is not a management decision, and the Commission can require permanent Caller ID service with per-line blocking. Lastly, the Attorney General noted that, if the Commission grants Southern Bell's request and the FCC refuses to reconsider its order, then Southern Bell subscribers may lose in-state per-line blocking on April 12, 1995, while Central customers will keep theirs.

This matter returned to the agenda of the Regular Commission Conference on December 19, 1994. Karen Long of the Attorney General's Office and Linda Cheatham of Southern Bell addressed the Commission.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration of the filings in this docket, the Commission concludes that Southern Bell's Caller ID experiment, including free per-line and per-call blocking, should be extended indefinitely pending the rendering of the FCC's Order on Reconsideration and pending further Commission Order.

The Commission does not believe that it is advisable at this point to require Southern Bell to do something that it is obviously resistant to doing--i.e., making its Caller ID tariff permanent. At the same time, the Commission likewise does not believe that it is advisable to put a time limit on the experiment so that it will expire on a date certain. The Commission views it as speculative at best as to what the FCC decision may be and even whether it will be rendered by the projected date. The Commission is further dubious that a Commission action to make Southern Bell's tariff permanent would influence the

FCC in its decision-making process, much less tip the scales toward reconsideration. The Commission notes that Central's Caller ID tariffs are permanent as requested by that Company, and the Commission's past Orders speak for themselves regarding the Commission's view concerning the appropriate blocking policy.

In conclusion, this Order is meant to address the relatively narrow question before the Commission as to the device by which Caller ID is to remain in force for the time being as a service. The Commission does not by this Order address the merits of Caller ID controversy. Judging from the quantity and intensity of recent filings, it is possible that the Caller ID controversy may be revisited at some future time. However, it is not necessary for the Commission to do so now.

IT IS, THEREFORE, ORDERED that Southern Bell's Caller ID service, including free per-line and per-call blocking, be indefinitely extended as an experiment pending further Order and that Southern Bell be required to refile its Caller ID tariff consistent with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1994.

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

Commissioner Charles H. Hughes did not participate.

DOCKET NO. W-314, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Surry Water Company, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Bishops Ridge Subdivision in Forsyth County, North Carolina, and for Approval of Rates	)	ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD: June 23, 1994, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Charles H. Hughes, Presiding, Chairman Ralph A. Hunt, and Commissioners William W. Redman, Jr., Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On March 21, 1992, Surry Water Company, Inc. (Surry, Applicant, or Company), filed an application in Docket No. W-314, Sub 26, for a certificate of public convenience and necessity to furnish water utility service in Bishops Ridge Subdivision and for approval of rates. By Order issued November 16, 1992, the Commission denied the application.

On December 23, 1992, in Docket No. W-1027, Forsyth Water Company, Inc. (Forsyth), filed an application for a water utility franchise for Bishops Ridge Subdivision. Forsyth was a new corporation formed by Carroll and Mary Weber, stockholders of Surry. By Order issued on May 19, 1993, the Commission denied the franchise sought in Docket No. W-1027 because of the Commission's concerns of the overall financial fitness of the Webers. The Commission concluded that Forsyth had not carried the burden of proof as to Forsyth's financial fitness.

On October 13, 1993, in Docket No. W-314, Sub 29, Surry again filed for a water franchise in Bishops Ridge Subdivision. On March 23, 1994, Surry filed a motion for reconsideration of the Order issued on November 16, 1992, or, in the alternative, for the Commission to grant temporary operating authority in Docket No. W-314 Sub 29.

This matter was presented to the Commission by the Public Staff at the May 16, 1994, Staff Conference. The Public Staff recommended that an Order be issued granting temporary operating authority, approving interim rates, requiring a $10,000 bond, scheduling a hearing subject to cancellation if no significant protests were received, and requiring public notice.

By Order of May 19, 1994, the Commission granted temporary operating authority, approved interim rates, required bond, required public notice, closed Docket No. W-314, Sub 26, and set the matter for hearing.

The hearing was held as scheduled. The Applicant presented the testimony of Jocelyn M. Perkerson, Vice President of Surry Water Company, Inc. The Public Staff presented the prefiled testimony of John Robert Hinton, Public Utilities Financial Analyst, Economic Research Division of the Public Staff.

Company witness Perkerson testified that the Company had complied with all of the requirements outlined in the Order of May 19, 1994.

Public Staff witness Hinton, testified for the Public Staff that it was reasonable to expect that the addition of Bishops Ridge would enhance the financial viability of Surry Water Company, Inc.

Upon consideration of the foregoing, the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Surry is seeking a certificate of public convenience and necessity to furnish water utility service in Bishops Ridge Subdivision in Forsyth County, North Carolina.

2. There is a demand and need for water utility service in Bishops Ridge Subdivision.

3. The Applicant's proposed monthly water rates are as follows:

Metered Residential Water Rates (Monthly)

Base charge	$ 7.75 minimum
Usage charge	2.02/1,000 gallons
Testing charge	
1st 12 months	15.54/month
2nd 12 months	9.23/month
After 2nd 12 months	1.01/month

4. The financial viability of Surry and the other companies affiliated with Surry and Mid South Water Systems, Inc., will be enhanced by the addition of a franchise to serve Bishops Ridge Subdivision.

5. A bond in the required amount of $10,000 has been posted.

CONCLUSIONS

From a review and study of the application, the evidence presented at the hearing, and other information in the Commission's files in this docket, the Commission reaches the following conclusions:

1. The Applicant should be granted a certificate of public convenience and necessity to provide water utility service in Bishops Ridge Subdivision, Forsyth County, North Carolina.

2. There is a demand and need for water utility service in Bishops Ridge Subdivision which can best be met by the Applicant at this time.

3. The rates approved by the Commission for water utility service in Bishops Ridge Subdivision are the uniform rates of Surry and are contained in the Schedule of Rates, attached hereto as Appendix B. These rates are not unfair or unreasonable and are unopposed by the parties of record.

4. A bond in the amount of $10,000 has been posted with United Carolina Bank, as required.

5. The addition of Bishop's Ridge will enhance the financial viability of the Company. This conclusion is based primarily on the testimony of Public Staff witness Hinton. His testimony was not contested by the Company. It indicated that, since Surry is incurring the expenses to provide water service to Bishops Ridge Subdivision, the Company's financial condition would be improved by being allowed to charge its uniform rates for the service provided. The Commission, therefore, concludes that Surry's financial viability and the financial viability of the other companies affiliated with Surry and Mid South will be enhanced by the addition of Bishops Ridge Subdivision.

IT IS, THEREFORE, ORDERED as follows:

1. That Surry Water Company, Inc., is hereby granted a certificate of public convenience and necessity in order to provide water utility service in Bishops Ridge Subdivision, Forsyth County, North Carolina, as is more particularly described in the application made a part hereof by reference.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That a copy of this Order and Appendix B shall be mailed or hand delivered by Surry to all of its customers affected by this proceeding; that said Order and Appendix B be mailed or hand delivered no later than 30 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service properly signed and notarized no later than 45 days after the date of this Order.

5. 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

Commissioner Charles H. Hughes dissents.

APPENDIX A

DOCKET NO. W-314, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

SURRY WATER COMPANY, INC.

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

BISHOPS RIDGE SUBDIVISION

Forsyth County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

APPENDIX B

SCHEDULE OF RATES

for

SURRY WATER COMPANY, INC.

for providing water utility service in

BISHOPS RIDGE SUBDIVISION

Forsyth County, North Carolina

Metered Rates: (monthly)

Base charge[1/]	$23.29 (minimum charge)
Usage charge	$ 2.02/1,000 gallons

Connection Charge: $450.00 (only for property that is not in the original development.)

Reconnection Charges:

If water service cut off by utility for good cause:	$15.00
If water service discontinued at customer's request:	$10.00

Cut-off Valve Replacement Fee: $40.00
(This fee will be charged only when Company is required to replace cut-off valve as a result of damages made by homeowner).

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

This rate is effective for water service provided until February 28, 1995. After that date the rate becomes:

	March 1, 1995 - February 29, 1996	After February 29, 1996
Base Facility Charge	$16.98	$ 8.76

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-314, Sub 29, on this the 9th day of September 1994.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by Order of the North Carolina Utilities Commission in Docket No. W-314, Sub 29, and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-314, Sub 29.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-720, SUB 100

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Provide Sewer Utility Service in Killian Crossroads Service Area in Catawba County, North Carolina, and for Approval of Rates	}	ORDER GRANTING SEWER UTILITY FRANCHISE, APPROVING RATES, AND REQUIRING REFUNDS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, June 23, 1994

BEFORE: Commissioner Charles H. Hughes, Presiding, Chairman Ralph A. Hunt, and Commissioners William W. Redman, Jr., Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On May 10, 1990, Mid South Water Systems, Inc. (Mid South, Applicant or Company), filed an application in Docket No. W-720, Sub 100, seeking a franchise to provide sewer utility service in the Killian Crossroads service area in Catawba County, North Carolina.

During the course of its investigation, the Public Staff learned that Mid South was charging rates without authority in this service area.

This matter was presented to the Commission by the Public Staff at the May 16, 1994, Staff Conference. The Public Staff recommended that an Order be issued granting temporary operating authority, approving interim rates, requiring a $10,000 bond, scheduling a hearing subject to cancellation if no significant protests were received, and requiring public notice. The Public Staff also recommended that Mid South be required to refund, with interest, all monies collected in this service area prior to the granting of temporary authority.

By Order of May 23, 1994, the Commission granted temporary operating authority, approved interim rates, required a $10,000 bond, required public

notice, and set the matter for hearing. The grant of temporary authority was made subject to Mid South receiving and notifying the Commission of its receipt of funds to pay taxes on contribution in aid of construction (CIAC).

The hearing was held as scheduled. The Applicant presented the testimony of Jocelyn M. Perkerson, Vice President of Mid South Water Systems, Inc. The Public Staff presented the prefiled testimony of John Robert Hinton, Public Utilities Financial Analyst, Economic Research Division of the Public Staff.

On July 5, 1994, Mid South filed as a late exhibit indicating that $42,785.26 had been collected as CIAC gross-up.

On June 20, 1994 a late-filed exhibit was filed showing the posting of a $10,000 bond.

On August 5, 1994, an exhibit was filed, as requested at the June 23, 1994, hearing, providing information regarding the cost incurred by Mid South for the repair and maintenance and improvement of the Killian Crossroads system since the application for franchise was filed.

Upon consideration of the foregoing, the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Mid South is seeking a certificate of public convenience and necessity to furnish sewer utility service in Killian Crossroads in Catawba County, North Carolina.

2. There is a demand and need for sewer utility service in Killian Crossroads.

3. The Applicant's proposed monthly sewer rates are as follows:

Metered Commercial Sewer Rates (Monthly)

Base charge	$12.25 minimum
Usage charge	3.00/1000 gallons

Flat Rate: (Residential) $29.00/month

4. A bond in the amount of $10,000 has been posted.

5. CIAC gross up has been collected from the developer in the amount of $42,785.26 on a contribution of $68,000.00.

6. Mid South has sold excess treatment capacity to the developer of Baypointe Subdivision for the sum of $32,000, but has not treated this as a contribution and has not collected gross-up on this amount.

7. Payment for excess capacity constitutes taxable CIAC and, therefore, should be grossed-up as required by this Commission in Docket No. M-100, Sub 113.

8. Mid South has collected revenues from customers in the Killian Crossroads service area without authority.

9. Granting of this franchise will enhance the financial viability of Mid South and of the other companies affiliated with Mid South.

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

From a review and study of the application, the evidence presented at the hearing, and other information in the Commission's files in this docket, the Commission reaches the following conclusions:

A. The Applicant should be granted a certificate of public convenience and necessity to provide sewer utility service in Killian Crossroads, Catawba County, North Carolina.

B. There is a demand and need for sewer utility service in Killian Crossroads which can best be met by the Applicant at this time.

C. The rates approved by the Commission for sewer utility service in Killian Crossroads are the uniform rates of Mid South and are contained in the Schedule of Rates, attached hereto as Appendix B. These rates are not unfair or unreasonable and are unopposed by the parties of record.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Ms. Perkerson testified that a bond in the amount of $10,000 had been posted. The information filed with the Commission shows that a Certificate of Deposit was issued by United Carolina Bank on June 6, 1994 in the amount of $10,000 for Mid South Water Systems, Inc. The Certificate number is 467804. The Commission therefore concludes that the requirements relating to the bond have been met.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The contract provided by the Company with SIHO Properties and the testimony of Ms. Perkerson indicate that Mid South received CIAC in the amount of $68,000 for the Baypointe Subdivision. Ms. Perkerson testified that the check for the gross-up in the amount of $42,785.26 would be picked up from the developer within a few days and that a copy of the paper work would be filed as a late-filed exhibit. This was done by a filing on June 29, 1994. The Commission concludes that the requirements relating to CIAC and the resulting gross up have been met by the Company.

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

SIHO Properties purchased 16,000 gallons of excess capacity in the Killian Crossroads sewer facility. The price for the excess capacity was $32,000. The Commission concludes that the $32,000 paid to Mid South by the developer of Baypointe is a contribution in aid of construction. This payment is cash

contributed by a developer to cover the cost of plant for the provision of services to the development. This payment constitutes taxable CIAC and should be grossed-up as required by the Commission in Docket No. M-100, Sub 113.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Perkerson testified that at some point in time the Company began to bill the Killian Crossroads customers. She indicated that the billing began prior to her employment with the Company and that Mr. Weber, the Company President, was not aware that the billing was taking place prior to a sewer rate case heard in 1992. She indicated that the bills were mailed out with no attempt to collect from persons who did not pay. There were no past due notices and no threats to disconnect.

Witness Perkerson also testified that during the time the customers were being served there were a number of expenses that were being incurred each month. A late-filed exhibit was filed showing these expenses as being $27,828. The revenues that were received also shown on the late-filed exhibit were $12,240. These amounts are for the 18 months ended June 30, 1994. Although the Company did not profit from the serving of these customers over the four-year period since the application was filed, the Company did charge for service prior to receiving authority from the Commission.

The Commission concludes that Mid South should be required to account for and refund, with interest at 10% per annum, all monies received for service prior to the granting of temporary operating authority on May 16, 1994. Where possible, this refund may be made by credit against future bills.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

This finding is based primarily upon the testimony of Public Staff witness Hinton. His testimony was not contested by the Mid South. It indicated that, since Mid South is incurring the expenses to provide sewer service to Killian Crossroads, the Company's financial condition would be improved by being allowed to charge its uniform rates for the services provided. The Commission, therefore, concludes that Mid South's financial viability and the financial viability of the other companies affiliated with Mid South will be enhanced by the addition of Killian Crossroads.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Mid South Water Systems, Inc., is hereby granted a certificate of public convenience and necessity to furnish sewer utility service in the Killian Crossroads service area, Catawba County, North Carolina.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved for service rendered on and after the effective date of this Order and that such Schedule is hereby deemed filed with the Commission pursuant to G.S. 62-138.

4. That the bond in the amount of $10,000 previously filed with respect to the grant of temporary operating authority, shall remain in effect for the franchise.

5. That this franchise is granted conditionally subject to the taxes on the $32,000 in CIAC received from the developer of Baypointe being paid by the developer to Mid South within 60 days of the date of this Order and further subject to Mid South's refund with interest of all monies received for service prior to the granting of temporary authority on May 16, 1994. Where possible, this refund may be made by credit against future bills. Mid South shall file an accounting of funds received and a plan for refunds with the Commission and Public Staff within 10 days of the date of this Order. After the Public Staff has had an opportunity to comment, the Commission will issue an Order specifying the procedure for refunds. Mid South shall notify the Commission once the developer has paid the gross-up on the $32,000 of CIAC.

6. That a copy of this Order and Appendix B shall be mailed or hand delivered by Mid South to all of its customers affected by this proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

Commissioner Charles H. Hughes dissents.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-720, SUB 100
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
MID SOUTH WATER SYSTEMS, INC.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide sewer utility service
in
KILLIAN CROSSROADS
Catawba County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

APPENDIX B

SCHEDULE OF RATES

for

MID SOUTH WATER SYSTEM, INC.

for providing sewer utility service in

KILLIAN CROSSROADS

Catawba County, North Carolina

Metered Rates: (Commercial)

Base charge (zero usage)	$ 12.25
Usage charge	$ 3.00/1,000 gallons

Flat Monthly Rate: (Residential) $ 29.00

Connection Fee: $400.00
Except where excluded by contract

Reconnection Charges:

If service cut off at customers request or by utility for good cause and the sewer customer is also a water customer:	$ 15.00
If water service not provided by utility:	$ 75.00

Customers who have been disconnected and are reconnected at the same address within nine months of disconnection will be charged the monthly base charge or the monthly flat rate per month for the period during which they were disconnected.

Returned Check Charge: $ 20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Deposits: May be requested in accordance with NCUC Rules R12-1 through R12-6.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-720, Sub 100, on this the 9th day of September 1994.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Order issued by the North Carolina Utilities Commission in Docket No. W-720, Sub 100, and said Order was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Order was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-720, Sub 100.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-720, SUB 117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Provide Water Utility Service in Pine Isle Subdivision, Iredell County, North Carolina, and for Approval of Rates	ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, June 23, 1994,

BEFORE: Commissioner Charles H. Hughes, Presiding, Chairman Ralph A. Hunt, and Commissioners William W. Redman, Jr., Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On May 13, 1992, Mid South Water Systems, Inc. (Mid South, Applicant or Company), filed an application in Docket No. W-720, Sub 117, seeking a franchise to provide water utiltiy service in Pine Isle Subdivison, Iredell County, North Carolina. The Public Staff and Mid South disagreed on whether taxes would be due on contributions in aid of constrution (CIAC). On Octover 16, 1992, the Commission issued an Order scheduling a a hearing on the issue of taxes on CIAC. By motion filed on November 19, 1992, Mid South requested a continuance of that hearing.

On October 13, 1993, Mid South filed a revised application addressing the issue of CIAC and stating that taxes on the CIAC of $180,440 would be collected using the full gross-up method.

This matter was presented to the Commission by the Public Staff at the May 16, 1994, Staff Conference. The Public Staff recommended that an Order be issued granting temporary operating authority, approving interim rates, requiring a $10,000 bond, scheduling a hearing subject to cancellation if no significant protests were received, and requiring public notice.

By Order of May 23, 1994, the Commission granted temporary operating authority, approved interim rates, required a bond, required public notice, and set the matter for hearing. The grant of temporary authority was made subject Mid South receiving and notifying the Commission of its receipt of funds to pay taxes on CIAC.

The hearing was held as scheduled. The Applicant presented the testimony of Jocelyn M. Perkerson, Vice President of Mid South Water Systems, Inc. The Public Staff presented the prefiled testimony of John Robert Hinton, Public Utilities Financial Analyst, Economic Research Division of the Public Staff. No customers appeared at this hearing.

Upon consideration of the foregoing, the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Mid South is seeking a certificate of public convenience and necessity to furnish water utility service in the Pine Isle Subdivision in Iredell County, North Carolina.

2. There is a demand and need for water utility service in the Pine Isle Subdivision.

3. The Applicant's proposed monthly water rates are as follows:

Metered Residential Water Rates (Monthly)	
Base charge	$ 8.35 minimum
Usage charge	$ 2.05/1000 gals.
Testing charge	
1st 12 months	$11.16/month
2nd 12 months	$ 9.20/month
After 2nd 12 months	$ .62/month

4. The CIAC gross up collected from the developer by Mid South Water Systems, Inc. is $113,532.27. This amount is sufficient to pay the estimated taxes on CIAC.

5. Mid South's financial viability is enhanced by the addition of the Pine Isle Subdivision.

6. A bond in the required amount of $10,000 has been posted.

CONCLUSIONS

From a review and study of the application, the evidence presented at the hearing, and other information in the Commission's files in this docket, the Commission reaches the following conclusions:

1. The Applicant should be granted a certificate of public convenience and necessity to provide water utility service in the Pine Isle Subdivision, Iredell County, North Carolina.

2. There is a demand and need for water utility service in the Pine Isle Subdivision which can best be met by the Applicant at this time.

3. The rates approved by the Commission for water utility service in the Pine Isle Subdivision are the uniform rates of Mid South and are contained in the Schedule of Rates, attached hereto as Appendix B. These rates are not unfair or unreasonable and are unopposed by the parties of record.

4. A bond in the amount of $10,000 has been posted with United Carolina Bank.

5. CIAC in the amount of $180,440 has been received by the Company and gross up in the amount of $113,532.27 has been paid by the developer.

6. Mid South's financial viability is enchanced by the addition of the Pine Isle Subdivision. This conclusion is based primarily upon the testimony of Public Staff Witness Hinton. His testimony was not contested by the Company. It indicated that, since Mid South is incurring the expenses to provide water service to Pine Isle Subdivision, the Company's financial condition would be improved by being allowed to charge its uniform rates for the service provided.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Mid South Water Systems, Inc., is hereby granted a certificate of public convenience and necessity to furnish water utility service in the Pine Isle Subdivision, Iredell County, North Carolina.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved for service rendered on and after the effective date of this Order and that such schedule is hereby deemed filed with the Commission pursuant to G.S. 62-138.

4. That the bond in the amount of $10,000 previously filed with respect to the grant of temporary operating authority, shall remain in effect for the franchise.

5. That a copy of this Order and Appendix B shall be mailed or hand delivered by Mid South to all of its customers affected by this proceeding; that said Order and Appendix B be mailed or hand delivered no later than 30 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service properly signed and notarized no later than 45 days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

Commissioner Charles H. Hughes dissents.

APPENDIX A

DOCKET NO. W-720, SUB 117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

MID SOUTH WATER SYSTEMS, INC.

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

PINE ISLE SUBDIVISION

Iredell County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

APPENDIX B

SCHEDULE OF RATES

for

MID SOUTH WATER SYSTEMS, INC.

for providing water utility service in

PINE ISLE SUBDIVISION

Iredell County, North Carolina

Metered Rates: (both residential and nonresidential)

Base charge: (based on meter size)[1/]

Meter size	
3/4" x 5/8"	$ 19.51
3/4"	$ 29.09
1"	$ 48.25
1-1/2"	$ 96.15
2"	$153.63
3"	$287.75
4"	$479.35
6"	$958.35

Connection Fee: $400.00 (except where excluded by contract)

Reconnection Charges:

If water service cut off by utility for good cause or at customer's request: $15.00

If water service cut off by utility for good cause when there is no cut-off valve: (to cover installation of cut-off valve) $50.00

Customers who have been disconnected and are reconnected at the same address within nine months of disconnection will be charged the monthly base charge or the monthly flat rate per month for the period during which they were disconnected.

Cut-off Valve Replacement Fee: $40.00
(This fee will be charged only when Company is required to replace cut-off valve as a result of damages made by homeowner).

Returned Check Charge: $10.00

Bills Due: On billing date

Bills Past Due: 20 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Deposits: May be requested in accordance with NCUC Rules R12-1 through R12-6.

1/ This rate is effective for water service provided after the date of this Order and is applicable until February 28, 1995. After February 28, 1995, the rates become:

	March 1, 1995 February 28, 1996	After February 28, 1996
Metered Rates:		
Base Charge* (based on meter size)		
3/4" x 5/8"	$ 17.55	$ 8.97
3/4"	$ 26.15	$ 13.28
1"	$ 43.35	$ 21.90
1-1/2"	$ 86.35	$ 43.45
2"	$137.95	$ 69.31
3"	$258.35	$129.65
4"	$430.35	$215.85
6"	$860.35	$431.35

*Monthly base charges or montly flat rates will be charged whether or not unit is occupied unless disconnection is requrested (see reconnection charges). Units that are sold or rental units that change occupants (where service is not in name of landlord) will not be charged these charges for the period that they were disconnected from system.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-720, Sub 117,on this the 9th day of September 1994.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Order issued by the North Carolina Utilities Commission in Docket No. W-720, Sub 117, and said Order was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Order was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-720, Sub 117.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-1044

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Bradfield Farms Water Company, 145 Scaleybark Road, Charlotte, North Carolina 28209 for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Services in Bradfield Farms Subdivision in Cabarrus and Mecklenburg Counties, North Carolina, and for Approval of Rates	ORDER GRANTING WATER AND SEWER UTILITY FRANCHISE AND APPROVING RATES

HEARD IN: Charlotte-Mecklenburg Government Center, Charlotte, North Carolina, on May 17, 1994

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 24, 1994

BEFORE: Commissioner Ralph A. Hunt, Presiding, and Commissioners William W. Redman and Charles H. Hughes

APPEARANCES:

For Bradfield Farms Water Company:

Louis S. Watson, Jr., and Joseph W. Eason, Moore & Van Allen, One Hanover Square, Suite 1700, Raleigh, North Carolina 27601

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On December 13, 1993, Bradfield Farms Water Company (Bradfield, Applicant, or Company) filed an application for a certificate of public convenience and necessity to provide water and sewer utility service in Bradfield Farms Subdivision in Mecklenburg and Cabarrus Counties and for approval of rates. A revised application was filed on February 14, 1994. The Commission issued an Order on January 27, 1994, granting temporary operating authority, approving interim rates, requiring posting of a bond in the amount of $200,000, and scheduling hearings in Charlotte on May 17, 1994, and in Raleigh on May 24, 1994. The remainder of the procedural history of this matter is found in the records, files, and Orders of the Commission in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026 which are hereby incorporated by reference.

On May 4, 1994, the Public Staff filed the testimony and exhibits of Katherine A. Fernald, Supervisor, Accounting Water Section, Andy R. Lee, Director, Water Division, and Gina Y. Casselberry, Utilities Engineer, Water Division, and the affidavit of Thomas W. Farmer, Jr., Financial Analyst, Economic Research Division.

On May 17, 1994, the Company filed the direct and supplemental testimony and exhibits of Daniel L. Barnobi, President of Bradfield Farms Water Company, William E. Saint, Secretary and Treasurer of Bradfield Farms Water Company, and Oreste V. Baffi, of Arthur Andersen & Co.

The hearing in Charlotte was held as scheduled. The following public witnesses appeared and offered testimony: Jennifer Parsons, Fred Stees, O.D. Furr, Patrick Ford, Grady Balentine, Ted Czuba, Kevin Burd, Mark Brown, Susie Katz, Paul Pollinger, Cameron Esmailian, Angela Walker, Tim Keesling, and Mike Sansevieri. Generally, the public witnesses presented testimony in opposition to the proposed rate increase and one public witness complained about having problems caused by hard water.

The hearing in Raleigh was held as scheduled. The Company presented the direct and rebuttal testimony and exhibits of Daniel L. Barnobi, William E. Saint, and Oreste V. Baffi, and the rebuttal testimony of M.L. Stankovic, Sales Manager for the South Charlotte Division of John Crosland Company (Crosland), the developer of Bradfield Farms Subdivision. The Public Staff presented the testimony and exhibits of Gina Y. Casselberry, Andy R. Lee and Katherine A. Fernald. The Public Staff and the Company entered into a stipulation with respect to the affidavit of Thomas W. Farmer, Jr., which was subsequently reduced to writing and filed with the Commission.

On the basis of the application, the testimony and exhibits at the hearings, the records in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026 and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

GENERAL MATTERS

1. Bradfield, a subsidiary of Crosland, is seeking a certificate of public convenience and necessity to furnish water and sewer utility service in Bradfield Farms Subdivision in Mecklenburg and Cabarrus Counties, North Carolina, and to provide bulk sewer treatment service to utilities serving Silverton and Britley Subdivisions in Cabarrus County, North Carolina, and approval of rates.

2. There is a demand and need for water and sewer utility service in Bradfield Farms Subdivision. There is a demand and need for bulk sewer treatment service in Silverton and Britley Subdivisions.

3. The Applicant's proposed monthly water and sewer rates, as amended at the hearing, are as follows:

Metered residential water rate	
Base charge, zero usage	$ 9.15 minimum
Usage charge	$ 2.75/1,000 gallons
Flat residential sewer rate	$28.15
Bulk sewer rate	$13.00/residence

4. The monthly water and sewer rates recommended by the Public Staff are as follows:

Metered residential water rate	
Base charge, zero usage	$ 5.25 minimum
Usage charge	$ 0.40/1,000 gallons
Flat residential sewer rate	$12.10
Bulk sewer rate	$ 7.75/residence
EPA-testing surcharge	$ 2.65

The EPA-testing surcharge is to be added to the flat rate for water utility service for a period of 12 months starting with the first billing following the effective date of this Order.

5. The Applicant proposes to employ Rayco Utilities, Inc. (Rayco), to perform the day-to-day operation and maintenance of the water and sewer systems at Bradfield Farms Subdivision under the terms of a contract, the Utility Operating Agreement, filed with the application. Rayco is presently providing this service to the Applicant under its temporary operating authority and is technically fit and qualified to provide the services required.

6. Water and sewer service has been provided to residents of Bradfield Farms Subdivision at least since 1990 by the Applicant or its predecessors in interest using the existing facilities.

7. The test period appropriate for use in this proceeding is the 12 months ended December 31, 1993.

RATE BASE

8. It is inappropriate in this proceeding to include in rate base the cost of transferred assets which have previously been contributed by the developer to utility operations.

9. It is inappropriate in this proceeding to include in rate base the cost of purchased assets.

10. The land used by the utility as of December 31, 1993 is part of the transferred assets and, therefore, should not be included in rate base.

11. It is inappropriate to include a deduction in rate base for capacity sales related to the transferred assets.

12. It is inappropriate to include post-test-year plant additions in rate base.

13. It is inappropriate to include in rate base the cost of the primary main and hydrants.

14. The total plant in service for utility operations is zero.

15. Since there is zero plant in service, the appropriate level of accumulated depreciation is also zero.

16. It is appropriate to include in rate base cash working capital of $6,466 for water operations and $9,989 for sewer operations and average tax accruals of $1,110 for water operations and $1,787 for sewer operations.

17. Bradfield's reasonable rate base used and useful in providing water and sewer utility service is $13,558, consisting of cash working capital of $16,455 reduced by average tax accruals of $2,897.

REVENUES

18. The appropriate numbers of end-of-period customers are 361 for water utility service, 349 for flat rate sewer service, and 71 for bulk sewer service.

19. The appropriate levels of end-of-period service revenues are $92,353 for water utility service, $109,572 for flat rate sewer utility service, and $20,448 for bulk sewer service.

20. It is inappropriate to include nonoperating revenues of $12,628 in total utility operating revenues.

21. The appropriate level of uncollectibles under present rates is $2,224 of which $924 is applicable to water operations and $1,300 is applicable to sewer operations.

CUSTOMER GROWTH

22. It is appropriate to adjust purchased power for water operations for customer growth. The appropriate customer growth factor to be used for such adjustment is 1.103.

OPERATION AND MAINTENANCE EXPENSES

23. It is appropriate to reflect contractual accounting services at the actual rates under the contract with the operator.

24. The appropriate level of contractual legal services is $5,000, of which $2,550 relates to water operations and $2,450 relates to sewer operations.

25. The appropriate level of both materials and supplies and contractual engineering services associated with maintenance and repair expenditures is $12,000, of which $2,000 and $3,000, respectively, relate to water operations and $3,500 and $3,500, respectively, relate to sewer operations.

26. The appropriate level of materials and supplies for operations is $4,000, of which $2,040 relates to water operations and $1,960 relates to sewer operations.

27. The appropriate level of salaries to be included in the management fee is $15,760.

28. Based on the level of salaries found appropriate in this proceeding, the appropriate level of rent, payroll taxes, benefits, and workers' compensation to be included in the management fee is $3,530.

29. It is appropriate to allocate the management fee between water and sewer operations based on the number of customers.

30. The appropriate level of management fees is $19,290, of which $9,839 relates to water operations and $9,451 relates to sewer operations.

31. The appropriate level of chemical expense for sewer operations is $5,000.

32. The appropriate level of electric power expense is $22,960, of which $7,292 relates to water operations and $15,668 relates to sewer operations.

33. The appropriate level of expense for sludge removal is $6,400 for the sewer operations.

34. It is appropriate to include $750 for permit fees in operation and maintenance expenses, of which $300 relates to water operations and $450 relates to sewer operations.

35. It is appropriate to include $902 for testing expenses for water operations and $1,000 for testing expenses for sewer operations.

36. A $2.65 per month per customer EPA-testing surcharge for 12 months is appropriate for recovering the cost of required tests under phase II of the Safe Drinking Water Act (SDWA).

37. The appropriate level of contractual services - other is $29,027, of which $9,227 relates to water operations and $19,800 relates to sewer operations.

38. The appropriate level of insurance expense is $3,600, of which $1,800 is applicable to water operations and $1,800 is applicable to sewer operations.

39. It is appropriate to include $2,318 in miscellaneous expense for the actual phone line expenses incurred by the emergency operator in the water operations during the test year.

40. The appropriate level of miscellaneous expense for the Company's annual expense of maintaining its surety bond is $1,500, of which $765 relates to water operations and $735 relates to sewer operations.

41. The appropriate level of regulatory expense is $10,000, of which $5,100 relates to water operations and $4,900 relates to sewer operations.

42. The appropriate level of total operation and maintenance expense is $131,643, of which $51,729 relates to water operations and $79,914 relates to sewer operations.

OTHER OPERATING REVENUE DEDUCTIONS

43. The appropriate level of depreciation expense is zero.

44. The appropriate level of property tax expense is $1,000 for water operations and $1,000 for sewer operations.

45. Based on the other findings and conclusions set forth in this Order, the appropriate level of regulatory fees is $78 for water operations and $109 for sewer operations.

46. Based on the other findings and conclusions set forth in this Order, the appropriate level of gross receipts tax is $3,657 for water operations and $7,723 for sewer operations.

47. Based on the other findings and conclusions set forth in this Order, the appropriate level of state income taxes is $2,710 for water operations and $3,098 for sewer operations.

48. Based on the other findings and conclusions set forth in this Order, the appropriate level of federal income taxes is $5,714 for water operations and $6,569 for sewer operations.

49. It is inappropriate to include interest expense as an operating revenue deduction since it is considered that such costs would be recovered as a component of the level of net operating income approved by the Commission in this proceeding based on the operating ratio methodology.

50. The appropriate level of other operating revenue deductions is $31,658, of which $13,159 relates to water operations and $18,499 relates to sewer operations.

METHODOLOGY FOR REVENUE DETERMINATION

51. The appropriate methodology to use in determining rates in this proceeding is the operating ratio methodology.

52. The appropriate margin on operating revenue deductions requiring a return is 9.00% for purposes of this proceeding.

RATES, FEES, AND OTHER MATTERS

53. The Commission finds that the rates should be set to produce total annual revenues of $158,919. These revenues will allow Bradfield the opportunity to earn a 9.00% margin on its operating revenue deductions requiring a return which the Commission has found to be reasonable upon consideration of the findings in this Order.

54. In a situation where the Applicant cuts off a customer's water service for good cause and there is not a cut-off valve located on the customer's water service line, the Applicant has requested a reconnection charge of $50. The

Public Staff recommends, in such a situation, that the reconnection charge be set at $15 plus the actual cost of installing a cut-off valve on the customer's water service line. The appropriate charge for such situation should be actual cost.

55. In a situation where the Applicant provides sewer service, but not water service to a customer, the Applicant has requested a reconnection charge of $75 if the customer's sewer service is cut off for good cause. The Public Staff recommends, in such a situation, that the reconnection charge be set at $15 plus the actual cost of installing a plug on the customer's sewer service line. The appropriate charge for such situation should be actual cost.

56. The Applicant has not requested a connection charge for future customers but has requested that the cost of connecting a future customer be included in rate base and recovered through rates in future general rate case proceedings. The Public Staff recommends that the Applicant request a connection charge based on the cost for connection of future customers to the water and or sewer systems. The Commission will not require the Applicant to establish a connection charge, at this time. Further, the Commission finds that any decision on the inclusion in rate base of utility plant to serve future customers, if any, will be decided in the Company's future general rate case proceedings based on the facts and evidence presented to the Commission at that time.

57. The proper rates to be set in this proceeding are found in the Schedule of Rates attached hereto as Appendix B.

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

The evidence supporting these findings of fact is contained in the application and supporting documents and in the Commission's records. These findings are generally jurisdictional and informational and are not contested.

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

The evidence supporting these findings is contained in the records of the Commission in this docket, in the Commission records in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026, and in the testimony of Company witnesses Saint and Barnobi, and Public Staff witness Fernald.

Company witness Barnobi testified that Bradfield filed its application based upon a projected test year ending December 31, 1994, since neither Crosland nor Bradfield had any actual historical operating data upon which to base a historical test year. Further, witness Barnobi explained that until December 1993, the water and sewer systems at Bradfield Farms had been operated by Mid South Water Systems, Inc. (Mid South). Company witness Saint forecasted the December 31, 1994, test year level of annual expenses for Bradfield based on a combination of estimates and annualizations of operating expense data for the period from December 12, 1993 through April 30, 1994.

Public Staff witness Fernald testified that, as set forth under G.S. 62-133, Bradfield's operations should be based on a historical test year ending December 31, 1993.

In setting rates for public utilities, the Commission is generally required by G.S. 62-133(c) to employ a test period consisting of 12 months' historical operating experience, but the Commission shall consider such relevant, material and competent evidence as may be offered to show actual changes in costs, revenues and public utility property used and useful up to the time the hearing is closed. While this is not possible in the case of new utilities, the subject water and sewer utility is not a new utility per se. Water and sewer utility services have been provided for a number of years and actual historical operating data is available. Under these circumstances, the Commission finds that the test period appropriate for use in this proceeding is the 12 months ended December 31, 1993.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-17

The evidence for these findings of fact is found in the testimony of Public Staff witnesses Fernald and Lee and Company witnesses Baffi and Barnobi. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$1,136,099	$ 0	$(1,136,099)
Accumulated depreciation	(32,096)	0	32,096
Cash working capital	0	3,879	3,879
Average tax accruals	0	(1,116)	(1,116)
Total original cost rate base	$1,104,003	$ 2,763	$(1,101,240)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$ 952,468	$ 0	$ (952,468)
Accumulated depreciation	(21,647)	0	21,647
Cash working capital	0	6,523	6,523
Average tax accruals	0	(1,800)	(1,800)
Total original cost rate base	$ 930,821	$ 4,723	$ (926,098)

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The differences in the levels of plant in service recommended by the Company and the Public Staff are composed of the following items:

Item	Water Operations	Sewer Operations	Total
Transferred assets	$ 408,973	$ 779,077	$1,188,050
Purchased assets	475,000	0	475,000
Land at 12/31/93	36,000	54,000	90,000
WWTP capacity sales	0	(101,231)	(101,231)
1994 additions	122,000	220,622	342,622
Primary main and hydrants	94,126	0	94,126
Total	$1,136,099	$ 952,468	$2,088,567

Transferred assets

The Company included in plant in service on its application $1,188,050 of transferred assets. As shown on pages 15 and 16 of the workpapers attached to Company witness Baffi's testimony, $1,169,451 of these transferred assets were in service at December 31, 1993 and the remaining amount of $18,599 relates to well No. 3 which will be in service in 1994. The physical plant in service at December 31, 1993, included in the amount of $1,169,451, consists of mains to serve Bradfield Farms' phases II, III, IV, V-A and V-B, two wells (Nos. 6 and 7), a 250,000 gallon per day sewer treatment plant and sewer trunk lines.

The history of the transferred assets is as follows:

(1) The developer, Crosland, originally paid for these assets and contributed them to Mid South.

(2) In 1993, these assets were subsequently transferred from Mid South back to Crosland under the Reconveyance and Purchase Agreement filed on November 29, 1993 in Docket No. W-1026. Under this agreement, Crosland did not pay Mid South for these transferred assets.

(3) Crosland will enter into an Asset Purchase Agreement (Exhibit 6 of Application) to sell these assets to Bradfield Farms Water Company, an affiliate, for $1,188,050.

Public Staff witness Fernald removed these assets from plant in service since the cost of the plant was initially contributed to the utility operations of Mid South. Witness Fernald testified that Crosland initially contributed the plant to Mid South and recovered it through the sale of lots from customers. Further, witness Fernald testified that she did not believe that the customers should have to pay twice for this plant.

Public Staff witness Lee testified that, if the Commission allows any cost of the wastewater treatment plant (WWTP) in rate base, the issue of excess capacity would have to be addressed. Witness Lee testified that the WWTP has a capacity to serve approximately 700 customers and that there were 420 sewer customers, including Silverton and Britley Subdivisions, being served at December 31, 1993.

Company witness Barnobi stated that Bradfield intends to include the cost of these assets in its rate base at the purchase price of those assets set forth

in the Asset Purchase Agreement between Bradfield and Crosland. Witness Barnobi testified that exclusion of these assets from Bradfield's rate base will preclude Bradfield from providing reliable and reasonably priced long-term water and sewer service. Additionally, witness Barnobi testified that although Crosland originally intended to and did contribute these transferred assets to Mid South, the Commission's Order requiring reconveyance by Mid South to Crosland, effectively rescinded that original transaction. Further, the Company argues that since the Commission Order issued on October 13, 1993, in Docket No. W-1026, rescinds the earlier contribution by Crosland to Mid South then the property was never dedicated to public service and that Crosland now intends to sell the transferred assets to Bradfield. Therefore, it is the Company's opinion that it should not now be held to Crosland's original intent to contribute the transferred assets. Further, witness Barnobi testified that the Company's proposed rate base treatment would not result in customers paying twice for the same property since the price paid by the customers for the homes represents the fair market value of those homes.

However, on cross-examination by the Public Staff, witness Barnobi testified that Crosland had been recovering the cost of the transferred plant through the sale of lots. In this regard, witness Barnobi responded to several questions on cross-examination as follows:

Q. I HAD ASKED HOW CROSLAND WAS HANDLING THE COSTS OF THE PLANT WHICH WAS INITIALLY TRANSFERRED TO MID SOUTH FOR TAX PURPOSES.

A. It is included in the lot cost of the homes that are sold and as such time at the time of closing, those costs are expensed as part of the cost of the home.

Q. SO YOU HAVE BEEN RECOVERING THE COST OF THAT PLANT THROUGH THE SALE OF LOTS?

A. Yes.

Q. NOW, YOU ARE ASKING TO HAVE THAT INCLUDED IN RATE BASE, IS THAT CORRECT?

A. That is correct.

Q. AND THAT IS THE SAME PLANT THAT YOU WERE RECOVERING THROUGH THE SALE OF LOTS, IS THAT CORRECT?

A. Same facilities.

Q. OKAY. NOW, ARE YOU PROPOSING TO MAKE REFUNDS TO THOSE CUSTOMERS FOR THE PLANT COSTS THAT WERE RECOVERED THROUGH THE SALE OF THEIR LOTS?

A. No.

In regard to witness Lee's testimony regarding the WWTP's excess capacity, the Company stated that although the WWTP is large enough to serve slightly more than the existing number of customers, the entire value of the plant should be

allowed in rate base as it is needed to meet demand in the near future. The Company stated that it has an obligation to serve peak demand and anticipated growth.

Based upon the evidence, the Commission concludes that it would be inappropriate to include the transferred assets in rate base in this proceeding. The facts of this case indicate that the developer is recovering the cost of the contributed property through the sale of lots. Thus, if the cost of the transferred property was included in rate base, the ratepayers would end up paying twice for the same plant; i.e., once through rates and once in the price of their lots. The Commission believes that the ratepayers should only be responsible for reimbursing an investor once for utility property. Therefore, the Commission finds that it would be unfair and unreasonable to include the transferred property in rate base in this proceeding.

Further, the Company has advanced the position that the Commission's Order issued October 13, 1993, in Docket No. W-1026, requiring the return of certain utility property to the developers, effectively canceled Crosland's contribution of property to the utility. The Commission finds that this argument ignores the fact, acknowledged by witness Barnobi, that the cost of this property is being recovered through the sale of lots. Thus, the Commission concludes that since the Company does not plan to reimburse lot purchasers for their contribution to the cost of this property, the Company cannot also ask those purchasers to provide through rates either a return on investment or, through depreciation, a return of that investment.

Additionally, because the Commission finds that it would not be appropriate to include the cost of these assets, including the WWTP, in rate base, there is no issue of excess capacity related to the WWTP to be decided.

Purchased assets

The Company included in rate base $475,000 paid by Crosland to Mid South for a 250,000 gallon elevated storage tank and three wells (Nos. 3, 6 and 7). As shown on pages 15 and 16 of the workpapers attached to Company witness Baffi's testimony, $455,100 of these purchased assets were in service at December 31, 1993 and the remaining amount of $19,900 relates to well No. 3 which will be in service in 1994.

The history of the purchased assets is as follows:

(1) Mid South, or its construction division, installed or made improvements to the elevated storage tank and three wells.

(2) Crosland deposited $440,300 into an escrow account. Funds were withdrawn from this account by Mid South to reimburse it for monies it had spent.

(3) In 1993, these assets were purchased from Mid South by Crosland for $475,000 under the Reconveyance and Purchase Agreement. Company witness Barnobi testified that based on engineering estimates, the

Company allocated $370,100 of the purchase price to the elevated storage tank and $104,900 to the three wells since Mid South was unable to document the exact cost of those additions.

(4) Crosland will enter into an Asset Purchase Agreement (Exhibit 6 of Application) to sell these assets to Bradfield, an affiliate, for $475,000.

Public Staff witness Fernald removed these assets from plant in service since the cost of the plant was initially contributed to the utility operations of Mid South. On cross-examination, witness Fernald testified that, "Those assets that were never owned by Crosland, the $475,000, $370,000 of that, and actually more than that, was paid for by funds put into an escrow account by Crosland, they weren't actually paid for by Mid South."

Public Staff witness Lee testified that there will be an excess capacity issue if the Commission allows any cost of the elevated storage tank in rate base. Witness Lee testified that the elevated storage tank has a capacity to serve 1,250 water customers and that there were 361 water customers being served in Bradfield Farms at December 31, 1993.

Company witness Barnobi testified that the $475,000 of purchased assets should be included in rate base because "...Crosland's payment of $475,000 to Mid South for the Purchased Assets was solely to facilitate compliance with the Commission's Order. Crosland negotiated with Mid South for return of those assets, which were indispensable for the operation of the water system." Further witness Barnobi stated that he did not believe that Crosland or Bradfield should now be penalized for actions taken to comply with the Commission's Order of October 13, 1993, in Docket No. W-1026.

Additionally, Company witness Barnobi testified that Crosland deposited $440,300 into an escrow account to pay for certain construction of water utility property to be performed by Mid South. Witness Barnobi further testified that the $440,300 was deposited into an escrow account as a cost of Crosland's operations and that such funds were included in the sale of lots. However, the Company takes the position that the escrow account is separate from the expense incurred by Crosland to reacquire the utility system and that the evidence does not indicate that any of the $475,000 paid to Mid South had been recovered by Crosland. Thus, the Company argued that the existence of the escrow account to finance the original construction of part of the purchased assets does not remove the $475,000 paid for the purchased assets.

Based upon the evidence, the Commission concludes that it would be inappropriate to include the purchased assets in rate base in this proceeding. The facts of this case indicate that $440,300 was contributed by the developer to Mid South to pay for these assets and that the developer recovered these costs through lot sales. Thus, to include property paid for by this $440,300 contribution in rate base would result in customers paying twice for the same property. The Company argues that excluding this property penalizes it for obeying the Commission's Order in Docket No. W-1026. To the contrary, the Commission believes that to include property for which the Company is recovering through lot sales would unfairly penalize the Company's customers.

As to the remaining $34,700 of the purchase price, which is the difference between the $475,000 purchase price and the $440,300 of escrow funds, the Company did not provide any documentation or evidence supporting other improvements and/or additions constructed by Mid South, for which Crosland should have paid $34,700. In fact, Company witness Barnobi stated that he did not know what exact amount Mid South expended and whether it was expended by the utility company. Based upon the foregoing, the Commission concludes that it would be inappropriate to include any portion of the $475,000 in rate base in this proceeding. However, although the inclusion of the $34,700 amount in rate base has been denied in this case, the Commission finds that, in regard to this specific investment of $34,700, the Company should not be precluded from litigating the reasonableness of such costs in its next general rate case proceeding, if it so chooses.

Additionally, because the Commission finds that it is not appropriate to include these purchased assets, including the elevated storage tank, in rate base, there is no issue of excess capacity related to the elevated storage tank to be decided.

Land at December 31, 1993

The Company included in plant in service $90,000 of land that was in service at December 31, 1993. As shown on pages 15 and 16 of the workpapers attached to Company witness Baffi's testimony this land is classified as retained assets. Company witness Barnobi defined retained assets as property "which Crosland never transferred to Mid South, but retained for use in future phases of Bradfield Farms."

On cross-examination, Public Staff witness Fernald stated "I had some problems with a few [items] of the retained property. For example, the land listed, there was no land listed as transferred but according to responses and other deeds and everything there was land that was transferred so I had a problem there as to classification..."

Company witness Baffi, during cross-examination, read into the record in this docket the following Company response to a Public Staff data request:

> Question reads: Please provide a breakdown indicating exactly what land (elevated storage tank, WWTP, wells, lots, et cetera) is included in the land amounts at 1-1-94 of $36,000 for the water operations and $54,000 for sewer operations. Response: The land relates to lots, to well lots and sewer treatment plant is shown on subdivision map filed with the application. Land is valued at approximately $10,000 to $12,000 per acre. The land was transferred from Mid South to John Crosland pursuant to the Commission Order. See details as wells 6 and 7, elevated storage tank and sewage treatment plant and the values are $12,000, $12,000, $12,000, and $54,000, respectively.

Based upon the foregoing, the Commission concludes that the $90,000 of land at December 31, 1993 is part of the transferred assets, not retained assets, as classified by the Company. According to the Company's own data response, this land was transferred from Mid South back to Crosland.

the Commission has concluded that it is inappropriate to include the transferred assets in rate base and therefore, it is inappropriate to include the subject land investment.

WWTP capacity sales

The Company included in rate base a deduction of $101,231 as of December 31, 1993, for the sale of WWTP capacity. Crosland, the developer, has entered into several contracts to sell capacity in the WWTP to other developers. As shown on page 17 of the workpapers attached to Company witness Baffi's testimony, $251,500 had been received for the sale of capacity at December 31, 1993, and the Company projects that it will receive an additional $294,500 from sales of capacity during 1994.

On cross-examination, Company witness Baffi testified that the difference between the actual amount received and the amount deducted from rate base are related to excess dollars that go to reduce the future additions. Witness Baffi also testified that the Company does have the money from these sales.

Based upon the foregoing, the Commission concludes that money received under these contracts is cost-free capital to the utility. However, the Commission has found elsewhere in this Order that it would not be appropriate to include costs related to the transferred assets, including the WWTP, in rate base for ratemaking purposes. Therefore, the Commission concludes that it would not be appropriate to include a deduction for capacity sales related to those assets in rate base.

1994 plant additions

The Company included $342,622 in plant in service for the cost of its 1994 plant additions. This difference is due to the fact that the Company used a future test year ended December 31, 1994, while the Public Staff used a historical test year ended December 31, 1993.

According to page 16 of the exhibit attached to Company witness Baffi's testimony, these 1994 plant additions relate to expenditures on mains in Bradfield Farms' phases 7 and 10, well No. 3 and sewer trunk lines and lift stations. Company witness Barnobi testified that Bradfield Farms' phases 7 and 10 were not placed into service until February 1994 when Bradfield was granted temporary operating authority in Bradfield Farms Subdivision. Witness Barnobi further testified that well No. 3 was placed into service in April 1994. Further, witness Barnobi testified that up until the time the Company received temporary operating authority, not one lot had been sold in Bradfield Farms' phases 7 and 10. However, the Company takes the position that the plant additions made up through the close of the hearing should, by statute, be included in rate base.

Public Staff witness Fernald testified that she removed the estimated cost of the 1994 additions from rate base since the cost of these additions is not known and these additions were not in service at the end of the test year. Public Staff witness Lee testified that the plant installed to serve future customers should not be allowed in rate base in this proceeding. Witness Lee further testified that allowing this plant in rate base would create a problem

of not matching plant with revenues and expenses and would unfairly burden the existing customers with higher rates to pay for plant required to serve future customers. Witness Lee also testified that, in fairness to the existing customers, tap fees designed to recover the estimated cost of future plant additions should be charged to future customers.

Further, witness Lee testified that wells 6 and 7, which were included in the transferred assets, have the capacity to serve the customers that are on line as of April 30, 1994. Witness Lee stated that based on the DEH approval, the two wells can serve up to 392 customers and that there were 361 water customers being served in Bradfield Farms at December 31, 1993.

As discussed in finding of fact No. 7, the test year for use in this proceeding is the 12 months ended December 31, 1993. G.S. 62-133(c) does allow the Commission to adjust this test period for actual changes in costs, revenues, and utility plant placed in service. The Company's proposed order reflects amounts being included for projected additions through April 30, 1994. However, the Company has not provided any supporting evidence as to the actual cost of the plant additions after the end of the test year, the actual expenses associated with those plant additions, and the actual number of customers that would be served by those plant additions. Based upon the foregoing, the Commission finds that it is inappropriate to include the amount of $342,622 for post-test-year plant additions in rate base in this proceeding. To do otherwise would create a problem of not matching plant with revenues and expenses and would unfairly burden the existing customers with higher rates.

Primary main and hydrants

The last remaining difference of $94,126 in plant in service relates to the Company's inclusion of the cost of a primary main of $76,501 and hydrants of $17,625. According to Page 15 of the workpapers attached to Company witness Baffi's testimony, these items are retained assets. Company witness Barnobi defined retained assets as "property which Crosland never transferred to Mid South, but retained for use in future phases of Bradfield Farms."

Public Staff witness Fernald testified that she removed all plant previously contributed to utility operations and all future additions. Public Staff witness Lee testified that utility plant that has been installed to serve future customers should not be allowed in rate base in this proceeding, including the primary water main.

The Commission concludes that it would be inappropriate to include in rate base the cost of the primary main and hydrants which were retained by the Company for use in future phases. The Commission believes that to do otherwise would create a problem of not matching plant with revenues and expenses and would unfairly burden the existing customers with higher rates.

Summary conclusion

Based on the foregoing, the Commission concludes that the total plant in service is zero for the Company's water operations and zero for the Company's sewer operations in this proceeding.

ACCUMULATED DEPRECIATION

The difference in accumulated depreciation between the Public Staff and the Company is due to the difference in the levels of plant in service. The Company included one year of accumulated depreciation on the plant in service as of December 31, 1994. The Public Staff included a zero balance for accumulated depreciation based on its determination that the plant in service was zero.

Public Staff witness Fernald testified that if the Company was allowed rate base treatment of its proposed plant costs, the issue of the appropriate level of accumulated depreciation would have to be addressed.

When asked why he included only one year of accumulated depreciation when customers have been receiving service for more than one year, Company witness Baffi testified that he included only one year of accumulated depreciation because the Company's position is that Bradfield is starting its operations in December of 1993 and that it will be purchasing the plant at original cost. Also, when asked why the Company was paying original cost for a system which is not in its original state (a used system), witness Baffi testified that the Company has taken the approach that Bradfield would be operating the utility as if none of this had gone before.

Based on our conclusion reached previously in this Order, that the net plant in service balance is zero, the Commission concludes that the appropriate level of accumulated depreciation is also zero.

CASH WORKING CAPITAL

The Company did not include any cash working capital on its application. The Public Staff included an amount based on one-eighth of operating and maintenance expenses, which is a standard formula used by this Commission for water and sewer companies. Based on the level of operating and maintenance expenses determined elsewhere in this Order, the Commission concludes that the appropriate level of cash working capital for purposes of this proceeding is $16,455, of which $6,466 relates to water operations and $9,989 relates to sewer operations.

AVERAGE TAX ACCRUALS

The Company did not include any amount for average tax accruals on its application. The Public Staff included an amount based on one-sixth of gross receipts tax and one-half of property taxes, which is a standard formula used by this Commission for water and sewer companies. Based on the level of gross receipts taxes and property taxes determined elsewhere in this Order, the Commission concludes that the appropriate level of average tax accruals, for purposes of this proceeding, to be treated as a reduction in rate base is $2,897, of which $1,110 relates to water operations and $1,787 relates to sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the Company's reasonable rate base used and useful in providing water and sewer utility service is $13,558, composed of the following items:

Item	Water Operations	Sewer Operations	Total
Plant in service	$ 0	$ 0	$ 0
Accumulated depreciation	0	0	0
Cash working capital	6,466	9,989	16,455
Average tax accruals	(1,110)	(1,787)	(2,897)
Total original cost rate base	$ 5,356	$ 8,202	$ 13,558

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-21

The evidence for these findings of facts is found in the testimony of Public Staff witnesses Fernald and Casselberry and Company witnesses Baffi, Barnobi, and Saint.

The parties disagree on the level of end-of-period customers. Public Staff witness Casselberry testified that based on the test year ending December 31, 1993, and Mid South's billing records she determined 361 customers received water utility service, 349 customers received flat rate sewer service, and 71 customers received bulk sewer service.

Company witnesses Baffi, Barnobi and Saint also used conflicting levels for end-of-period customers. Company witness Baffi used average end-of-period customers for 1994, and Company witness Barnobi used end-of-period customers as of April 30, 1994. Company witness Baffi determined 392 water customers, 392 flat rate sewer customers, and 90 bulk rate sewer customers. Company witness Barnobi testified that the end-of-period customers as of April 30, 1994, was 370 water customers, 370 flat rate sewer customers, and approximately 84 bulk rate sewer customers. Company witness Saint's Exhibit 1 reflected that he used 370 water customers, 370 flat rate sewer customers and 90 bulk rate sewer customers. Witness Saint's proposed customer levels would result in the proposed revenue level that was reflected in the Company's proposed order.

Based on the foregoing, the Commission concludes that the end of the test year is December 31, 1993, and the appropriate end-of-period customers is 361 for water utility service, 349 for flat rate sewer utility service, and 71 for bulk rate sewer utility service. Additionally, the Commission also finds that it would be appropriate to use the December 31, 1993, number of customers to allocate expenses between the water and sewer operations, when allocation is appropriate, by using factors of 51.00% for water operations and 49.00% for sewer operations.

Further, as a result of the parties' disagreement on the proper level of end-of-period customers, the parties also disagree on end-of-period revenues. Based on the Company's amended proposed rates and the existing rates under the

emergency operator, Public Staff witness Casselberry calculated the Company's present and proposed revenues using the Public Staff's end-of-period customers. The Company's existing and amended proposed revenues using the end-of-period customer count at December 31, 1993, are as follows:

WATER UTILITY SERVICE

Applicant's Existing Rates:

Base charge	361 cust. x $8.35 x 12 mo.	= $ 36,172
Usage charge	27,405,320 gal. x $2.05/1,000	= $ 56,181
Total Revenue		$ 92,353

Applicant's Amended Proposed Rates:

Base charge	361 cust. x $9.15 x 12 mo.	= $ 39,638
Usage charge	27,405,320 gal. x $2.75/1,000	= $ 75,365
Total Revenue		$115,003

SEWER UTILITY SERVICE

Applicant's Existing Rates:

Phase II	151 cust. x $29.00 x 12 mo.	= $ 52,548
Remaining Phases	198 cust. x $24.00 x 12 mo.	= $ 57,024
Bulk Rate Britley	20 cust. x $24.00 x 12 mo.	= $ 5,760
Bulk Rate Silverton	51 cust. x $24.00 x 12 mo.	= $ 14,688
Total Revenue		$130,020

Applicant's Amended Proposed Rates:

Phase II	151 cust. x $28.15 x 12 mo.	= $ 51,008
Remaining Phases	198 cust. x $28.15 x 12 mo.	= $ 66,884
Bulk Rate Britley	20 cust. x $13.00 x 12 mo.	= $ 3,120
Bulk Rate Silverton	51 cust. x $13.00 x 12 mo.	= $ 7,956
Total Revenue		$128,968

The Company's amended application and direct and supplemental testimony did not include calculations for revenues under present rates. Furthermore, Company witnesses Baffi and Saint used conflicting end-of-period revenue levels. Witness Baffi testified that the Company's proposed rates would generate revenue levels of $134,900 for water utility service, $164,640 for flat rate sewer service, and $14,040 for bulk rate sewer service. Witness Saint testified that the Company's proposed rates would generate revenues of $113,886 for water utility service, $124,986 for flat rate sewer service, and $14,040 for bulk sewer service and these are the proposed revenue levels reflected in the Company's proposed order.

Based on the foregoing, the Commission concludes that the appropriate level of end-of-period revenue is $222,373, composed of $92,353 for water utility service, $109,572 for flat rate sewer utility service, and $20,448 for bulk sewer service based on the end-of-period customer count at December 31, 1993.

OTHER REVENUES

The last revenue difference between the parties is other sewer revenues. The Company included other revenues related to interest and dividend income of $12,628. Public Staff witness Fernald made an adjustment to remove this level of revenue since it is a nonoperating item. As shown on pages 17 and 18 of the Company witness Baffi's workpapers, the Company calculated this interest income based on a 4.00% rate on the monies received from the sale of WWTP capacity that was not included as a rate base deduction by the Company.

In the Evidence and Conclusions for Findings of Fact Nos. 8-17, the Commission addressed the treatment of money received from the sale of WWTP capacity. In consideration of this finding, the Commission concludes that the interest income on the monies received for the sale of WWTP capacity should not be included in operating revenues for ratemaking purposes in this proceeding.

UNCOLLECTIBLE REVENUES

Public Staff witness Fernald testified that she removed the Company's proposed level of bad debt expense since the estimated costs were not supported by any documentation and she did not know if they were a representative level.

Company witness Saint testified that the proposed bad debt expense is an estimate; the Company's best guess, based on what the Company assumes its level of bad debts could possibly be over the course of a year. Witness Saint further testified that in determining the uncollectible rate, "We looked at past trends in other businesses that we are familiar with. We tried to get as much information as we could from the prior operator and used a conservative factor..." Under the Company's proposed level of bad debt expense of $5,000 on a combined system basis and using the previously determined end-of-period revenue level of $222,373 under present rates, the resulting uncollectible rate is approximately 2.25%

The Commission believes that it is not unreasonable to expect that the Company will incur uncollectible revenues during the course of its yearly operations, but the Commission also believes that the Company's estimate reflecting a rate of 2.25% may be somewhat high based on the Commission's knowledge of what other regulated water and sewer utility companies are experiencing. Therefore, the Commission believes that a lower uncollectible rate would be reasonable and concludes that a rate of 1.00% would be appropriate in this proceeding. Based upon the conclusions previously reached regarding revenues, the Commission concludes that the appropriate level of uncollectibles is $924 for water operations and $1,300 for sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the appropriate level of end-of-period net operating revenues is $220,149, of which $91,429 relates to water operations and $128,720 relates to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witness Casselberry. Witness Casselberry testified that she determined a customer growth factor of 1.103 for water operations and a customer growth factor of 1.137 for sewer operations. Witness Casselberry recommended adjusting purchased power for water operations and chemical expenses for sewer operations to reflect customer growth. The Company did not oppose the theory of witness Casselberry's adjustment. However, the Company did not agree with the levels of purchased power for water operations and chemical expenses for sewer operations as proposed by the Public Staff.

Based on the foregoing, the Commission concludes that it is appropriate to adjust purchased power and chemical expenses to reflect customer growth if the Public Staff's underlying assumptions in its purchased power and chemical expenses are determined to be appropriate; i.e., the base to which the customer growth factor is applied would have to be considered appropriate. As discussed subsequently, the Commission finds that the Public Staff's recommended level of purchased power expense for the water operations is correct and thus, the Commission agrees with the application of a 1.103 customer growth factor to reflect a proper level for this cost of service item. However, the Commission does not agree with the Public Staff's recommended level of chemical expense as will be discussed subsequently.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23-42

The evidence supporting these findings of fact is found in the testimony and exhibits of Public Staff witnesses Fernald and Casselberry and Company witnesses Barnobi, Saint, and Baffi. The following tables summarize the positions of the parties for operation and maintenance expenses:

WATER AND SEWER - CERTIFICATES

WATER OPERATIONS

Item	Company	Public Staff	Difference
Administrative & office:			
Contractual services - acct.	$ 4,500	$ 4,596	$ 96
Bad debt expense	2,500	0	(2,500)
Contractual services - legal	2,500	0	(2,500)
Management fees	19,458	3,108	(16,350)
Maintenance & repairs:			
Materials and supplies	2,000	0	(2,000)
Contractual services - eng.	3,000	0	(3,000)
Electric power	15,748	7,292	(8,456)
Permit fees	0	300	300
Testing fees	5,000	902	(4,098)
Materials and supplies	2,000	0	(2,000)
Contractual services - other	15,004	5,400	(9,604)
Insurance	1,800	1,250	(550)
Miscellaneous:			
Phone lines	2,400	2,318	(82)
Other	8,200	765	(7,435)
Regulatory expense	5,000	5,100	100
Total O&M expenses	$ 89,110	$ 31,031	$ (58,079)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Administrative & office:			
Contractual services - acct.	$ 3,300	$ 3,300	$ 0
Bad debt expense	2,500	0	(2,500)
Contractual services - legal	2,500	0	(2,500)
Management fees	19,458	2,985	(16,473)
Maintenance & repairs:			
Materials and supplies	3,500	0	(3,500)
Contractual services - eng.	3,500	0	(3,500)
Chemicals	5,000	1,795	(3,205)
Electric power	16,748	15,668	(1,080)
Sludge removal	6,400	1,300	(5,100)
Permit fees	0	450	450
Testing fees	5,000	0	(5,000)
Materials and supplies	2,000	0	(2,000)
Contractual services other	23,300	19,800	(3,500)
Insurance	1,800	1,250	(550)
Miscellaneous:			
Other	5,950	735	(5,215)
Regulatory expense	5,000	4,900	(100)
Total O&M expenses	$ 105,956	$ 52,183	$ (53,773)

CONTRACTUAL SERVICES - ACCOUNTING

The first area of difference in operation and maintenance expenses is contractual services - accounting. The Company included an estimated amount for contractual services - accounting for water operations of $4,500 and $3,300 for sewer operations. Public Staff witness Fernald increased the Company's expense level for water operations by $96 to reflect the actual cost for meter reading based on the operator contract with Rayco. Such adjustment resulted in the Public Staff recommending an expense level of $4,596 for contractual accounting services. Witness Fernald agreed with the Company's proposal regarding contractual services - accounting expenses for its sewer operations. Bradfield did not oppose the Public Staff's adjustment to its water operations for contractual services - accounting.

The Commission agrees that it is appropriate to reflect contractual services - accounting, at the actual rates under the contract with the operator. Based on the foregoing, the Commission concludes that the appropriate level of contractual services - accounting for water operations is $4,596 and for sewer operations is $3,300.

ESTIMATED COSTS

The estimated costs addressed in this section consist of various expense items which were estimated by the Company and totally eliminated by the Public Staff. The differences between the parties in this regard relates to the following expense items:

Item	Water Operations	Sewer Operations	Total
Bad debt expense	$ 2,500	$ 2,500	$ 5,000
Contractual services - legal	2,500	2,500	5,000
Maintenance & repairs:			
Materials & supplies	2,000	3,500	5,500
Contractual services - eng.	3,000	3,500	6,500
Materials & supplies	2,000	2,000	4,000
Total	$ 12,000	$ 14,000	$ 26,000

Public Staff witness Fernald testified with regard to these items of expense that she removed them from the cost of service since such costs were not supported by any documentation. Witness Fernald also testified that materials and supplies costs are covered under the agreement with the contract operator. When questioned about the four-month (January-April 1994) actual figures listed on Exhibit I attached to Company witness Saint's testimony, witness Fernald testified, "In the audit I repeatedly asked for any kind of documentation to support the Company's estimates. I was not provided any. I received, this was filed last week, and I only had yesterday to look at it. I don't know where those numbers were coming from, whether they are representative levels, whether there is extraordinary costs in them, I just don't know."

Company witness Saint testified that the amended application included some expenses for which no actual costs had been incurred during the four-month period

since December 1993, but he stated that it was necessary to include such expenses because it is either likely or certain that such expenses will be incurred over the course of an entire year as originally anticipated and included in the Company's initial application. When asked on cross-examination how he determined that these amounts were reasonable when there was no actual cost to base them on, witness Saint testified that "As it was stated in my prior testimony, many costs were based on estimates and discussions with consulting engineers, with our operator and our prior history. For items that we did not have actual costs for, we went back to what those estimates were, looked at them one more time and in most cases where I have indicated by footnote B, those estimates that were in the amended application we are still using."

Regarding these items of expense, the Commission is concerned by the Public Staff's total elimination of these expenses just because they are estimates. A review of the record in this docket reveals that the Public Staff specifically asked witness Saint the following question: "How did you calculate your bad debt expense?" However, the Public Staff did not repeat this question regarding calculations in specific regard to the Company's other estimated expenses; thus the directly associated evidence is very limited.

Witness Saint testified that the proposed bad debt expense is an estimate, the Company's best guess, based on what the Company would assume could be a possible bad debt incurred over the course of a year. Witness Saint further testified that in determining the uncollectible rate, "We looked at past trends in other businesses that we are familiar with. We tried to get as much information as we could from the prior operator and used a conservative factor..."

As previously discussed in preceding findings, the Commission has concluded that it is reasonable to recognize bad debt expense using an uncollectible rate of 1.00% and that such costs should be recognized as uncollectible revenue. Such decision by the Commission results in estimated uncollectible revenues of $924 for water operations and $1,300 for sewer operations.

In regard to the other remaining differences in estimated expenses: (1) contractual services - legal, (2) maintenance and repairs - related materials and supplies and contractual services - engineering, and (3) materials and supplies, the Commission finds that the amounts proposed by the Company are reasonable and representative when considered in conjunction with the Commission's other decisions on cost of service in this proceeding.

As discussed subsequently, the Commission agrees with the parties that the level of regulatory expense should be $10,000, yet the Commission recognizes that according to Exhibit 2 provided by Company witness Saint, the Company's actual regulatory costs for the four-month period since December 1993 have totalled $44,902. In consideration of the actual level of incurred regulatory costs, the Commission believes that the inclusion of the Company's estimated expenses for contractual legal services of an additional $5,000 is reasonable to reflect a proper normalized level for such expenses.

In the utility operating agreement between Crosland and Rayco at Section 2(b) the agreement states the following concerning repairs:

Operator agrees to operate, maintain, repair the Facility in strict compliance with the requirements of law and applicable rules and regulations in order that adequate water and sewer service will be provided by Utility to the residents of the Subdivision...

...

The aforesaid maintenance obligations shall include the provision of all required labor, tools, materials, supplies and equipment.

However, Section 4 of the utility operating agreement states the following concerning repairs:

Emergency service. Operator will provide 24-hour availability for servicing the Facility, seven (7) days per week. Emergency visits to repair equipment will be charged at the rate of $40.00 per man hour. Visits will be considered emergency after 7:00 pm Monday through Friday, Saturdays and Sundays.

Additionally, Section 11 of the utility operating agreement states the following concerning repairs:

Extraordinary Repair, Maintenance and Upkeep of System. Operator shall be responsible for emergency and extraordinary repairs, maintenance and upkeep and will use Land Design Engineering as a consultant in performing the same. Such repairs, maintenance and upkeep will include damage that may occur due to weather, lightning and acts of God and will include items such as replacing blowers, grinder pumps, well pumps, electrical malfunctions, air lines, water lines, sewer lines, manholes and damage done by third parties ("extraordinary events").

Operator shall notify Utility at the time of discovery of any damage or repairs needed as a result of extraordinary events. Verbal approval with written approval to follow must be obtained by Operator for any repairs estimated to exceed $250.00 before any repairs to damage is made or any monies spent...

In addition to the fees set forth above, Operator shall be reimbursed for actual costs for labor, parts and materials in making such extraordinary repairs and maintenance expenses; provided, however, that such costs incurred are within the budgeted costs approved for such items in the annual budget for extraordinary maintenance and upkeep of the system or are specifically approved by Utility.

Further, Section 12 of the utility operating agreement states the following concerning parts inventory:

Parts Inventory. Utility, from time to time, may approve the purchase of specific parts of a critical nature to be inventoried by the Operator for the repair and maintenance of the Facility. These parts may include, but are not limited to, blowers, grinder pumps and well pumps. These parts will be specifically identified as being for the

Facility and shall not be intermingled with Operator's inventory. Operator will be reimbursed by Utility for the actual cost of inventory parts. Utility's approved engineering consultant must approve all such purchases based on specific need, type and part.

In regards to the proper levels of maintenance and repairs and materials and supplies, the Commission recognizes that not all these kinds of costs would be covered by the operator under contract; for example, the contract requires the utility to pay for extraordinary repairs, maintenance and upkeep of system and to also pay for the actual cost of inventory parts. Additionally, the Commission also believes that there is a necessity for some allowance for materials and supplies costs necessary to carry out the day-to-day administration and management of the system, aside from the materials and supplies to be provided by the contract operator.

Based upon the foregoing, the Commission finds that the subject expenses should be allowed and allocated to the water and sewer operations by the number of customers (51.00% water/49.00% sewer) where allocation is appropriate, rather than using the 50/50 allocation used by the Company. The proper amounts for the subject expenses are as follows:

Item	Water Operations	Sewer Operations	Total
Contractual services -legal	$2,550	$ 2,450	$ 5,000
Maintenance & repairs:			
Materials & supplies	2,000	3,500	5,500
Contractual services - eng.	3,000	3,500	6,500
Materials & supplies	2,040	1,960	4,000
Total	$9,590	$11,410	$21,000

MANAGEMENT FEES

The parties disagree on the amount of management fees. The differences in the level of management fees is comprised of the following items:

Item	Water Operations	Sewer Operations	Total
Salaries	$ (13,294)	$ (13,390)	$ (26,684)
Payroll taxes, benefits, and workers' compensation	(2,478)	(2,497)	(4,975)
Rent	(516)	(524)	(1,040)
Other unexplained difference	(62)	(62)	(124)
Total difference	$ (16,350)	$ (16,473)	$ (32,823)

Salaries

The first area of difference between the parties is the level of salaries. As shown on page 22 of the workpapers attached to Company witness Baffi's testimony, the Company included salaries of $31,520 for the utility operations. This salary level is based on the total annual salary of four personnel of

$217,600, which the Company then allocated to utility operations based on the Company's estimates of time that will be dedicated to utility operations. Company witness Barnobi testified that Bradfield itself will not have any employees, therefore, Bradfield has contracted with Crosland to provide the overall management, accounting, and contract operator oversight necessary to provide adequate water and sewer utility service. Witness Barnobi testified that Crosland will be "...responsible for the administration of the utility system and recordkeeping related to the operation of the system, including without limitation, field supervision of the subcontract operator, all bookkeeping, preparation of financial statements and keeping of records, preparation and filing of all reports required by this Commission in connection with the operation of the system and generally maintaining records and accounts in accordance with normal and accepted utility accounting principles." Company witness Saint testified that the Company allocated a total of 24 hours per week between four individuals to utility operations: President - 4 hours per week; Controller - 6 hours per week; Accountant - 6 hours per week; and Land Development Manager - 8 hours per week.

Public Staff witness Fernald testified that the average salary of the four personnel being allocated by the Company is $54,400, or approximately $26.15 per hour. Witness Fernald testified that the Company's level of salaries and average hourly rate is unreasonable for a water and sewer utility this size which has a majority of its functions performed by a contract operator. Witness Fernald recommended that the level of salaries should be based on estimated hours for each function times an hourly rate of $13. Witness Fernald testified that her recommended $13 hourly charge was based on what the Public Staff generally sees for other water and sewer utilities this size. Further, she stated that it "was also based on specifically review of Rayco's salary levels which since they are a utility in that area and are actually the contract operator and based on Commission orders. For example, on the Harrco order...the Hearing Examiner stated that a $20 hourly rate was unreasonable for the functions performed." Witness Fernald testified that she calculated a total of 372 hours for budget approval, bookkeeping, preparation of gross receipts tax reports and annual reports and regulatory fee reports, miscellaneous items, preparation of financial statements, and coordination with the operator. Witness Fernald's 372 hours per year would be equivalent to approximately 7 hours per week to be spent on utility operations.

The Commission recognizes that the management agreement between Bradfield and Crosland is an affiliated transaction and, therefore, deserves special scrutiny to ensure that ratepayers do not pay more than the reasonable cost of service. As stated by witness Barnobi, Bradfield itself has no employees, but rather has entered into a management agreement with Crosland for management services.

The Commission believes that the level of salaries as proposed by the Company in this proceeding is unreasonably high; however, on the other hand, the Commission also finds that the Public Staff's estimate in this regard is unreasonably low. Neither the Company nor the Public Staff presented a specific breakdown of how they determined the number of hours required to provide the required administration and management duties for the water and sewer systems. Thus, the Commission is unable to make a straight-forward determination as to what is specifically the most appropriate amount of time necessary to be spent

for such activities. The Commission considers that the amount of time proposed by the Public Staff is inadequate to perform the duties that are required of the Company's management under the management agreement. Further, the Commission also considers that the Public Staff's proposed hourly rate of $13 per hour is unreasonably low for the hiring and retention of competent executive management and accounting personnel and to compensate them accordingly. Based upon the foregoing, the Commission finds that for purposes of this proceeding, a reasonable level of management fees is most reasonably approximated by allowing a level of salaries expense at one-half of what the Company has proposed.

Therefore, the Commission finds that the appropriate level of salaries to be included in the management fee is $15,760.

Payroll taxes, benefits, workers' compensation and rent expense

The differences in payroll taxes, benefits, workers' compensation and rent expense result from the parties' differing levels of proposed salary expense. Both parties have used the factors of 9.75% for payroll taxes, 5.51% for benefits and 3.16% for workers' compensation to calculate their respective proposed levels for these expenses. There being no controversy over the appropriate factors to use in this regard, the Commission agrees with the use of the foregoing factors for a determination of the proper levels of payroll taxes, benefits and workers' compensation.

Regarding rent expense, witness Fernald testified that she allocated a portion of the total costs for the office building housing Crosland employees to, utility operations based on the square footage of the building and the employees' time spent on utility operations. Witness Fernald's calculation resulted in a level of rent expense of $366, which she allocated to the water and sewer operations based on the number of customers (51.00% water/49.00% sewer), resulting in rent expense of $187 for water operations and $179 for sewer operations.

Witness Saint testified that the Company's amended application reflected an allocation factor of 3.00% to apportion rent expense from Crosland to the utility company. According to witness Saint, the 3.00% factor was calculated by dividing the office square footage used by Bradfield personnel by the total office square footage. The Public Staff opposed the Company's office space allocation factor of 3.00%, since the Company's allocation charged the total rent related to these employees' office space to utility operations. Witness Fernald stated that only a percentage of these employees' time is spent on utility operations, so only a percentage of their office space should be allocated to utility operations. Upon the filing of supplemental testimony a week before the May 24, 1994 hearing, witness Saint revised the 3.00% factor to a factor of 1.00% stating that the original estimate was lowered to account for the percentage of time dedicated to utility operations by Crosland's employees. Using a factor of 1.00% would result in office space rental expense of $1,406, yet the Company's total expenses reflect an additional unexplained difference of $124.

Based upon the foregoing, the Commission concludes that for purposes of this proceeding, rent expense should be determined based upon the Public Staff's methodology, but adjusted to reflect the Commission's determination of salaries. The Commission, having previously determined the appropriate level of salaries,

concludes that the appropriate level of payroll taxes, benefits, workers' compensation, and rent expense to be included in the management fee is $3,530 and such expenses should be allocated to the water and sewer operations based on the number of customers (51.00% water/49.00% sewer).

The Commission finds that the appropriate level of management fees for use in this proceeding is $19,290, of which $9,839 relates to water operations and $9,451 relates to sewer operations as follows:

Item	Water Operations	Sewer Operations	Total
Salaries	$8,038	$7,722	$15,760
Payroll, taxes, benefits and workers' compensation	1,481	1,422	2,903
Rent expense	320	307	627
Total	$9,839	$9,451	$19,290

CHEMICALS

The parties disagree on the appropriate level for chemical expenses related to sewer operations. Public Staff witness Casselberry testified that Mid South was unable to provide specific invoices for chemical expenses directly related to the operation of the Bradfield system. Therefore, witness Casselberry used the cost per customer based on Mid South's chemical expenses for all of its systems to determine her proposed level for chemical expenses. Witness Casselberry further testified that this practice has been accepted by the Commission in other transfer cases.

Company witness Saint's representative level for chemical expenses was based on an estimate provided by Rayco, the Company's contract operator. Rayco estimated that the sewer system at Bradfield would require 10 to 15 pounds of chlorine per day. At a cost of $1 per pound of chlorine, Bradfield will incur expenses for chemicals of approximately $5,000 for the sewer system.

Based upon the foregoing, the Commission concludes that the cost of chemical expenses for the sewer operations as estimated by Rayco, the current operator of this system, represents a fair and reasonable level for purposes of this proceeding. The Commission believes that it is more appropriate to use the cost of such chemicals as estimated by Rayco who is actually operating the subject sewer system than to take Mid South's per-customer average cost of chemicals for all of its systems as a surrogate for Bradfield's chemical expenses. Therefore, the Commission concludes that $5,000 is an appropriate level for chemical expenses for the Company's sewer operations.

ELECTRIC POWER

The parties disagree on the appropriate level of electric power expense. Public Staff witness Fernald adjusted electric power expenses to reflect the actual amount during the test year for water and sewer operations. Witness Fernald then adjusted the actual amount for water operations for customer growth as recommended by Public Staff witness Casselberry.

As shown on Exhibit 2 attached to the testimony of Company witness Saint, he estimated electric power expense as follows:

(1) Elevated storage tank - March 1994 bill times 12 months = $576
(2) Well No. 6 - $400 per month estimated cost times 12 months = $4,800
(3) Well No. 7 - January - March 1994 bills annualized = $5,172
(4) Well No. 3 - $400 per month estimated cost times 7 months = $2,800
(5) Well No. 1 - $400 per month estimated cost times 6 months = $2,400
(6) Sewer pump - February 1994 bill times 12 months = $792
(7) WWTP - January - March 1994 bills annualized = $15,956

Witness Saint testified that for the elevated storage tank, the Company took the highest bill, which was March 1994, and multiplied it by 12. Witness Saint admitted that this was not a true average based on the January, February, and March 1994 numbers, but witness Saint stated that his number was based on what appeared to be a rising rate with the Company's limited history. Witness Saint further testified that the amount for well No. 6 is not based on actual cost and that although the experience the Company has had so far is lower, that experience does not represent typical usage that the Company would expect in the future. Witness Saint also testified that it would have been useful to have 1993's history in arriving at his estimate. However, Witness Saint stated that both he and Witness Barnobi had conversations with the prior operator to get information and that he did not receive that information.

Company witness Barnobi testified that he did receive information from Mid South but that he did not provide that information to witness Saint since the original numbers witness Saint was using had already included the information that was obtained from Mid South. Witness Barnobi further stated that "Those were estimates, as we looked at the numbers, as we discussed them, we looked at what Mid South had paid for utilities and we looked at what we were paying for utilities, okay, and we made some adjustments. They were used in determining what we would use as budgets for those items."

As previously discussed, the Commission has found that the test year for this proceeding is the 12 months ended December 31, 1993. The Commission finds that it would be appropriate to determine the reasonable level of electric power expense in this proceeding based on 12-months of actual data from the emergency operator's records versus the Company's estimate based on four months of 1994 data and estimates. Additionally, the Commission does not agree with witness Saint's inclusion of electric power expense for wells 1 and 3, since these wells are not considered necessary to serve the existing customers as of December 31, 1993, and were, therefore, excluded from rate base by the Commission. Further, as found in the Evidence and Conclusions for Finding of Fact No. 22, it is appropriate to adjust purchased power expense for water operations for customer growth. Therefore, the Commission concludes that the appropriate level of electric power is $7,292 for water operations and $15,668 for sewer operations.

SLUDGE REMOVAL

The parties disagree on the appropriate level for sludge removal. Public Staff witness Casselberry testified that based on Mid South's records for sludge removal she determined $1,300 to be appropriate. Witness Casselberry further

testified that Mid South removed sludge on the following dates: March 24, 1993, July 21, 1993, August 4, 1993, October 6, 1993, and November 22, 1993. The total cost of sludge removal on these dates during 1993 was $1,300.

Company witness Saint's representative level for sludge removal was based on an estimate provided by Rayco, the Company's contract operator. Rayco estimated that the number of customers at Bradfield would require the removal of approximately 1,500 pounds of sludge per week. At a cost of $120 per load and 53 loads per year, Bradfield will likely incur expenses for sludge removal in the total amount of $6,400. Further, in Exhibit 2 of witness Saint's testimony, he shows that the Company had actually already incurred a cost of $2,850 for sludge removal in one month - January 1994; such one expenditure is more than double the annual expense level proposed by the Public Staff.

Based on the foregoing, the Commission concludes that the cost of sludge removal as estimated by Rayco, the current operator of this system, is fair and reasonable for purposes of this proceeding. The Commission believes that the Company's estimate is more reasonable than the Public Staff's proposal considering that the Company incurred an expense of $2,850 in just one month alone. Therefore, the Commission concludes that the appropriate level for sludge removal is $6,400 for the Company's sewer operations.

PERMIT FEES

Witness Casselberry included $300 for DEH annual permit fees and $450 for DEM annual fees. The Company did not oppose witness Casselberry's adjustment in this regard.

Based on the foregoing, the Commission concludes that it is appropriate to include $300 for DEH annual permit fees for water operations and $450 for DEM annual fees for sewer operations.

TESTING EXPENSES

Public Staff witness Casselberry testified that she determined $902 as a representative level for testing expenses for the Company's water operations. Witness Casselberry also recommended a $2.65 per month per customer surcharge for 12 months beginning with the first month following the effective date of this Order to recover the cost of additional testing required under phase II of the SDWA. Furthermore, witness Casselberry disallowed $5,000 for testing expenses for sewer operations. Witness Casselberry concluded that the Company's testing for sewer operations would be covered by the contract operator.

Company witness Saint testified, "Although expenses had not been incurred during the four months since December 1993, I have continued to include estimates of these expenses because it is either likely or certain that such expenses will be incurred over the course of an entire year, as originally anticipated." Witness Saint estimated $5,000 for testing for both water and sewer operations.

The Company's proposed order reflected that it agreed with the Public Staff's proposed $2.65 per month per customer surcharge for 12 months to cover water testing expenses.

Based on the forgoing, the Commission concludes that it is appropriate to include $902 for testing expenses for water operations. Furthermore, the Commission concludes that a $2.65 per month per customer EPA surcharge for 12 months is appropriate for recovering the cost of required tests under phase II of the SDWA.

In the utility operating agreement between Crosland and Rayco at Section 2(d) the agreement states the following concerning testing:

> Operator will be responsible for collecting all monthly samples, performing laboratory analysis, monitoring and reporting and keeping all necessary records to keep the Facility in compliance with State rules and regulations. Operator will also act as a liaison between the State of North Carolina and Utility with respect to the Facility. Operator will prepare any necessary correspondence and be available for all on-site inspections by state, county or other public officials. Operator will notify Utility of any additional or extraordinary testing necessary or advisable to assure compliance with all laws, regulations and rules of the Commission and any other public agencies and governmental authorities having jurisdiction over the Facility.

Additionally, Section 3 of the utility operating agreement states the following concerning budget approval:

> Budget Approval. On or before December 1 of each calendar year, Operator will submit to Utility for approval a comprehensive budget, in form and format acceptable to Utility, projecting operating expenditures of the System for the following calendar year. Upon approval of the budget, Operator will be authorized to perform its services hereunder and expend monies in accordance with the budget. Operator may exceed line items in the budget by 5% without the prior approval of Utility provided projected expenditures under the overall budget are not exceeded. Any single expenditure in excess of $250.00 not shown in an approved budget must be approved by Utility.

Regarding the sewer testing expenses, the Commission finds that it does not agree with either parties' position. The Commission has reviewed the operator contract agreement and is concerned that all the required sewer related testing expenses will not be paid by the operator, however, the Commission believes that the Company's estimate of $5,000 is excessive. The Commission believes that it is reasonable in this proceeding to include $1,000 for the representative level of additional sewer-related testing expenses.

CONTRACTUAL SERVICES - OTHER

The difference between the parties for contractual services - other is comprised of the following:

Item	Water Operations	Sewer Operations	Total
Contract operator	$ (1,950)	$ 0	$ (1,950)
Repairs	(7,654)	0	(7,654)
Other estimated costs	0	(3,500)	(3,500)
Total difference	$ (9,604)	$ (3,500)	$ (13,104)

Contract operator

The first area of difference is the level of expense to include for the contract operator for water operations. As shown on Exhibit 2, Note E attached to Company witness Saint's testimony, the Company included an additional $1,950 for contract operator costs relating to well Nos. 1 and 3, which were not in service at December 31, 1993, the end of the test year. In the Evidence and Conclusions for Finding of Fact No. 12, the Commission concluded that it would not be appropriate to include any amount for post-test-year plant additions in rate base since the Company has not provided any evidence of the actual changes in plant, expenses, and revenues after the end of the test year. The Commission therefore concludes that it would not be appropriate to include any amount in expenses related to these post-test-year plant additions.

Repairs

In its application, the Company included estimates for contractual services - other. Public Staff witness Fernald made an adjustment to remove these costs since the Company provided no supporting documentation. In Exhibit 1 attached to Company witness Saint's testimony, the Company revised its numbers to include repair expenses of $7,654 related to water operations. As shown on Exhibit 2 of witness Saint's testimony, he calculated this amount by doubling the actual costs incurred to convert a motor to diesel and for repairs to the water system.

Witness Saint testified that he had doubled these costs for repairs because "we don't know whether we will incur three times or four times that cost but it seemed reasonable that if we have incurred these dollars to date over four months that we would incur future dollars and conservatively we have figured that would be at least twice." Witness Saint testified that the cost to convert the motor to diesel is not a cost he would expect to incur frequently, but that he would expect other costs to be incurred of a repair and maintenance nature that would fall outside of the contract with Rayco.

Public Staff witness Fernald testified that she did not know if the amounts listed on Company witness Saint's Exhibit 2 were unreasonable or unnecessary. Witness Fernald testified, "In the audit I repeatedly asked for any kind of documentation to support the Company's estimates. I was not provided any. I received, this was filed last week, and I only had yesterday to look at it. I don't know where those numbers were coming from, whether they are representative levels, whether there is extraordinary costs in them, I don't know."

In the utility operating agreement between Crosland and Rayco at Section 2(b) the agreement states the following concerning repairs:

> Operator agrees to operate, maintain, repair the Facility in strict compliance with the requirements of law and applicable rules and regulations in order that adequate water and sewer service will be provided by Utility to the residents of the Subdivision...
>
> The aforesaid maintenance obligations shall include the provision of all required labor, tools, materials, supplies and equipment.

However, Section 4 of the utility operating agreement states the following concerning repairs:

> Emergency service. Operator will provide 24-hour availability for servicing the Facility, seven (7) days per week. Emergency visits to repair equipment will be charged at the rate of $40.00 per man hour. Visits will be considered emergency after 7:00 pm Monday through Friday, Saturdays and Sundays.

Additionally, Section 11 of the utility operating agreement states the following concerning repairs:

> Extraordinary Repair, Maintenance and Upkeep of System. Operator shall be responsible for emergency and extraordinary repairs, maintenance and upkeep and will use Land Design Engineering as a consultant in performing the same. Such repairs, maintenance and upkeep will include damage that may occur due to weather, lightning and acts of God and will include items such as replacing blowers, grinder pumps, well pumps, electrical malfunctions, air lines, water lines, sewer lines, manholes and damage done by third parties ("extraordinary events").
>
> Operator shall notify Utility at the time of discovery of any damage or repairs needed as a result of extraordinary events. Verbal approval with written approval to follow must be obtained by Operator for any repairs estimated to exceed $250.00 before any repairs to damage is made or any monies spent...
>
> In addition to the fees set forth above, Operator shall be reimbursed for actual costs for labor, parts and materials in making such extraordinary repairs and maintenance expenses; provided, however, that such costs incurred are within the budgeted costs approved for such items in the annual budget for extraordinary maintenance and upkeep of the system or are specifically approved by Utility.

Based upon a review of the contract and the other evidence, the Commission finds that the Company will likely incur other costs of a maintenance and repair nature that will fall outside of the Crosland contract with Rayco. However, the Commission does not agree with the Company's estimate of $7,654 which represents a doubling of costs actually incurred for such additional repair expenses. The

Commission finds that for purposes of this proceeding it is appropriate to use the Company's actual incurred costs of $2,833 for repairs to convert a motor to diesel and $994 for repairs to water system for a total expense adjustment of $3,827 to reflect a reasonable and representative level of such other additional repair expenses for inclusion in contractual services - other.

Other estimated costs

The remaining difference of $3,500 for sewer operations relates to estimated costs included by the Company. Public Staff witness Fernald removed these costs since the Company provided no support. Witness Fernald proposed a level for sewer operations' contractual services - other of $19,800 which is based on a contract rate of $1,650 per month to be paid to Rayco for the operation and maintenance of the sewer collection system, waste water treatment plant and pump stations currently in operation including a pump station to be placed in service in Bradfield Farms' phase 7.

Footnote B of Exhibit 1 attached to Company witness Saint's testimony states that "Based on Amended Application amount. Due to lack of actual costs, and/or limited history, Amended Application appears reasonable." Company witness Saint testified, "For items that we did not have actual costs for, we went back to what those estimates were, looked at them one more time and in most cases where I have indicated footnote B, those estimates that were in the amended application we are still using."

Based on the evidence, the Commission does not find any credible reason for allowing the additional $3,500 of such expenses as proposed by the Company. The Commission concludes that it is reasonable to consider an amount of $19,800 as a representative level of contractual services - other expense to be included in the Company's cost of service for its sewer operations.

Summary conclusion

Based on the foregoing, the Commission concludes that the appropriate level of contractual services - other is $29,027, of which $9,227 relates to water operations and $19,800 relates to sewer operations.

INSURANCE

The parties disagree on the level of insurance expense to include for ratemaking purposes. In its original application, the Company included general liability insurance of $2,500. In her testimony filed on May 4, 1994, Public Staff witness Fernald included these amounts in her exhibits as the proper level of insurance expense. However, in Exhibit 1 attached to Company witness Saint's testimony filed on May 17, 1994, the Company updated its level of insurance expense to $3,600. Witness Fernald stated that the company provided no support for its increase from $2,500 to $3,600 and therefore she did not agree with such expenses which results in a difference of $1,100 between the parties.

On Exhibit 2 of Company witness Saint's testimony, witness Saint shows that the Company actually incurred insurance expense of $3,600 in January 1994 to the vendor - Rollins Hudig Hall - for coverage on its water and sewer systems. Based on the foregoing, the Commission concludes that the appropriate level of

insurance expense for use in this proceeding is $3,600 which reflects the Company's actually incurred costs for such insurance coverage. The Commission finds that the Company's reasonable level of insurance expense is $1,800 for its water operations and $1,800 for its sewer operations.

MISCELLANEOUS

The difference in the level of miscellaneous expense is comprised of the following:

Item	Water Operations	Sewer Operations	Total
Phone lines	$ (82)	$ 0	$ (82)
Other	(7,435)	(5,215)	(12,650)
Total difference	$ (7,517)	$ (5,215)	$ (12,732)

Phone lines

As shown on Exhibit 2 attached to Company witness Saint's testimony, the Company determined the costs related to the phone lines to the water facilities by annualizing an estimate of $50 per month per well including four wells, which resulted in a recommended level of $2,400. Public Staff witness Fernald recommended a level for phone line expense of $2,318 which was based on the actual costs for the test year based on the emergency operator records. Thus, there is a difference between the parties of $82.

Based on the foregoing, the Commission concludes that it is appropriate to include the actual costs for phone lines incurred by the emergency operator during the test year. The actual data provides a reasonable and representative level and does not include estimated costs for phone lines at wells which are not required to serve the level of customers at December 31, 1993. Therefore, the Commission concludes that the appropriate level for phone line expense is $2,318 for the Company's water operations.

Other

The differences in other miscellaneous expense is related to the Public Staff's inclusion of bond costs and the Company's inclusion of estimated costs. Public Staff witness Fernald adjusted miscellaneous expense to include the annual premium for the surety bond of $1,500 allocated to water and sewer operations based on the number of customers. The Company did not address this adjustment. The Commission concludes that it is appropriate to include in miscellaneous expense the annual premium of the surety bond allocated to water and sewer operations based on the number of customers.

The remaining difference of $12,650 in other miscellaneous expense relates to estimated costs included by the Company. Public Staff witness Fernald did not include these costs in her schedules since the Company provided no support.

Footnote B of Exhibit 1 attached to Company witness Saint's testimony states that "Due to lack of actual costs, and/or limited history, Amended Application

appears reasonable." Company witness Saint testified, "For items that we did not have actual costs for, we went back to what those estimates were, looked at them one more time and in most cases where I have indicated footnote B, those estimates that were in the amended application we are still using."

Based upon a review of the record, the Commission does not find any evidence that additional miscellaneous expenses would be incurred by the Company. The Commission believes that it has heretofore, and hereinafter, properly provided for the Company's reasonable, representative, ongoing level of expenses. Therefore, the Commission finds that it is inappropriate to include the Company's additional estimate of $12,650 in miscellaneous expenses in the cost of service in this proceeding.

Summary conclusion

Based upon the foregoing, the Commission concludes that the appropriate level of miscellaneous expense for use in this proceeding is $3,818, consisting of the following:

Item	Water Operations	Sewer Operations	Total
Phone lines	$ 2,318	$ 0	$ 2,318
Other	765	735	1,500
Total	$ 3,083	$ 735	$ 3,818

REGULATORY EXPENSE

The difference in regulatory expense is entirely due to the different allocation methods used by the parties to allocate the costs between water and sewer operations. The Company allocated regulatory expense 50.00% to water operations and 50.00% to sewer operations, while the Public Staff allocated regulatory expense based on the number of customers. The Commission concludes that it is appropriate to allocate regulatory expense to water and sewer operations based on the number of customers, - 51.00% to water operations and 49.00% to sewer operations. Therefore, the commission concludes that the appropriate level of regulatory expense for use in this proceeding is $10,000, of which $5,100 is for water operations and $4,900 is for sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expenses is $131,643, comprised of the following:

WATER AND SEWER - CERTIFICATES

Item	Water Operations	Sewer Operations	Total
Administrative & office:			
Contractual services - acct.	$ 4,596	$ 3,300	$ 7,896
Contractual services - legal	2,550	2,450	5,000
Management fees	9,839	9,451	19,290
Maintenance & repairs:			
Materials and supplies	2,000	3,500	5,500
Contractual services - eng.	3,000	3,500	6,500
Chemicals	0	5,000	5,000
Electric power	7,292	15,668	22,960
Sludge removal	0	6,400	6,400
Permit fees	300	450	750
Testing fees	902	1,000	1,902
Materials and supplies	2,040	1,960	4,000
Contractual services - other	9,227	19,800	29,027
Insurance	1,800	1,800	3,600
Miscellaneous:			
Phone lines	2,318	0	2,318
Other	765	735	1,500
Regulatory expense	5,100	4,900	10,000
Total O&M expenses	$ 51,729	$ 79,914	$ 131,643

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 43-50

The evidence supporting these findings is found in the testimony and exhibits of Public Staff witness Fernald and Company witnesses Barnobi, Baffi, and Saint. The following chart indicates the differences between the Public Staff and the Company for operating revenue deductions other than operation and maintenance expenses:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation expense	$ 32,096	$ 0	$ (32,096)
Property taxes	1,000	1,000	0
Regulatory fee	78	79	1
Gross receipts tax	3,667	3,694	27
State income tax	0	4,375	4,375
Federal income tax	0	8,019	8,019
Interest expense	55,786	0	(55,786)
Total other operating revenue deductions	$ 92,627	$ 17,167	$ (75,460)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation expense	$ 21,647	$ 0	$ (21,647)
Property taxes	1,000	1,000	0
Regulatory fee	121	111	(10)
Gross receipts tax	8,524	7,801	(723)
State income tax	0	5,329	5,329
Federal income tax	0	10,858	10,858
Interest expense	50,530	0	(50,530)
Total other operating revenue deductions	$ 81,822	$ 25,099	$ (56,723)

DEPRECIATION EXPENSE

The difference in depreciation expense results from the parties' differing opinions as to the amount of plant in service that should be included in rate base in this proceeding. The Commission, having previously determined that it is not appropriate to include any plant in service in rate base, consistently concludes that the appropriate level of depreciation expense for use in this proceeding is zero.

PROPERTY TAXES

There is no difference between the parties regarding the appropriate level of property taxes, thus there being no controversy, the Commission concludes that the appropriate level of property tax expense for use in this proceeding is $2,000 of which $1,000 relates to water operations and $1,000 relates to sewer operations.

REGULATORY FEE AND GROSS RECEIPTS TAX

The differences in regulatory fee expenses and gross receipts taxes between the Company and the Public Staff result from the parties' disagreement over the proper level of revenues. The Commission, having previously determined the appropriate level of service revenues and uncollectible revenues elsewhere in this Order, concludes that the appropriate level of regulatory fee expense is $187, of which $78 relates to water operations and $109 relates to sewer operations. The Commission also concludes that the appropriate level of gross receipts taxes is $11,380, of which $3,657 relates to water operations and $7,723 relates to sewer operations.

STATE AND FEDERAL INCOME TAXES

The differences in state and federal income taxes between the Company and the Public Staff arise from the parties' disagreements over rate base, revenues and expenses. The Commission, having previously determined the appropriate level of rate base, service revenues, uncollectible revenues and operating revenue deductions, concludes that the appropriate level of state income taxes to be included in this proceeding is $5,808, of which $2,710 relates to water operations and $3,098 relates to sewer operations. The Commission also concludes

that the appropriate level of federal income taxes to be included in this proceeding is $12,283, of which $5,714 relates to water operations and $6,569 relates to sewer operations.

INTEREST EXPENSE

The Company included interest expense as an operating revenue deduction in its income statement. The Company's interest expense was calculated based on what the Company considered was its average 1994 investment supported by debt capital multiplied by an interest rate of 7.00%.

Public Staff witness Fernald did not include interest expense in her calculation of net operating income for a return.

It has been the Commission's continuing policy that a reasonable level of interest may be recovered as a component of net operating income. Therefore, the Commission concludes that it is inappropriate to include interest expense as an operating revenue deduction since this cost is considered to be provided for in the margin on operating revenue deductions requiring a return that is reflected in the level of net operating income approved in this proceeding.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of other operating revenue deductions is $31,658 which consists of the following:

Item	Water Operations	Sewer Operations	Total
Property taxes	$ 1,000	$ 1,000	$ 2,000
Regulatory fee	78	109	187
Gross receipts tax	3,657	7,723	11,380
State income tax	2,710	3,098	5,808
Federal income tax	5,714	6,569	12,283
Total other operating revenue deductions	$ 13,159	$ 18,499	$ 31,658

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 51 and 52

The evidence for these findings of fact is found in the affidavit of Public Staff witness Farmer, the testimony and exhibits of Company witnesses Barnobi and Baffi, and the Stipulation concerning Affidavit of Thomas W. Farmer, Jr. filed on May 24, 1994.

In his affidavit, Mr. Farmer made the following statements with regard to determining the Company's water and sewer rates: "...I recommend that the Company be granted a 9.1% margin on expenses.... After investigation, the Public Staff is recommending that Bradfield Farms Water Company's rate base is less than the reasonable level of operating expenses. I derive a margin above expenses by combining the risk-free rate of 10-year U.S. Treasury bonds (averaged over the most recent 26-week period) with a 3 percentage point factor to adjust for risk. My estimate of the risk-free rate is 6.1% which when combined with the 3

percentage point risk factor produces the 9.1% margin. As allowed under G.S. 62-133.1, I have used the operating ratio method to evaluate the Company's proposed rate increase."

In the Stipulation filed May 24, 1994, the parties agreed that Bradfield has indicated that it has elected to have its water and sewer rates determined using the rate base method. The parties also stipulated that if the revenue requirement is determined by the rate base method, then, the reasonable overall rate of return for Bradfield is 9.00%. Company witness Baffi presented the components of the 9.00% overall cost of capital in his testimony; such overall return consists of a capital structure of 50.00% debt and 50.00% equity and an embedded cost of 7.00% for debt and a recommended return on common equity of 11.00%. The Public Staff concurred with the Company's proposed capital structure and cost rates. Further, witness Barnobi testified that the Company was electing to have the reasonableness of its rates for both water and sewer service determined by the Commission in accordance with G.S. 62-133(b), which would result in rates being determined by the rate base/rate of return methodology.

Based on the evidence presented and the conclusions heretofore reached in this proceeding, the Commission has found that the Company's operating expenses of both its water and sewer operations are larger than the associated rate bases for each respective system. The Commission recognizes that since the operating expenses are larger than the respective rate bases in this proceeding, then the variation in revenues and/or expenses presents a greater risk to the Company than variation in the return on investment in rate base. That being the case, the Commission finds good cause, for purposes of this case, to shift the rate determination required in this proceeding from the parties' focus on investment and use of the rate base/rate of return methodology to expenses and to use the operating ratio methodology which allows a margin on operating revenue deductions requiring a return. The Commission concludes that the operating ratio method will provide a more reasonable level of revenues than the return on rate base method considering the specific findings of the Commission in this particular proceeding. However, the Commission acknowledges that the use of the operating ratio methodology in this proceeding does not preclude the Commission from using the rate base methodology in any of the Company's future rate-application filings.

Concerning the margin which should be allowed on operating expenses requiring a return, the Commission concludes that the 9.00% overall rate of return as stipulated to by the parties would also be reasonable and appropriate to use as the margin on operating expenses requiring a return in this proceeding.

The operating ratios resulting from the allowed 9.00% margin on operating revenue deductions requiring a return in this proceeding are 92.26% for the water operations and 92.42% for the sewer operations including gross receipts taxes and state and federal income taxes. The Commission finds that such operating ratios are reasonable and fair to both the Company and its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 53

Based upon the rate base, revenues, operating revenue deductions, and margin on operating revenue deductions as previously determined and set forth in this Order, the Commission concludes that Bradfield should be required to decrease its annual gross service revenues on a combined system basis by $63,454.

The following schedules summarize the revenues and operating revenue deductions for the water operations, the sewer operations and combined operations and incorporates the findings and conclusions heretofore, and hereinafter, found fair by the Commission.

SCHEDULE I
BRADFIELD FARMS UTILITY COMPANY
DOCKET NO. W-1044
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
WATER OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Residential Revenue	$ 92,353	$ (30,449)	$ 61,904
Uncollectibles	(924)	305	(619)
Total Operating Revenue	91,429	(30,144)	61,285
Operating Revenue Deductions:			
Operation and Maintenance Expenses	51,729	0	51,729
Property Taxes	1,000	0	1,000
Regulatory Fee	78	(26)	52
Gross Receipts Taxes	3,657	(1,206)	2,451
State Income Taxes	2,710	(2,241)	469
Federal Income Taxes	5,714	(4,876)	838
Total Operating Revenue Deductions	64,888	(8,349)	56,539
Net Operating Income for Return	$ 26,541	$ (21,795)	$ 4,746

SCHEDULE 11
BRADFIELD FARMS UTILITY COMPANY
DOCKET NO. W-1044
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
SEWER OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Residential Revenue	$ 109,572	$ (28,276)	$ 81,296
Bulk Usage Revenue	20,448	(4,729)	15,719
Uncollectibles	(1,300)	330	(970)
Total Operating Revenue	128,720	(32,675)	96,045
Operating Revenue Deductions:			
Operation and Maintenance Expenses	79,914	0	79,914
Property Taxes	1,000	0	1,000
Regulatory Fee	109	(27)	82
Gross Receipts Taxes	7,723	(1,960)	5,763
State Income Taxes	3,098	(2,378)	720
Federal Income Taxes	6,569	(5,285)	1,284
Total Operating Revenue Deductions	98,413	(9,650)	88,763
Net Operating Income for Return	$ 30,307	$ (23,025)	$ 7,282

SCHEDULE III
BRADFIELD FARMS UTILITY COMPANY
DOCKET NO. W-1044
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
COMBINED OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Residential Revenue	$ 201,925	$ (58,725)	$ 143,200
Bulk Usage Revenue	20,448	(4,729)	15,719
Uncollectibles	(2,224)	635	(1,589)
Total Operating Revenue	220,149	(62,819)	157,330
Operating Revenue Deductions:			
Operation and Maintenance Expenses	131,643	0	131,643
Property Taxes	2,000	0	2,000
Regulatory Fee	187	(53)	134
Gross Receipts Taxes	11,380	(3,166)	8,214
State Income Taxes	5,808	(4,619)	1,189
Federal Income Taxes	12,283	(10,161)	2,122
Total Operating Revenue Deductions	163,301	(17,999)	145,302
Net Operating Income for Return	$ 56,848	$ (44,820)	$ 12,028

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NOS. 54 AND 55

The evidence for these findings of fact is found in the Company's application filed on December 13, 1993; in the Company's proposed order filed on July 2, 1994, and in the testimony of Public Staff witness Casselberry.

The Company, in its application and proposed order, recommended a reconnection charge of $50 if water service was disconnected for good cause and there was no cut-off valve on the customer's service line and a reconnection charge of $75 if sewer service was disconnected for good cause and the customer was not also a water customer of the Company. The $50 water reconnection was to cover the cost of installing a cut-off valve. The $75 sewer reconnection was to cover the cost to physically disconnect the customer from the Company's sewer main.

Public Staff witness Casselberry recommended a water reconnect fee of $15 plus the actual cost to install a cut-off valve on the customer's service line.

She recommended a sewer reconnect fee of $15 plus actual cost to install a sewer plug on the customer's sewer service line. Witness Casselberry further recommended that the Company furnish the customer the estimated cost of installing a water cut-off valve or sewer plug along with the written notice of its intention to discontinue service as required by R7-20(c) of the Commission's Rules. Witness Casselberry also recommended that, prior to disconnection of sewer service, the Company notify the local health department of its intentions. The Company did not oppose witness Casselberry's recommendation.

Commission Rule R7-20 (f) specifies that the reconnection charge cannot be greater than the actual proven cost.

Based on the foregoing, the Commission is of the opinion that the water and sewer reconnection charges should be set as follows:

If water service cut off by utility:

A.	Cut-off valve on service line	$15.00
B.	No cut-off valve on service line	Actual cost to install water cut-off valve

If sewer service cut off by utility:

A.	Customer also receives water service from company	No charge
B.	Customer is a sewer customer only	Actual cost to install sewer plug

Company shall notify customer of the estimated cost of disconnecting service at time notice of discontinuance is provided to customer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 56

The evidence for this finding of fact is found in the testimony of Company witness Barnobi and Public Staff witness Lee.

Company witness Barnobi testified that the Company proposes to include the cost of adding future additions to its systems in its rate base in future rate case proceedings after the new additions are placed in service.

The Public Staff, through its witness Lee, recommended that the Commission establish a connection charge or tap fee designed to recover the estimated cost of plant additions required to serve future customers. Witness Lee testified that it would be unreasonable to allow the cost of plant additions required to serve future customers to be included in rate base because the present customers, who have already paid for plant required to serve them through lot cost, would be required to pay higher rates to help recover plant needed to serve future development. Therefore, witness Lee recommended that Bradfield should be required to file proposed water and sewer tap fees to be charged to future customers based on estimated utility plant costs. Witness Lee provided the following, as further support for his position:

Commission Rule R10-12(c) requires developers requesting sewer service to advance funds to the utility for facilities including mains and treatment capacity needed to serve the subdivision or tract requiring service. Commission Rule R7-16(c) requires the advancement of funds for installing mains including hydrants and also allows the utility to require advance funding of water production and storage facilities. These rules allow repayment to the developer as tap fees are collected.

In its proposed order, the Company presented the following statements in this regard:

> Although a final determination of the rate base treatment afforded future construction must be made in a future general rate case, the Commission will not require BFWC to collect a tap fee from future customers. As the Commission stated in Carolina Water, [Docket No. W-354, Sub 81], "the Public Staff's position that developers must contribute the entire cost of plant to serve a new area is without merit." Neither the Commission's rules nor economic reality supports the Public Staff's position.

The Commission finds that Rules R7-16(c) and R10-12(c), regarding service extensions, as cited by the Public Staff to support its recommendation, do not mandate the assessment of tap fees on water and sewer utility customers. In fact, the Commission cannot find any water or sewer utility-related rules that would mandate a tap fee. In this case, the Company did not request a tap fee and the Commission will not require the Company to establish one at this time. Additionally, the Commission also finds that the decision on what portion, if any, of the Company's investment in future development to be allowed in rate base will be decided in the Company's future general rate case proceedings based on the facts and evidence presented to the Commission at that time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 57

The evidence for this finding of fact is found in the Evidence and Conclusions for Findings of Fact Nos. 8 through 56.

Based on 361 water customers and 349 sewer customers in Bradfield Farms Subdivision (each receiving a monthly bill), 51 sewer customers in Silverton Subdivision (one bill-bulk rate), 20 sewer customers in Britley Subdivision (one bill-bulk rate), a water revenue requirement of $61,904 for Bradfield Farms Subdivision, and a sewer revenue requirement of $97,015 for all three subdivisions, the Commission finds and concludes that the rates shown on the Schedule of Rates attached to this Order are the proper rates to be set in this proceeding.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Applicant, Bradfield Farms Water Company, is hereby granted a certificate of public convenience and necessity to furnish water and sewer utility service in Bradfield Farms Subdivision, Mecklenburg and Cabarrus

Counties, North Carolina, and to furnish bulk sewer treatment service to the utilities serving Silverton and Britley Subdivisions, Cabarrus County, North Carolina.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved for service rendered on and after the effective date of this Order and that such Schedule of Rates is hereby deemed filed with the Commission pursuant to G.S. 62-138.

4. That Bradfield shall record all transactions, including contributions-in-aid of construction (CIAC) on its books and records in accordance with the Uniform System of Accounts for water and sewer companies.

5. That Bradfield shall collect gross-up on CIAC in accordance with the Commission's Orders in Docket No. M-100, Sub 113.

6. That, absent a strong, clear and convincing showing of exceptional cause, no ratemaking treatment will be allowed in any future proceeding on taxes on CIAC if the appropriate tax authority or court rules at some future date that taxes are due.

7. That Bradfield shall request Commission approval of any sale, transfer, termination or pledge of assets as required by statute or Commission rule.

8. That the Notice to Customers, attached hereto as Appendix C, and a copy of the Schedule of Rates, attached hereto as Appendix B, shall be delivered to all of the Company's customers in conjunction with Bradfield's next regular billing cycle after the effective date of this Order. Further, Bradfield shall submit to the Commission the attached Certificate of Service, properly signed, and notarized, within 10 days of completing such requirement.

ISSUED BY ORDER OF THE COMMISSION
This the 5th day of October 1994.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-1044

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

BRADFIELD FARMS WATER COMPANY

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water and sewer utility service

in

BRADFIELD FARMS SUBDIVISION

Cabarrus and Mecklenburg Counties, North Carolina

and bulk sewer utility service to

SILVERTON AND BRITLEY SUBDIVISIONS

Cabarrus County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of October 1994.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

SCHEDULE OF RATES

for

BRADFIELD FARMS WATER COMPANY

for providing Water and Sewer utility service in

Bradfield Farms Subdivision

in

Cabarrus and Mecklenburg Counties,
North Carolina

and for providing Bulk Sewer utility service to

Silverton and Britley Subdivisions

in Cabarrus County, North Carolina

WATER UTILITY SERVICE

Residential Customers:

Base charge (zero usage)	$ 5.75
Usage charge/per 1,000 gallons	$ 1.35

SEWER UTILITY SERVICE

Residential Customers:

Flat rate	$19.45

Bulk Rate:

Flat Rate per customer	$18.45

EPA-Testing Surcharge

Flat rate/month	$ 2.65

EPA-Testing Surcharge is to be added to the flat rate for water utility service for a period of 12 months starting with the first billing following the effective date of this Order.

Connection Charge: None

Reconnection Charges:[1]

Water	
If water is cut off by utility for good cause or at customer's request and the customer's has a cut-off valve on his service line	$15.00
If water cut off by utility for good cause and there is no cut-off valve on customer's sewer line[2]	Actual cost to install cut-off valve
Sewer[1]	
If sewer cut off by utility for good cause and:	
A. the customer is also a water customer of the Company	No charge
B. the customer is not a water customer of the Company[2]	Actual cost to install sewer plug

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be quarterly in arrears

Returned Check Charge: $20.00

Finance Charge For Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1 Customers who have been disconnected and are reconnected at the same address within nine months of disconnection will be charged the monthly base charge or the monthly flat rate per month for the period during which they were disconnected.

2 Company shall provide the customer the estimated cost of disconnecting service at the time Notice of Disconnection is provided to customer.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1044 on the 5th day of October 1994.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX C

DOCKET NO. W-1044

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Bradfield Farms Water Company, 145 Scaleybark Road, Charlotte, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Bradfield Farms Subdivision in Cabarrus and Mecklenburg Counties, North Carolina	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted Bradfield Farms Water Company a Certificate of Public Convenience and Necessity to provide water and/or sewer service in Bradfield Farms Subdivision and bulk sewer service to Silverton and Britley Subdivisions. The rates approved by the Commission are shown on the attached Schedule of Rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of October 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by Order of the North Carolina Utilities Commission in Docket No. W-1044 and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1044.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-1046

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Pace Utilities Group, Inc., 6719-C Fairview Road, Charlotte, North Carolina, 28210 for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Services in Silverton Subdivision in Cabarrus County, North Carolina, and for Approval of Rates	)	ORDER GRANTING WATER AND SEWER UTILITY FRANCHISE AND APPROVING RATES

WATER AND SEWER - CERTIFICATES

HEARD IN: Charlotte-Mecklenburg Government Center, Charlotte, North Carolina, on May 17, 1994

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 24, 1994

BEFORE: Commissioner Ralph A. Hunt, Presiding, and Commissioners William W. Redman and Charles H. Hughes

APPEARANCES:

For Pace Utilities Group, Inc.:

Robert F. Page, Crisp, Davis, Page, Currin & Nichols, LLP, 4011 WestChase Boulevard, Suite 400, Raleigh, North Carolina 27607-3944

For William Whitley, III:

James L. Hunt, Hunton & Williams, One Hannover Square, Suite 1400, Raleigh, North Carolina 27601

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 10, 1994, Pace Utilities Group, Inc., (Pace, Applicant or Company) filed an application for a certificate of public convenience and necessity to provide water and sewer utility service in Silverton Subdivision in Cabarrus County and for approval of rates. Amendments to the application were filed on February 2, 1994. The Commission issued an Order on February 9, 1994, granting temporary operating authority, approving interim rates, requiring posting of a bond in the amount of $40,000, and scheduling hearings in Charlotte on May 17, 1994, and in Raleigh on May 24, 1994. The remainder of the procedural history of this matter is found in the records, files and Orders of the Commission in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026 which are hereby incorporated by reference.

On March 23, 1994, William Whitley, III, d/b/a SPDI Partnership (Whitley), filed a Motion to intervene which was granted by Order dated March 29, 1994.

On May 16, 1994, the Public Staff filed the testimony and exhibits of Katherine A. Fernald, Supervisor, Accounting Water Section, and Gina Y. Casselberry, Utilities Engineer, Water Division, and the affidavit of Thomas W. Farmer, Jr., Financial Analyst, Economic Research Division.

The hearing in Charlotte was held as scheduled, but no public witnesses appeared.

The hearing in Raleigh was held as scheduled. The Company presented the testimony and exhibit of Jocelyn M. Perkerson, Assistant Secretary, Pace Utilities Group, Inc., and Steven Pace, a real estate developer, Pace Development Group, Inc. The Public Staff presented the testimony and exhibits of Gina Y. Casselberry, Andy R. Lee, and Katherine A. Fernald and offered the Affidavit of Thomas W. Farmer, Jr., which was accepted into evidence.

On July 8, 1994, Whitley filed a brief expressing his arguments and objections to: Pace's desire not to serve Britley Subdivision and Pace's proposed excess capacity fee of $850 per lot to be applicable in Britley Subdivision. Later, on July 12, 1994, Pace and the Public Staff filed their respective proposed orders addressing their final positions on all the issues raised in this proceeding. Thereafter, a number of related motions and responses were filed in this docket as follows:

1. On July 11, 1994, Pace filed a motion whereby the Commission was requested to allow Pace to withdraw its offer to provide bulk water service to Britley Subdivision.

2. On July 13, 1994, the Public Staff filed a response in opposition to Pace's motion whereby the Commission was requested to deny said motion.

3. On July 20, 1994, Pace filed a response in opposition to the response filed by the Public Staff and renewed its motion, as previously filed on July 11, 1994.

4. On July 21, 1994, Whitley filed a response in opposition to Pace's motion whereby the Commission was requested to deny said motion.

5. On August 12, 1994, the Public Staff filed an amendment to its proposed order filed on July 12, 1994, reflecting that the proposed 12 month surcharge to defray the cost of EPA-mandated testing should be set at $11.35 per month per customer for all residential customers in both Britley and Silverton Subdivisions.

On the basis of the application, the testimony and exhibits at the hearings, the records in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026 and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

GENERAL MATTERS

1. Pace is seeking a certificate of public convenience and necessity to furnish water and sewer utility service in Silverton Subdivision in Cabarrus County, North Carolina.

2. There is a demand and need for water and sewer utility service in Silverton Subdivision. There is a demand and need for bulk water service for Britley Subdivision.

3. The Applicant's proposed monthly water and sewer rates, as amended at the hearing are as follows:

Metered residential water rate	
Base charge, zero usage	$ 8.35 minimum
Usage charge	$ 2.05/1,000 gallons
Flat residential sewer rate	$ 29.00
Bulk water rate	
Base charge, zero usage	$500.00 minimum
Usage charge	$ 2.05/1,000 gallons
Tap Fee/Excess capacity purchase (to be charged to Britley)	$850.00/lot

4. The monthly water and sewer rates recommended by the Public Staff are as follows:

Metered residential water rates	
Base charge, zero usage	$ 5.00 minimum
Usage charge	$ 0.65/1,000 gallons
Flat residential sewer rate	$ 21.15
Bulk water rate	
Base charge, zero usage	$250.00 minimum
Usage charge	$ 0.65/1,000 gallons

5. The Applicant proposes to employ Mid South Water Systems, Inc. (Mid South), to perform the day-to-day operation and maintenance of the water and sewer system in Silverton Subdivision under the terms of a contract, the Utility Operating Agreement, filed with the application. Mid South is presently providing this service under its temporary operating authority and is technically fit and qualified to provide the services required.

6. Water and sewer service have been provided to residents of Silverton Subdivision at least since 1990 by the Applicant or its predecessors using the existing facilities.

7. The test period appropriate for use in this proceeding is the 12 months ended December 31, 1993.

RATE BASE

8. It is inappropriate in this proceeding to include in rate base the cost of assets which have previously been contributed by the developer to utility operations.

9. It is appropriate to include in rate base the Company's investment of $60,000 for the acquisition from Mid South of certain water facilities which are necessary for the provision of water utility service.

10. The total plant in service for water utility operations is $60,000 and zero for the sewer operations.

11. The appropriate level of accumulated depreciation for the water operations is $1,800. Since there is zero plant in service for the sewer operations, the appropriate level of accumulated depreciation is also zero.

12. It is appropriate to include in rate base cash working capital of $1,242 for water operations and $2,240 for sewer operations and average tax accruals of $143 for water operations and $147 for sewer operations.

13. Pace's reasonable rate base used and useful in providing water and sewer service is $61,392, consisting of utility plant in service of $60,000 and cash working capital of $3,482; reduced by accumulated depreciation of $1,800 and average tax accruals of $290.

REVENUES

14. The appropriate end-of-period customers is 53 for residential water utility service, 21 for bulk water service, and 51 for flat rate sewer service.

15. The appropriate level of end-of-period residential revenues is $29,000, of which $14,312 is applicable to water operations and $14,688 is applicable to sewer operations.

16. The appropriate level of end-of-period bulk water usage revenues is $7,126 for water operations.

OPERATION AND MAINTENANCE EXPENSES

17. It is appropriate to include maintenance and repairs expense of $1,500 in operating expenses in this proceeding, of which $1,000 relates to water operations and $500 relates to sewer operations.

18. Based upon the rates found reasonable by the Commission in Docket No. W-1044, regarding the Bradfield Farms Water Company franchise, the Commission concludes that the appropriate level of sewage treatment expense is $11,291.

19. The appropriate level of operation and maintenance expenses is $27,856, of which $9,937 relates to water operations and $17,919 relates to sewer operations.

OTHER OPERATING REVENUE DEDUCTIONS

20. The appropriate levels of depreciation expense are $1,800 for the water operations and zero for the sewer operations.

21. Based on the other findings and conclusions set forth in this Order, the appropriate levels of regulatory fees are $18 for water operations and $12 for sewer operations.

22. Based on the other findings and conclusions set forth in this Order, the appropriate levels of gross receipts taxes are $858 for water operations and $881 for sewer operations.

23. Based on the other findings and conclusions set forth in this Order, the appropriate levels of state income taxes are $523 for water operations and zero for sewer operations.

24. Based on the other findings and conclusions set forth in this Order, the appropriate levels of federal income taxes are $934 for water operations and zero for sewer operations.

25. The appropriate levels of other operating revenue deductions are $5,026, of which $4,133 relates to water operations and $893 relates to sewer operations.

METHODOLOGY FOR REVENUE DETERMINATION

26. The appropriate methodology to use in determining rates for the water operations is the rate base/rate of return methodology. The appropriate overall cost of capital is 9.20% for purposes of this proceeding.

27. The appropriate methodology to use in determining rates for the sewer operations is the operating ratio methodology. The appropriate margin on operating revenue deductions requiring a return is 9.20% for purposes of this proceeding.

RATES, FEES, AND OTHER MATTERS

28. The Commission finds that the rates should be set to produce total annual water and sewer revenues of $40,212. These revenues will allow Pace the opportunity to earn a 9.20% overall rate of return on its rate base for its water operations and a 9.20% margin on operating revenue deductions requiring a return for its sewer operations, which the Commission has found to be reasonable upon the consideration of the findings in this Order.

29. Pace should be required to provide bulk water service to Britley Subdivision.

30. The Public Staff recommended the following rates to recover Pace's expected EPA-testing costs:

Silverton Subdivision-	$11.35/customer
Britley Subdivision-	$11.35/customer

The Commission agrees with the Public Staff's position in this matter.

31. The Public Staff has recommended a reconnection charge of $15 if sewer service is disconnected for good cause. The Commission agrees with the recommendations made by the Public Staff in this matter.

32. The Public Staff has recommended that Pace install a six inch water meter in order to measure the amount of water sold to the Britley Subdivision customers. The Commission agrees with the recommendations made by the Public Staff in this matter.

33. The interconnection between the water system serving Britley Subdivision and the water system serving Silverton Subdivision has not been approved by the North Carolina Division of Environmental Health (DEH). The owner of Britley Subdivision should be required to have this interconnection approved by DEH.

34. The proper rates to be set in this proceeding are found in the Schedule of Rates attached hereto as Appendix B.

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

The evidence supporting these findings of fact is contained in the application and supporting documents and in the Commission's records. These findings are generally jurisdictional and informational and are not contested.

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

The evidence supporting these findings is contained in the records of the Commission in this docket, in the Commission records in Docket Nos. W-720, Sub 96 and Sub 108 and Docket No. W-1026, and in the testimony of Company witness Perkerson and Public Staff witness Fernald.

The franchise filed by Pace is the result of several years of litigation involving Mid South and the Commission to secure a franchise to provide water and sewer service in Phases 2, 3, 4, and 5 of Bradfield Farms Subdivision as well as in Silverton and Britley Subdivisions. By Commission Order issued on October 13, 1993, in Docket No. W-1026, Mid South was ordered to reconvey to the respective developers of Bradfield Farms, Silverton, and Britley Subdivisions properties and facilities for which Mid South held deeds or other forms of ownership. In accordance with the requirements of that Order, Pace is now before the Commission seeking a certificate of public convenience and necessity to provide water and sewer service in Silverton Subdivision. Company witness Perkerson testified that she prepared the Company's application in keeping with the requirements for a new or initial franchise application; therefore, she did not include any test year data because there was no test year data for Pace. Further, as stated in the Company's proposed order, it is the opinion of Pace that the Commission is not required to make detailed findings in this docket on issues such as rate base, revenues and expenses, as this case is a new franchise application, not a general rate case.

In accordance with G.S. 62-133, Public Staff witness Fernald calculated the Company's revenue requirement based upon a historical test year ending December 31, 1993.

In setting rates for public utilities, the Commission is generally required by G.S. 62-133(c) to employ a test period consisting of 12 months' historical operating experience, but the Commission shall consider such relevant, material and competent evidence as may be offered to show actual changes in costs, revenues and public utility property used and useful up to the time the hearing is closed. While this is not possible in the case of new utilities, the subject water and sewer utility is not a new utility per se. Water and sewer utility service has been provided for a number of years and actual historical operating data is available. Under these circumstances, the Commission finds that it

should make detailed findings in this docket on issues such as rate base, revenues and expenses and that the test period appropriate for use in this proceeding is the 12 months ended December 31, 1993.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-13

The evidence for these findings of fact is found in the testimony of Public Staff witness Fernald and Company witnesses Pace and Perkerson. Assuming that the Company would agree to treating its application as a general rate request, which it does not, then the following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$ 156,861	$ 0	$ (156,861)
Accumulated depreciation	(6,274)	0	6,274
Cash working capital	1,367	1,117	(250)
Average tax accruals	(169)	(143)	26
Total original cost rate base	$ 151,785	$ 974	$ (150,811)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$ 120,906	$ 0	$ (120,906)
Accumulated depreciation	(5,279)	0	5,279
Cash working capital	1,886	1,359	(527)
Average tax accruals	(177)	(147)	30
Total original cost rate base	$ 117,336	$ 1,212	$ (116,124)

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The Company included on its application $277,767 for plant in service for its combined water and sewer operations.

Public Staff witness Fernald removed the $277,767 of such assets from plant in service since in her opinion the cost of the plant was initially contributed to utility operations. In this regard, witness Fernald responded to a question on cross-examination as follows:

Q. SO, YOU WOULD AGREE WITH ME, WOULD YOU NOT, THAT WHATEVER MID SOUTH WAS GOING TO DO WITH THOSE FACILITIES AND WHATEVER RATE-BASE VALUE THOSE FACILITIES MAY HAVE HAD IN THE HANDS OF MID SOUTH, THAT'S NO LONGER THE CASE THAT HAS BEEN DONE AWAY WITH?

A. They were contributed to Mid South and, you know, the contributions the developer made was recovered through the sale of lots and so the customers should not have to pay more in rates due to those transactions.

Further in this regard, witness Fernald also testified as follows:

"In response to a letter from the Commission dated October 10, 1989 in Docket No. W-720, Sub 96, Mid South stated:

Mid South acquired the Silverton subdivision as described above at no cost to the utility and no rate making impact on its customers.

Also, in its data response to question 63 filed on May 29, 1991 in Docket Nos. W-720, Sub 96 and Sub 108, Mid South stated:

To the extent MS installed any of the water and sewer facilities in Bradfield and Silverton, how did MS Construction treat the facility cost on its federal tax return? Ans.: Mid South Construction, Inc. is not regulated by the Commission. Mid South Water Systems, Inc., obtained all facilities at zero rate base.

Therefore, witness Fernald concluded that these facilities were previously contributed to be used as utility property and that the costs of these properties to the utility was thus zero.

Company witness Perkerson disagreed with the Public Staff's treatment of plant in service and testified as follows:

By the Order of the Commission issued on October 13, 1993, Mid South was ordered to reconvey to Bradfield Farms and Silverton the utility properties and facilities for which Mid South held deeds and other forms of ownership. Mid South was also required to file a report with the Commission indicating how and when this had been done. By virtue of this Order, the Commission required that everything revert back to Square One, with the utility facilities being reconveyed to the developers. There are no longer any contributions. Each of the three developers were restored to their original position of having built and paid for the utility facilities. Each developer was free to file for emergency and for permanent status as a utility. In view of the foregoing facts, each developer was free to determine whether or not the utility property would be contributed to another company or, as in the case of Pace, be purchased from the owner (developer).

Company witness Pace testified that he reacquired the facilities from Mid South for $60,000. Witness Pace testified that at the time of the development of Silverton Subdivision, Spartabrook Homes, Inc. (Spartabrook) owned the land and he had a joint venture with Spartabrook to develop the subdivision. Witness Pace further testified that Pace Utilities Group, Inc. acquired this system from Pace Development Group, Inc. for the price of $277,767. On cross-examination, witness Pace testified that no portion of the $60,000 paid to Mid South has been

written off, but that the remaining amount of $217,767 was contributed to Mid South by him with the idea that the sale of lots would reimburse him for that cost as an expense of doing business.

In this regard, witness Pace responded to several questions on cross-examination as follows:

Q. MR. PACE, WHEN YOU, ORIGINALLY, YOU AND YOUR JOINT VENTURE PARTNERS ORIGINALLY DEVELOPED SILVERTON, YOU DID SO WITH THE IDEA IN MIND OF MAKING A PROFIT, DID YOU NOT?

A. Yes

Q. DO YOU REMEMBER WAY BACK THEN?

A. Not like Pace Utilities.

Q. YES, SIR. AND WHAT YOU WERE GOING TO DO WAS YOU WERE GOING TO LAY OUT THE SUBDIVISION, YOU WERE GOING TO INSTALL THE INFRASTRUCTURE, AND THEN YOU WERE GOING TO SELL LOTS, AND FROM THE SALE OF THOSE LOTS YOU WERE GOING TO PAY YOUR EXPENSES AND MAKE A PROFIT, IS THAT RIGHT?

A. That is correct.

Q. AND ONE OF THE THINGS YOU DID WAS CONTRIBUTE THE UTILITY PLANT TO MID SOUTH, IS THAT CORRECT?

A. That is correct.

Q. OKAY. WITH THE IDEA THAT SALE OF THE LOTS WOULD REIMBURSE YOU FOR THAT COST AS AN EXPENSE OF DOING BUSINESS, IS THAT RIGHT?

A. That is correct.

Q. OKAY. NOW, HAVE YOU, IN FACT, WRITTEN OFF AT LEAST A PORTION OF THOSE EXPENSES AGAINST THE SALE OF THOSE LOTS?

A. Yes, I answered that question earlier.

Q. OKAY. AND, IN FACT, IF ANYTHING, THE QUESTION WOULD RELATE TO THE $60,000.00 THAT YOU -- WOULD NOT BE WRITTEN OFF, IS THAT RIGHT? THE PLAN RIGHT NOW IS TO WRITE OFF EVERYTHING ELSE?

A. No portion of the $60,000.00 has been written off.

Q. YES, SIR.

A. It has just been paid sometime in February, the middle of February.

Q. YES, SIR. BUT THE IDEA IS THAT EVERYTHING ELSE WILL BE WRITTEN OFF, IS THAT CORRECT?

A. That is correct, hopefully.

Q. OKAY. AND IT IS ESTABLISHED THAT ORIGINALLY THIS HAD ZERO RATE BASE IN THE HANDS OF MID SOUTH, IS THAT RIGHT?

A. I don't know what the rate base was in the hands of Mid South. I'm not familiar with their financial filings.

Q. OKAY, BUT THEY DIDN'T PAY YOU FOR THE PROPERTY, THAT'S RIGHT, ISN'T IT?

A. They paid some costs as I said earlier in the other counsel's questions. They did pay certain costs to improve the well sites at Silverton.

Q. BUT THAT WAS THEIR OWN INVESTMENT; THEY DIDN'T PAY YOU ANYTHING? THEY DID NOT PAY PACE OR--

A. (Interposing) They didn't write me a check.

Further, witness Pace testified that the $60,000 paid to Mid South was basically for the costs that had been incurred by Mid South to outfit the wells, to install the storage tanks, and to put in treatment.

Based upon the evidence, the Commission concludes that it would be inappropriate to include the $217,767 of assets that were originally transferred to Mid South in rate base in this proceeding. The facts of this case indicate that the developer is recovering the cost of the developer-contributed property through the sale of lots. Thus, if the $217,767 of assets were included in rate base, the ratepayers would end up paying twice for the same plant, once through rates and once in the price of their lots. Therefore, the Commission finds that it would be unfair and unreasonable to include in rate base the costs of the assets that were initially transferred to Mid South.

Regarding the $60,000 that was paid to Mid South for the purchase of assets installed by Mid South, the Commission finds that the evidence indicates that this amount will not be recovered in the sale of the lots. According to the testimony of witness Pace, the $60,000 was paid to Mid South for the costs that had been incurred by Mid South to outfit the wells, to install storage tanks and to put in the required treatment. The Commission, thus, concludes that the $60,000 investment relates only to the Company's water operations and further the Commission considers that these assets are necessary to the proper operation of the water system.

Given the circumstances of this particular case, the Commission believes that it is appropriate to allow the Company to include its investment of $60,000 in rate base for its water operations. The Commission recognizes that the Company's ratepayers have not previously paid for these costs in their lot costs nor, according to the testimony of witness Fernald, were such costs included in the rate base of Mid South while the ratepayers were customers of Mid South. Further, the Commission also notes that the record reflects no direct evidence that the level of costs for such purchased assets as constructed by Mid South and acquired by Pace for $60,000 was an unreasonable and unrepresentative amount.

Therefore, the Commission believes it is appropriate to include $60,000 in the rate base for the water operations as such assets are necessary to the provision of service, such costs have not been previously recovered from the ratepayers, and the level of costs for such assets does not appear to be unreasonable.

ACCUMULATED DEPRECIATION

The differences in accumulated depreciation between the Public Staff and the Company are due to their different recommended levels for plant in service. The Company included one year of accumulated depreciation on its plant in service. The Public Staff included zero accumulated depreciation based on its determination that the plant in service was zero.

Company witness Perkerson testified that she used a depreciation rate of 4.00%. She stated that she did not go into a detailed study of the assets to develop varying depreciation rates, but instead gave everything a 25-year average service life.

In consideration of our foregoing conclusions that it is appropriate to include $60,000 in plant in service relating to wells, storage tanks and treatment equipment for the water operations, the Commission finds that a depreciation rate of 3.00% representing an average service life of 33.33 years would be more appropriate in this proceeding than the rate of 4.00% recommended by the Company.

Based upon the foregoing, the Commission concludes that the appropriate level of accumulated depreciation is $1,800 for the water operations and zero for the sewer operations. Further, the Commission considers that it is appropriate in this proceeding to recognize just one year of accumulated depreciation since the $60,000 is an investment that the Company did not incur until 1994.

CASH WORKING CAPITAL

The differences in cash working capital between the parties are due to the differences in the levels of operation and maintenance expenses. Both parties included amounts based on one-eighth of operation and maintenance expenses, which is a standard formula used by this Commission for water and sewer companies. Based on the level of operation and maintenance expenses determined elsewhere in this Order, the Commission concludes that the appropriate level of cash working capital for purposes of this proceeding is $3,482, of which $1,242 relates to water operations and $2,240 relates to sewer operations.

AVERAGE TAX ACCRUALS

The differences in average tax accruals are due to the differences in the levels of gross receipts taxes. Both parties included amounts for average tax accruals which are based on one-sixth of gross receipts taxes. Further, the gross receipts taxes are calculated based on the level of operating revenues. In this proceeding, both parties agreed on the current level of revenues under present rates which would be the revenue level to use for determining gross receipts taxes and average tax accruals under present rates. However, the Company calculated its average tax accruals based upon the gross receipts taxes that would result under the Company's proposed revenues rather than present

revenues, thus, there is a resulting difference between the parties. Based on the level of gross receipts taxes determined elsewhere in this Order, the Commission concludes that the appropriate level of average tax accruals for purposes of this proceeding is $290, of which $143 relates to water operations and $147 relates to sewer operations.

SUMMARY CONCLUSIONS

Based upon the foregoing, the Commission concludes that the Company's reasonable rate base used and useful in providing service is $61,392, comprised as follows:

Item	Water Operations	Sewer Operations	Total
Plant in service	$ 60,000	$ 0	$ 60,000
Accumulated depreciation	(1,800)	0	(1,800)
Cash working capital	1,242	2,240	3,482
Average tax accruals	(143)	(147)	(290)
Total original cost rate base	$ 59,299	$ 2,093	$ 61,392

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14-16

The evidence supporting these findings of fact is found in the testimony and exhibits of Public Staff witnesses Casselberry and Fernald and Company witness Perkerson. There was no disagreement between the parties on the appropriate level of revenues under present rates; i.e., the parties agreed on the umber of end-of-period customers and water usage.

Their being no controversy in this regard, the Commission concludes that the appropriate level of end-of-period residential revenues is $29,000, of which $14,312 is applicable to water operations and $14,688 is applicable to sewer operations. Additionally, based on the uncontroverted evidence, the Commission finds that the appropriate level of end-of-period bulk usage revenues is $7,126 for water operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-19

The evidence supporting these findings of fact is found in the testimony and exhibits of Public Staff witnesses Casselberry and Fernald and Company witness Perkerson. Assuming that the Company would agree to treating its application as a general rate request, which it does not, then the following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of operation and maintenance expenses to be used in this proceeding:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Contract operator	$ 4,669	$ 4,669	$ 0
Maintenance and repairs	2,000	0	(2,000)
Electric power	1,801	1,801	0
Testing	757	757	0
Regulatory expense	1,710	1,710	0
Total O&M expenses	$ 10,937	$ 8,937	$ (2,000)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Contract operator	$ 4,486	$ 4,486	$ 0
Maintenance and repairs	1,000	0	(1,000)
Electric power	0	0	0
Sewage treatment	7,956	4,743	(3,213)
Regulatory expense	1,642	1,642	0
Total O&M expenses	$ 15,084	$ 10,871	$ (4,213)

As indicated in the foregoing tables, the Public Staff and the Company agreed on the amounts for contract operator, electric power, testing, and regulatory expenses. Therefore, the Commission concludes that the appropriate levels for these items are those set forth by the parties.

MAINTENANCE AND REPAIRS

The first area of difference between the parties is maintenance and repairs expenses. Company witness Perkerson included $3,000 for maintenance and repairs in her exhibits. Witness Perkerson estimated this amount and assigned "$2,000 to water operations and $1,000 to sewer operations for that level of maintenance and repairs that falls between day to day and capitalized." On cross-examination, witness Perkerson testified in this regard that: "I have absolutely no documentation I just know because I'm in the business that there are those expenses and I thought it should be good for something." However, witness Perkerson also stated that she had told the Public Staff about some sewer line work which had been done since December 31, 1993 which had cost $600 in labor alone and that such repair would not be covered by Pace's operator contract with Mid South. Further, witness Perkeson stated that even though she told the Public Staff about this repair, the Public Staff did not request any information as to the costs for such labor and parts. Additionally, witness Perkerson testified that "The only repair and maintenance that is covered under the contract management agreement is the day-to-day minor repairs."

Public Staff witness Fernald testified that it is the Applicant's responsibility to establish the costs of operating the system in a case and that to the extent that the Applicant is able to document costs, she would look at them for reasonableness and if they were reasonable she would include them.

Witness Fernald further testified that this is what she has done in this case. Further, it was the Public Staff's opinion that the maintenance and repair expenses would be covered by the contract operator agreement.

Based upon the evidence, the Commission concludes that it would be inappropriate in the proceeding not to include some amount for repairs and maintenance expenses that would not be covered by the operator contract with Mid South. The Commission is concerned that the Company would not be able to recover its reasonable level of operating expenses if no allowance is made for such expenses. Upon review of the utility operating agreement it is clear to the Commission that Pace is responsible for at least the cost of all materials that would be required for the repair and maintenance of pumps, motors, capital improvements and tank replacement, as specifically stated in the contract operator agreement with Mid South. Further, considering witness Perkerson's testimony that since December 31, 1993 the Company has actually incurred costs of $600 in labor alone for a sewer line repair that was not covered by the operator contract, the Commission believes that the utility will incur maintenance and repair expenses for both labor and materials that will not be covered by the operator contract expense allowance that is being included in the cost of service in this proceeding. However, the Commission also recognizes that some of these utility incurred maintenance and repair expenses could be for items of cost that should be capitalized rather than expensed. In this proceeding, the Commission concludes that it is reasonable to allow only one-half of the Company's proposed costs for such expenses to be included in the cost of service. Therefore, the Commission concludes that the appropriate level for repairs and maintenance expense is $1,500, of which $1,000 relates to water operations and $500 relates to sewer operations.

SEWAGE TREATMENT

The difference between the parties in the level of sewage treatment expense is due to the different bulk sewer rates used by the parties. The Public Staff used the bulk sewer rate it is recommending in the Bradfield Farms Water Company case, Docket No. W-1044, while the Company used the bulk sewer rate which Bradfield Farms Water Company is proposing to charge in that case. Based on the bulk sewer rate of $18.45 per customer per month found reasonable by the Commission in the Bradfield Farms Water Company case, Docket No. W-1044, the Commission concludes that the appropriate level of sewage treatment expense to be included in this proceeding is $11,291.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expenses is $27,856, comprised of the following:

Item	Water Operations	Sewer Operations	Total
Contract operator	$ 4,669	$ 4,486	$ 9,155
Maintenance and repair	1,000	500	1,500
Electric power	1,801	0	1,801
Testing	757	0	757
Sewage treatment	0	11,291	11,291
Regulatory expense	1,710	1,642	3,352
Total O&M expenses	$ 9,937	$ 17,919	$ 27,856

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20-25

The evidence supporting these findings is found in the testimony and exhibits of Public Staff witness Fernald and Company witness Perkerson. The following chart indicates the differences between the Public Staff and the Company for operating revenue deductions other than operation and maintenance expenses:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation expense	$ 6,274	$ 0	$ (6,274)
Regulatory fee	18	18	0
Gross receipts taxes	858	858	0
State income taxes	0	901	901
Federal income taxes	0	1,609	1,609
Total other operating revenue deductions	$ 7,150	$ 3,386	$ (3,764)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation expense	$ 4,836	$ 0	$ (4,836)
Regulatory fee	12	12	0
Gross receipts taxes	881	881	0
State income taxes	0	227	227
Federal income taxes	0	405	405
Total other operating revenue deductions	$ 5,729	$ 1,525	$ (4,204)

As indicated in the foregoing tables, the Public Staff and the Company agreed on the amounts for regulatory fee expense and gross receipts taxes as these expenses are determined based on the level of service revenues under present rates which, as discussed previously, the parties agreed on the level of such revenues. Therefore, the Commission concludes that the appropriate levels for these items of costs are those set forth by the parties.

DEPRECIATION EXPENSE

The differences in depreciation expense result from the parties' disagreement over the levels of plant in service that should be included in the rate bases for the water and sewer operations. As previously discussed, the Public Staff recommended that no amount of plant in service should be included in rate base. Therefore, the Public Staff recommended that the level of depreciation expense should be zero.

The Company has recommended that plant in service of $277,767 be included in rate base for its combined operations and is recommending a depreciation rate of 4.00% reflecting a 25-year average service life. Thus, the Company is recommending a level of depreciation expense of $11,110, consisting of $6,274 for its water operations and $4,836 for its sewer operations.

Further, in this regard, Company witness Perkerson testified as follows:

> It is time for all of us to realize that the assets of a utility, no matter how they were acquired, have a value. It is also time for us to realize that when a company is not allowed to earn a return on plant in service or an expense for depreciation, it has virtually no way to replace the utility plant as it wears out. The return on operating expenses does not cover these items and depreciation on the actual plant in service is not allowed in the establishment of rates under the Operating Ratio Method.

The Commission does not agree with witness Perkerson that the Company should be allowed depreciation expense to provide funds for the replacement of utility plant. Generally, for ratemaking purposes, the purpose of depreciation expense is to allow the utility the opportunity to recover its allowed investment in utility property over the service life of such property. It has been a long-standing practice of this Commission to not allow depreciation expense on contributions-in-aid of construction. In Utilities Commission v. Heater Utilities, Inc., the North Carolina Supreme Court stated as follows:

> The remaining question presented by this appeal is whether the Commission erred in its refusal to allow the utility company to make an annual charge to operating expenses for the depreciation of the properties representing such contributions in aid of construction. We hold that it did not err in so doing. The purpose of the annual allowance for depreciation and the resulting accumulation of depreciation reserve is not, as is sometimes erroneously supposed, to provide the utility with a fund by which it may purchase a replacement for the property when it is worn out. The purpose of the allowance is to enable the utility to recover the cost of such property to it. *State ex rel. Utilities Commission v. Heater Utilities, Inc.*, 288 N.C. 457, 219 S.E. 2d 56 (1975)

As previously discussed in this Order, the Commission concluded that it is appropriate to include $60,000 of plant in service for the Company's water operations and the Commission also found that a depreciation rate of 3.00% would be appropriate for the type of plant in which the $60,000 was invested.

Therefore, the Commission finds that the appropriate level of annual depreciation expense for the Company's water operations is $1,800 for purposes of this proceeding. Further, the Commission, having previously determined that the appropriate level of plant in service for the sewer operations is zero, concludes that the appropriate level of depreciation expense for use in this proceeding is zero for the sewer operations.

STATE AND FEDERAL INCOME TAXES

The differences in state and federal income taxes between the Company and the Public Staff arise from the parties' disagreements over rate base, revenues and expenses. The Commission, having previously determined the appropriate level of rate base, revenues and operating revenue deductions, concludes that the appropriate level of state income taxes to be included in this proceeding is $523 under present rates which relates entirely to the Company's water operations. The Commission also concludes that the appropriate level of federal income taxes to be included in this proceeding is $934, which also relates entirely to the Company's water operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of other operating revenue deductions is $5,026, which consists of the following:

Item	Water Operations	Sewer Operations	Total
Depreciation expense	$ 1,800	$ 0	$ 1,800
Regulatory fee	18	12	30
Gross receipts taxes	858	881	1,739
State income taxes	523	0	523
Federal income taxes	934	0	934
Total other operating revenue deductions	$ 4,133	$ 893	$ 5,026

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 26 AND 27

The evidence supporting these findings of fact is found in the affidavit of Public Staff witness Farmer and the testimony and exhibits of Public Staff witness Fernald and Company witness Perkerson. The parties differ on which method to use in determining rates. Public Staff witness Farmer recommended the operating ratio method while Company witness Perkerson recommended the rate base method if the Company's application is to be treated as a general rate case.

Based on the other findings and conclusions set forth in this Order, the rate base for water operations is $59,299 and the level of operating revenue deductions requiring a return for water operations is $11,737. Therefore, the Commission concludes that it is appropriate to use the rate base/rate of return methodology in determining rates for the Company's water operations.

Based on the other findings and conclusions set forth in this Order, the rate base for sewer operations is $2,093 and the level of operating revenue

deductions requiring a return for sewer operations is $17,919. Therefore, the Commission concludes that it is appropriate to use the operating ratio methodology in determining rates for the Company's sewer operations.

Both the Public Staff and the Company used 9.20% as either the return on rate base or the margin on operating revenue deductions requiring a return in evaluating the revenue requirement that would result under their respective positions. Therefore, the Commission concludes that it is appropriate to use an overall rate of return on rate base of 9.20% for the revenue requirement determination for the water operations and for the sewer operations, it is appropriate to use a margin of 9.20% on operating revenue deductions requiring a return for purposes of this proceeding. Further, with regard to the use of a 9.20% overall return on rate base for the water operations, the Commission believes that it would be appropriate in this proceeding to assume that Pace's capital structure is equally divided between debt and equity. Such assumption reflects the same capital structure (50.00% debt/50.00% equity) that was used by Company witness Perkerson. Additionally, upon review of the Company's promissory notes to Pace Development Group, Inc. and Central Carolina Bank and Trust Company, the Commission finds that it would be reasonable to assume that Pace's overall cost of debt is 7.00%. Thus, assuming a capital structure of 50.00% debt at a cost of 7.00% and 50.00% common equity, then the parties' agreed upon 9.20% overall rate of return would result in a common equity return of approximately 11.40%, which the Commission finds to be reasonable for purposes of this proceeding.

The operating ratio resulting from the allowed 9.20% margin on operating revenue deductions requiring a return for the sewer operations is 92.26% including gross receipts taxes and state and federal income taxes. The Commission finds that such operating ratio is reasonable and fair to both the Company and its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

Based upon the rate base, revenues, operating revenue deductions, margin on operating revenue deductions and rate of return on rate base as previously determined and set forth in this Order, the Commission concludes that Pace should be allowed to increase its annual gross service revenues on a combined system basis by $4,086.

The following schedules summarize the gross revenues and rate of return or margin that the Company should have a reasonable opportunity to achieve based upon the decrease for water operations and increase for sewer operations approved in this Order. These schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore, and hereinafter, found fair by the Commission in this Order.

SCHEDULE I
PACE UTILITIES GROUP, INC.
DOCKET NO. W-1046
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
WATER OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Residential Revenue	$ 14,312	$ (1,405)	$ 12,907
Bulk Usage Revenue	7,126	(1,138)	5,988
Total Operating Revenue	21,438	(2,543)	18,895
Operating Revenue Deductions:			
Operation and Maintenance Expenses	9,937	0	9,937
Depreciation Expense	1,800	0	1,800
Regulatory Fee	18	(2)	16
Gross Receipts Taxes	858	(102)	756
State Income Taxes	523	(189)	334
Federal Income Taxes	934	(337)	597
Total Operating Revenue Deductions	14,070	(630)	13,440
Net Operating Income for Return	$ 7,368	$ (1,913)	$ 5,455

SCHEDULE II
PACE UTILITIES GROUP, INC.
DOCKET NO. W-1046
STATEMENT OF RATE BASE
WATER OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Amount
Plant in Service	$ 60,000
Accumulated Depreciation	(1,800)
Net Plant in Service	58,200
Cash Working Capital	1,242
Average Tax Accruals	(143)
Total Rate Base	$ 59,299
Rates of Return:	
Present	12.43%
Approved	9.20%

SCHEDULE III
PACE UTILITIES GROUP, INC.
DOCKET NO. W-1046
STATEMENT OF CAPITALIZATION AND RELATED COSTS
WATER OPERATIONS

For the Twelve Months Ended December 31, 1993

	Ratio %	Original Cost Rate base	Embedded Cost	Net Operating Income
		Present Rates		
Long-term debt	50.00	$29,649	7.00	$2,075
Common equity	50.00	29,650	17.85	5,293
Total	100.00	$59,299	-	$7,368
		Approved Rates		
Long-term debt	50.00	$29,649	7.00	$2,075
Common equity	50.00	29,650	11.40	3,380
Total	100.00	$59,299		$5,455

SCHEDULE IV
PACE UTILITIES GROUP, INC.
DOCKET NO. W-1046
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
SEWER OPERATIONS

For the Twelve Months Ended December 31, 1993

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Residential Revenue	$ 14,688	$ 6,629	$ 21,317
Bulk Usage Revenue	0	0	0
Total Operating Revenue	14,688	6,629	21,317
Operating Revenue Deductions:			
Operation and Maintenance Expenses	17,919	0	17,919
Depreciation Expense	0	0	0
Regulatory Fee	12	(6)	18
Gross Receipts Taxes	881	(398)	1,279
State Income Taxes	0	(162)	162
Federal Income Taxes	0	(290)	290
Total Operating Revenue Deductions	18,812	(856)	19,668
Net Operating Income for Return	$ (4,124)	$ 5,773	$ 1,649
Operating Revenue Deductions Requiring a Return			$ 17,919
Margin on Operating Revenue Deductions Requiring a Return			9.20%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

The evidence for these findings of facts is found in the application filed on January 10, 1994, in the motions to amend the application, the responses to the motion, and in the testimony of Public Staff witnesses Fernald and Casselberry and Company witness Pace.

SERVICE TO BRITLEY SUBDIVISION

On January 10, 1994, Pace filed an application to provide water and sewer utility service in Silverton Subdivision. The application did not indicate that service would be provided in Britley Subdivision.

On February 2, 1994, Pace filed an amendment to its application which was filed on January 10, 1994. In that amendment, Pace proposed to provide service to Britley Subdivision at the following rates:

Base charge	$500/month
Usage charge	2.05/1,000 gallons
Tap fee or capacity charge	$850/lot

On July 11, 1994, Pace filed a motion amending the application by withdrawing its proposal to serve Britley Subdivision filed on February 2, 1994.

The evidence is uncontested that Pace originally proposed to serve only Silverton Subdivision, amended the application to include service to Britley Subdivision, and then withdrew the proposal to provide the service. In its motion to withdraw its offer to serve Britley Subdivision, Pace indicated:

"On January 10, 1994, Pace filed its Application for a CPCN to provide water and sewer utility service in Silverton. As originally filed, the Application did not propose or offer bulk water service, or any service for that matter, outside of Silverton Subdivision proper.

"Pace did not originally intend to become involved with Britley. Britley was connected to Silverton by Mid South, for water service, without the knowledge or consent of PDGI [Pace Development Group, Inc.] or Mr. Stephen Pace, the primary stockholder of both PDGI and Pace. Pace has received no payments from Mr. William Whitley ("Whitley"), or anyone else connected with Britley Subdivision, in return for an allocation of treated water capacity originating from the Silverton wells and storage tanks, which now belong exclusively to Pace.

"Mr. Stephen Pace was induced, by a member of the Commission's Staff, to amend his original Application to provide for bulk water service to Britley. The only condition under which Pace was willing to amend its Application and provide the service was if Pace was granted the bulk water rates, including the excess capacity charge, requested in the proposed rate schedule attached to its Application amendment. Even so, at the Silverton Application hearing, conducted on May 24, 1994, Mr. Pace stated as follows:

> I don't want to serve Britley. I have no desire to serve Britley. If it hadn't been for the Commission Staff asking me I wouldn't be doing it.

"Mr. Pace also stated that if the requested tariff charges for providing bulk water service to Britley were not approved, he intended to withdraw that tariff and the offer of bulk water service to Britley."

On July 13, 1994, the Public Staff filed its comments to Pace's motion to withdraw its offer to furnish water to Britley Subdivision. In its comments recommending that Pace's motion be denied, the Public Staff made the following statements:

"The Public Staff believes that Pace's motion is grounded on a fundamental misconception of the status of its service to Britley Subdivision. Pace has not, through its application, made an offer to provide service to Britley Subdivision. As holder of temporary authority and as owner of the wells in Silverton which have been devoted to utility use, Pace is providing utility service to Britley Subdivision. Utility service to the entire Bradfield Farms-Silverton-Britley area was, from the beginning, designed and installed on the assumption of a

single provider for water and sewer service. The provision of water to Britley Subdivision from wells located in Silverton Subdivision was an authorized utility service to Britley, with water from wells in Silverton and sewer treatment at the Bradfield Farms wastewater treatment plant, since 1991. There are customers on line in Britley Subdivision dependent on water from wells located in Silverton. Withdrawal of service by Pace would have devastating consequences for these customers.

"Because of the potential harm to consumers from termination of service, any change in ownership of property used to provide utility service, whether voluntary or as a result of Commission Order, is made subject to the continued obligation to provide service. This obligation passes with property which has been devoted to utility service and can be removed only by the Commission and only through transfer to an owner not subject to the regulation of the Commission or following a showing pursuant to G.S. 62-118 that the property is no longer needed to serve the public convenience and necessity or that the operation of the utility is not economically feasible.

"The Public Staff submits that Pace's motion is, in effect, a defective petition to abandon utility service. The petition is defective in that it does not allege either of the conditions established by G.S. 62-118 as necessary for abandonment. If Pace wishes to pursue abandonment of this service, Pace should be prepared to assume the burden of showing the existence of these circumstances."

On July 21, 1994, Whitley, the developer of Britley Subdivision, filed a response to Pace's Motion. In his response requesting the Commission to deny Pace's Motion, Whitley made the following statements:

"Residential customers in Britley have been receiving water service from wells located in Silverton since 1991. They are receiving such service today. The Commission has authorized such service to be provided by two different public utilities, Mid South and John Crosland. As a result, public utility service to Britley cannot be withdrawn without proof that the public convenience and necessity are no longer served or that Pace will not realize sufficient revenue from such service to meet its expenses. Pace cannot acquire a system that has been dedicated to the public use and then terminate service to the public without receiving Commission authorization pursuant to G.S. 62-118(a)."

The Commission agrees with the position and arguments made by the Public Staff and Whitley. Transferring ownership of Silverton Subdivision does not relieve the new owner of the obligation to serve Britley Subdivision. Based on all the discussion above, the Commission is of the opinion that Pace should be required to serve Britley Subdivision.

THE $850 CAPACITY CHARGE

The Company has requested a capacity charge of $850 per lot for the 70 lots in Britley Subdivision. Apparently, this was calculated by dividing the $60,000 that Pace paid to Mid South to reacquire the Silverton water system by the 70 lots that can be built on in Britley Subdivision.

It is the Public Staff's position that Pace should be required to serve Britley Subdivision, but that the $850 per lot capacity charge not be allowed. Public Staff witness Casselberry testified that the Public Staff opposed the $850 capacity charge for customers in Britley Subdivision. It is the Public Staff's position that the two wells have already been contributed to utility operations and that the two wells are adequate to serve the current as well as proposed customers for the existing mains, 64 customers in Britley Subdivision and 61 customers in Silverton Subdivisions. The Public Staff's position is that, if the Commission were to allow any cost of the wells in rate base, the capacity charge should be calculated by dividing the allowed cost of the wells by 125 connections.

Whitley's position is that Pace transferred all property to Mid South at zero cost; therefore, there should be no allowance in rate base for Pace to reacquire the facilities.

Based on decisions found elsewhere in this Order, the Commission is of the opinion that Pace should be allowed $60,000 in rate base, that being the $60,000 in the monies paid to Mid South by Pace to reacquire the system as required by Commission Order. The Commission is further of the opinion that Pace should be allowed to recover the $60,000 through its rates from all customers in Silverton Subdivision and Britley Subdivision and that there should be no connection charge or capacity charge in Britley Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

The evidence for this finding of fact is found in the amendment to the Public Staff's Proposed Order filed on August 12, 1994.

In her prefiled testimony, Public Staff witness Casselberry recommended that Pace be allowed to recover the cost of EPA testing as follows:

Silverton Subdivision-	$9.25/month/customer
Britley Subdivision-	$462.50/month (bulk rate)

Witness Casselberry determined the bulk surcharge by converting the design capacity of a six inch meter to residential equivalent units (50), multiplied by the proposed surcharge ($9.25) for a residential customer.

This was the same position taken by the Public Staff in its proposed order filed on July 12, 1994. However, in the amendment to its proposed order filed on August 12, 1994, the Public Staff recommended the following rate:

Silverton Subdivision-	$11.35/month/customer
Britley Subdivision-	$11.35/month customer

The Commission agrees with the position taken by the Public Staff that the most equitable allocation of the cost of the EPA testing will be to spread these cost evenly over all the customers in both subdivisions. Therefore, the Commission is of the opinion that the EPA testing costs for both Silverton and Britley Subdivisions should be $11.35/month/customer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

The evidence for this finding of fact is found in the testimony of witness Casselberry. Witness Casselberry recommended that, since all of the Company's sewer customers are also water customers, water service be cut off for delinquent sewer bills. She further recommended that the sewer reconnection charge be $15.

The Company did not oppose the Public Staff's recommendation in this matter. Therefore, the Commission is of the opinion that the proper sewer reconnection charge, when sewer service is disconnected for good cause, be set at $15.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 32 and 33

The evidence for these findings of fact are found in the testimony of witness Casselberry.

Witness Casselberry recommended that Pace install a six inch water meter to record water consumption for Britley Subdivision. The Company did not oppose the recommendation.

Based on the foregoing, the Commission concludes that Pace should install a six inch water meter to record water consumption for Britley Subdivision.

Further, witness Casselberry testified that based on DEH records, plan approval for the interconnection of the water distribution system for Britley and Silverton Subdivisions has not been granted. Witness Casselberry further recommended that Pace submit "as built plans" to DEH for plan approval and inform the Commission and the Public Staff when plan approval has been obtained. Further, the Public Staff has reviewed DEH records for Britley Subdivision and plan approval has not been obtained for Britley Subdivision.

In light of this, the Public Staff's position is that it is Britley Utilities, Inc.'s, responsibility to obtain plan approval from DEH for the water system in Britley Subdivision. If it was Britley Utilities, Inc.'s, intention to connect its water system to the system serving Silverton Subdivision, plan approval should have been obtained. The Public Staff stated that it plans to address this issue in Britley Utilities, Inc.'s, application for a certificate of public convenience and necessity in Docket No. W-1051. The hearing for that Docket will be set by further Order of the Commission.

Based on the foregoing, the Commission concludes that it is not Pace's responsibility to obtain plan approval from DEH for the interconnection of Britley and Silverton Subdivisions' distribution systems. The Commission will address this issue in Britley Utilities, Inc.'s, application for a certificate of public convenience and necessity in Docket No. W-1051 along with the issue of plan approval from DEH for the water system in Britley Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

The evidence for this finding of fact is found in the Evidence and Conclusions for Findings of Fact Nos. 8 through 33.

Based on 53 water customers and 51 sewer customers in Silverton Subdivision, 21 water customers in Britley Subdivision, Britley Subdivision being served through a six-inch meter in the future and receiving one bill, and a revenue requirement of $18,895 for water (both subdivisions) and $21,317 for sewer (Silverton Subdivision only), the Commission finds and concludes that the rates shown on the Schedule of Rates attached to this Order are the proper rates to be set in this proceeding.

IT IS, THEREFORE, ORDERED, as follows:

1. That Pace Utilities Group, Inc., is hereby granted a certificate of public convenience and necessity to furnish water and sewer utility service in Silverton Subdivision, Cabarrus County, North Carolina, and to furnish bulk water service to the utility serving Britley Subdivision, Cabarrus County, North Carolina.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved for service rendered on and after the effective date of this Order and that such Schedule of Rates is hereby deemed filed with the Commission pursuant to G.S. 62-138.

4. That Pace shall record all transactions, including contributions-in-aid of construction (CIAC), on its books and records in accordance with the Uniform System of Accounts for water and sewer companies.

5. That Pace shall collect gross-up on CIAC in accordance with the Commission's Orders in Docket No. M-100, Sub 113.

6. That, absent a strong, clear, and convincing showing of exceptional cause, no ratemaking treatment will be allowed in any future proceeding on taxes on CIAC if the appropriate tax authority or court rules at some future date that taxes are due.

7. That Pace shall request Commission approval of any sale, transfer, termination or pledge of assets as required by statute or Commission rule.

8. That the Notice to Customers, attached hereto as Appendix C, and a copy of the Schedule of Rates, attached hereto as Appendix B, shall be delivered to all of the Company's customers in conjunction with Pace's next regular billing cycle after the effective date of this Order. Further, Pace shall submit to the Commission the attached Certificate of Service, properly signed, and notarized, within 10 days of completing such requirement

9. That, within 10 days from the date of this Order, Pace shall complete and file with the Commission the attached Bond and shall deposit the appropriate security in the form of $40,000 with United Carolina Bank, Attention: Sandra P. Sawyer, 3605 Glenwood Avenue, Raleigh, North Carolina 27612. A copy of the appropriate security shall be filed with the Commission.

10. That Pace's motion filed in this docket on July 11, 1994, to withdraw its offer to provide bulk water service to Britley Subdivision, be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of October 1994.

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

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-1046

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

PACE UTILITIES GROUP, INC.

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water and sewer utility service in

SILVERTON SUBDIVISION

and

bulk water utility service to

Britley Subdivision

Cabarrus County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of October 1994.

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

APPENDIX B

SCHEDULE OF RATES

for

PACE UTILITIES GROUP, INC.

for providing water and sewer utility service in

SILVERTON SUBDIVISION

and

for providing bulk water utility service to

Britley Subdivision

Cabarrus County, North Carolina

WATER SERVICE (Metered)

Silverton Subdivision	
Base charge	$ 7.00
Usage charge/1,000 gallons	$ 1.93
Britley Subdivision[1]	
Base charge/residential	$ 5.00
Usage charge/1,000 gallons	$ 1.93

SEWER SERVICE (Flat rate)

Monthly charge	$34.83

EPA SURCHARGE[2]

Monthly charge	$11.35

CONNECTION CHARGE None

Reconnection Fees:

If water or sewer is cut off by utility for good cause	$15.00
If water or sewer is cut off at customer's request	$15.00

Bills Due: On billing date

Bills Past Due: 20 days after billing date

Billing Frequency: Shall be monthly in arrears

Returned Check Charge: $20.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1 Britley Subdivision will be furnished with water service through a 6" meter installed by Pace Utilities Group, Inc. Britley Subdivision will receive one bill, which will include the usage charge shown and the base charge times the number of homes served in Britley Subdivision.

2 This EPA-testing surcharge is to be added to the flat rate for water utility service for a period of 12 months starting with the first billing period following the effective date of this Order.

Issued In Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1046, on this the 6th day of October 1994.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX C

DOCKET NO. W-1046

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Pace Utilities Group, Inc., 6719 C Fairview, Charlotte, North Carolina, 28210, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Silverton Subdivision in Cabarrus County, North Carolina	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted Pace Utilities Group, Inc., a Certificate of Public Convenience and Necessity to provide water and sewer utility service in Silverton Subdivision and bulk water utility service to Britley Subdivision. The rates approved by the Commission are shown on the attached Schedule of Rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of October 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by Order of the North Carolina Utilities Commission in Docket No. W-1046 and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1046.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-205, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Greenfield Heights Development Company, Inc., Post Office Box 1416, Havelock, North Carolina, for Authority to Increase Rates for Water Utility Service in Greenfield Heights Subdivision in Craven County, North Carolina	)	ORDER SETTING RATES ON RECONSIDERATION

HEARD: Monday, April 25, 1994, at 2:00 p.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Chairman Ralph A. Hunt; and Commissioners William W. Redman and Judy Hunt

APPEARANCES:

For Greenfield Heights Development Company, Inc.:

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

For the Public Staff:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On February 18, 1994, a Commission Staff Hearing Examiner issued a Recommended Order in this proceeding granting a partial rate increase. The Recommended Order provided that exceptions were due on or before March 7, 1994, and that the Recommended Order would become effective and final on March 8, 1994.

On March 7, 1994, Greenfield Heights Development Company, Inc. (Greenfield Heights, Company, or Applicant), filed certain exceptions to the Recommended Order and requested an opportunity to present oral argument to the Commission. On March 25, 1994, the Commission entered an Order stating that no oral argument would be scheduled until the Company retained representation of counsel. On April 4, 1994, the Company filed a notice through counsel that it had retained the services of the law firm of Hunton and Williams to represent it further in this matter. The Commission then entered an Order dated April 5, 1994, scheduling oral argument for April 19, 1994. By Order dated April 13, 1994, the oral argument was rescheduled at the Company's request to April 25, 1994.

On April 19, 1994, the Applicant, through its counsel, filed exceptions to the Recommended Order. Greenfield Heights' two exceptions are as follows:

1. Applicant excepts to Finding of Fact No. 23 and the conclusions in support thereof. Finding of Fact No. 23 states:

> The Applicant states that it has mains in the ground capable of serving 100 customers in Greenfield Heights Subdivision. Since the Applicant has only 33 customers, approximately 67% of the installed plant is not used and useful.

2. Applicant excepts to Finding of Fact No. 6 and the evidence and conclusions in support thereof and ordering paragraph No. 7 to the extent these finding, conclusions and ordering paragraphs require Applicant to refund the amount collected as a tap-on fee in excess of the $450 approved tap-on fee. Finding of Fact No. 6 states:

> The Applicant's approved 1966 tariff includes a $450 tap-on fee. The Applicant has charged a $1,350 tap-on fee to 24 of the 33 customers. The other nine customers have not been charged any tap-on fee.

Oral argument on the Applicant's two exceptions was subsequently heard by the Commission at the appointed time and place. Both parties were represented by counsel.

With regard to the Company's first exception which relates to the Hearing Examiner's finding (Finding of Fact No. 23) that approximately 67% of the installed plant is not used and useful, the Applicant argued that such a finding is not supported by the record evidence.

The Evidence and Conclusions for Finding of Fact No. 23 as stated in the Recommended Order is as follows:

> "The evidence for this finding of fact is found in the testimony of Public Staff witness Rudder. It is the Commission's position that investment for plant capacity not needed to serve customers beyond the test year should not be included in rate base since such plant is not being matched with appropriate revenues, expenses, and contributions in aid of construction related to the customer growth the excess plant capacity can serve. This position is consistent with the North Carolina Supreme Court's decision in State ex rel. Utilities Commission v. Carolina Water Service, 328 N.C. 299 (1991)."

In this proceeding, it is uncontested evidence that Greenfield Heights has 33 end-of-period customers and that the installed water mains are capable of serving 100 customers. Using these facts, Public Staff witness Kenneth E. Rudder testified that 67% of Greenfield Heights' installed water utility plant was not used and useful. Thus, witness Rudder recommended that 67% of the cost of such plant should not be allowed to be recovered through inclusion in rate base. Therefore, the Public Staff reduced utility plant in service by $54,672 (67% of $81,600). Further, as stated by the Public Staff at the oral argument, there was no evidence in the record of Greenfield Heights' growth rate. Therefore, the Public Staff concluded that it was appropriate to include only 33% of the Applicant's installed water utility plant in rate base. As stated in its proposed order, the Public Staff was of the opinion that the Company's excess

plant capacity in water mains should not be included in rate base because such plant is not being matched with appropriate revenues, expenses, and contributions in aid of construction related to the customer growth that the excess plant capacity could possibly serve. Such position, according to the Public Staff is consistent with the North Carolina Supreme Court's decision in State ex rel. Utilities Commission v. Carolina Water Service, 328 N.C. 299 (1991).

In both the Applicant's filing of November 22, 1993, responding to the Public Staff's proposed order, and in its initial filing of exceptions on March 7, 1994, the Company stated that the Health Department in Greenville had recommended that it should purchase water from the City of Havelock (City) because of better water quality, more uniform pressure, greater reserve for emergencies and more dependable service and source. Additionally, in those filings the Applicant also stated that the City refused to provide water to Greenfield Heights Subdivision unless the entire subdivision was served and required that the lines be constructed to the City's specifications relating to line sizes and hydrant placement. The Applicant also noted, in those filings, that the majority of the subdivision lots were already sold and provided with wells and septic tanks when the City required that the line installation be made for the entire subdivision. The Applicant decided to purchase water from the City and construction of the water utility system occurred in 1981.

Further, the Company stated in its exceptions that there is no evidence that the investment in mains to serve more than the 33 end-of-period customers is excess capacity, that the existing customers could be served with fewer mains or that the existing mains contain more capacity than is reasonable or prudent. The Company argued that any prior precedent supporting excess capacity adjustments for investment in well supply capacity, elevated storage tanks or sewage treatment plant capacity is inapplicable in this proceeding, as Greenfield Heights' only investment for which rate base treatment is sought is water mains. It is the Applicant's opinion that arguably, water utilities have some discretion in sizing supply, storage and sewage treatment plant capacity so as to limit the amount of investment used to serve future capacity, but that the same discretion does not apply to water mains as they are generally installed first to save costs such as cutting up the roads and to avoid other sorts of problems. The Company takes the position that all the water distribution lines installed within the subdivision are currently used and useful because they are all needed for fire protection purposes and because the 33 customers now being served are spread out within the subdivision such that the connections between homes involve distances between several lots. Thus, the Company's recommended gross level of utility plant in service is $81,600, which is $54,672 more than was proposed by the Public Staff and allowed by the Hearing Examiner.

Upon review of the transcript of the hearing conducted by the Hearing Examiner on September 9, 1993 in this docket, the Commission finds that it contains testimony by Public Staff witness Rudder that it was his understanding that somewhere around 52 customers in the subdivision have private wells. The Commission finds this information to be very significant when considered in conjunction with the Applicant's statements that the majority of the subdivision lots were already sold and provided with wells and septic tanks when the City required that the line installation be made for the entire subdivision. Thus,

the Commission believes that the water utility system constructed in 1981 was installed with the obvious expectation that it would serve fewer than 50 customers.

Further, the Commission finds that the utility plant investment in water mains is necessary to route water to all of the Company's customers in Greenfield Heights Subdivision. Additionally, the Commission understands that the City required that fire protection be provided on the water system, such that the fire hydrants are spaced within a radius of 500 feet of one another within the subdivision. Thus, the Commission finds that the utility plant investment in water mains is also required to provide fire protection to the Company's existing customers.

Based upon the foregoing, the Commission finds that in this particular proceeding it would be unreasonable to exclude 67% of the Company's investment in water distribution lines/mains in the determination of rate base as proposed by the Public Staff. Upon consideration of the size of the Greenfield Heights' water system, the need for fire protection and the lack of contiguity between customer connections, the Commission believes that all of the Company's investment in water mains now installed as required by the City are used and useful in providing water utility service to Greenfield Heights' existing customers. Therefore, the Commission concludes that it is reasonable and appropriate to include 100% of the Company's water main investment in rate base for purposes of this proceeding based on the facts and circumstances present in this case.

The Company's only other exception to the Hearing Examiner's Recommended Order relates to Finding of Fact No. 6, that would require the Applicant to refund the amount collected as a tap-on fee that was in excess of the $450 approved fee. The Applicant stated that it was unable to make such a refund and proposed an alternative solution.

The Evidence and Conclusions for Finding of Fact No. 6 was included within the overall discussion of the Evidence and Conclusions for Findings of Fact Nos. 1 through 7 in the Recommended Order and is stated as follows:

> "The evidence for these findings of fact are found in the application and the record in this case, and the testimony of Public Staff witnesses Rudder and Windley and is uncontested. Therefore, the Hearing Examiner concludes that the Applicant should be required to refund the difference between the approved tap-on fee of $450 and the actual tap-on fee collected, plus accrued interest from the date of receipt, to each customer that has paid a tap-on fee. In addition, the Company must file as a late-filed exhibit the actual plan to refund excess tap-on fee to its customers. The plan will consist of no less than the names and addresses of customers that paid a tap-on fee, the amount of tap-on fee collected from each customer, the amount of the excess tap-on fee received, calculation of the amount of accrued interest form the date of receipt and the date by which all refunds will be made."

In this proceeding the Applicant stated that it had charged a tap-on fee of $1,350 to 24 of its 33 customers and had not charged any tap-on fee to its other

nine customers. The Company also acknowledged that its Commission approved tap-on fee was $450 as authorized in its last proceeding before the Commission in 1966, at the time it received its Certificate of Public Convenience and Necessity to provide water utility service in Greenfield Heights Subdivision.

The Recommended Order issued on February 18, 1994, required the Applicant to refund the difference between the approved tap-on fee of $450 and the actual $1,350 tap-on fee collected, plus accrued interest from the date of receipt, to each customer that has paid such a tap-on fee. Greenfield Heights states that it is unable to make the required refund. The Company is requesting that instead of making the required refund that it be allowed to reduce its rate base by treating the overcollection as cost-free capital. Specifically, the Applicant suggested that connection fees of $1,350 should be attributed to each of its 33 end-of-period customers with a corresponding reduction of $300 for the portion of costs for each of the 33 taps not previously capitalized as utility plant in service, such that $34,650 would be considered to be the net contribution by the customers and then that amount would be used to lower the Company's rate base on which rates are set. The $300 figure is the amount that was calculated by Public Staff witness Rudder and set out in Public Staff witness Windley E. Henry's testimony as the amount of construction costs incurred for each new tap that had not been capitalized and included in utility plant in service.

At the oral argument, the Public Staff stated that it did not object to the Company's recommendation regarding the refund alternative, if interest is also included and calculated at the statutory rate of 10% from the time the taps were paid, and if, upon transfer of this water utility service, that provision will be made in the transfer for these refunds to be made.

The Company's counsel responded to that recommendation by noting that he had not conferred with his client on such a proposal and would need to do so before responding. Later, on May 3, 1994, Greenfield Heights filed a letter stating that its proposed treatment of the alleged overcollected tap-on fees was advocated in the context of its overall position taken in its two exceptions and that it would be unable to accept the conditions that the Public Staff would impose in this regard. The Company stated that the Public Staff's proposed treatment of the additional tap-on fee collections would result in an undue benefit to its customers. The Company argued that under its proposal the customer will receive the benefit of those funds by treating the additional tap fee collections as cost-free capital, thereby resulting in a lower rate base. It is the Company's opinion that reducing rate base by these contributions and then subsequently refunding them to the customers upon transfer gives the customers a double benefit from these fees. Further, the Company remarked that by reducing rate base by the amount of the fees, then the Company is in effect paying the customers interest on these funds. According to the Company, the funds are a dollar for dollar reduction in rate base and, as such, customers forego paying the Company its overall cost of capital on rate base that otherwise would not be offset by these funds.

Based upon a careful review of the record in this regard, the Commission finds that the Applicant's proposal to treat the unauthorized tap fee collections as cost-free capital and thereby reduce its rate base is not an unfair or unreasonable alternative to making actual refunds in this particular proceeding. The Commission finds that the Company's proposal to reduce its rate base by

$34,650 based upon a calculation that attributes tap-on fees of $1,350 to each of its 33 end-of-period customers with a corresponding reduction of $300 for the portion of costs for each of the 33 taps not previously capitalized and included in utility plant in service, is a reasonable alternative solution to the refund requirement initially suggested by the Public Staff. The Commission agrees with the Company's calculation in this regard and recognizes that such a proposal reflects that the Company has imputed additional tap-on fees for nine customers from whom it did not collect any actual funds, i.e. the Company only collected tap-on fees from 24 of its 33 end-of-period customers. Such imputation for those nine uncollected tap-on fees results in an additional cost-free capital deduction over and above what the principal refund amount would have been and thus, the Commission recognizes that the customers are further benefitted by that additional rate base reduction.

Further, the Commission also concludes that the Company should not be required to accrue interest on its overcollection of tap fees. In the proposed order of the Public Staff, a recommendation was made that the Company's tap-on fee be increased from $450 to $1,350 as proposed by the Company. The Public Staff stated that it had reviewed the Company's request in this regard and did not oppose the increase in the tap-on fee as requested. Further, the Recommended Order also reflected concurrence with the recommendation that the Company's tap-on fee should be increased to $1,350. In this case, the approved tap-on fee of $450 dates back to 1966 and is insufficient as evidenced by the Public Staff's agreement that the tap-on fee should be increased to $1,350. Based upon the foregoing, the Commission believes that it is reasonable in this proceeding not to require the accrual of interest on the tap-on fee overcollection and just require that the amount of $34,650 be treated as cost-free capital resulting in a reduction in the rate base on which the Company is allowed to earn a return.

The only remaining issue to be addressed is the appropriate monthly rates to be authorized. The Commission recognizes that the Company's recommendations relating to the issues of excess capacity and the required refund of certain tap-on fee collections will result in rate base adjustments that produce a revenue requirement in excess of what was requested in the Company's application. However, the Applicant is limited by its application to its requested increase. Based upon the conclusions reached herein relating to Greenfield Heights' proposals regarding the issues of excess capacity and the refund of certain tap-on fee collections, the Commission finds that the Company's requested monthly rates consisting of a base charge of $12.00 for zero usage and a usage charge of $2.40 per 1,000 gallons are justified and reasonable for purposes of this proceeding and should be approved based on the facts and circumstances present in this proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates, attached hereto as Appendix A, is approved for water utility service provided by Greenfield Heights.

2. That the Schedule of Rates is considered filed with the Commission pursuant to G.S. 62-138.

3. That the Schedule of Rates shall become effective for service rendered on and after the date of this Order.

4. That a copy of the Notice to Customers, attached as Appendix B, shall be mailed with sufficient postage or hand delivered to all of the Applicant's customers in conjunction with the next regularly scheduled billing process occurring after the date of this Order.

5. That the Applicant's exceptions filed in this docket on April 19, 1994, be, and are hereby, allowed.

6. That, except as modified herein, the Recommended Order of February 18, 1994, in this docket is affirmed and shall become effective and final on the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioners Charles H. Hughes and Laurence A. Cobb did not participate.

APPENDIX A

SCHEDULE OF RATES
for
GREENFIELD HEIGHTS DEVELOPMENT COMPANY, INC.
for providing water utility service in
GREENFIELD HEIGHTS SUBDIVISION
Craven County, North Carolina

Metered water rates:	
Base charge, zero usage	$12.00
Usage charge	$ 2.40 per 1,000 gallons
Connection charge (tap-on fee):	$1,350
Reconnection charges:	$10.00
Bills due:	On billing date
Bills past due:	15 days after billing date
Billing frequency:	Shall be monthly for service in arrears
Finance charges for late payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.
Returned check fee:	$15.00

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-205, Sub 1, on this the 23rd day of June 1994.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-205, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Greenfield Heights Development Company, Inc., Post Office Box 1416, Havelock, North Carolina, for Authority to Increase Rates for Water Utility Service in Greenfield Heights Subdivision in Craven County, North Carolina	)))))	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission (Commission) has approved the following monthly rates for Greenfield Heights Development Company, Inc. (Company) for providing water utility service in Greenfield Heights Subdivision in Craven County, North Carolina:

Base Charge, zero usage	$12.00
Usage charge	$ 2.40 per 1,000 gallons

A public hearing on the Company's rate increase application was held in Havelock on September 9, 1993. No customers testified in that proceeding. The Commission is ordering the Company to refund with interest the water testing charges it has been collecting since early 1993. The Commission is further ordering the Company to refund all meter fees or deposits that it has collected from customers who paid such fee or deposit over a year ago and have established a satisfactory payment history of one year, and must include interest in the refund. The Company must also refund the difference between the $50 meter fee deposit and two-twelfths of the estimated annual service where held for less than one year. These refunds may be refunded by either check payment or by bill credit to each affected customer.

ISSUED BY ORDER OF THE COMMISSION
This is the 23rd day of June 1994

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-354, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina	)	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Charlie Rose Agri-Expo Center, 121 East Mountain Drive, Fayetteville, North Carolina, on Tuesday, February 15, 1994, at 9:30 a.m.

Rooms 1 and 4, Agriculture Center, 707 Pinehurst Drive, Carthage, North Carolina, on Tuesday, February 15, 1994, at 7 p.m.

Utilities Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, February 16, 1994, at 7 p.m.

Meeting Room, Town Hall, State Road 1206, Kitty Hawk, North Carolina, on Tuesday, February 22, 1994, at 7 p.m.

Town Council Chambers, Municipal Building, 202 South Eighth Street, Morehead City, North Carolina, on Wednesday, February 23, 1994, at 7 p.m.

Courtroom, Second Floor, City Hall, 300 Pollock Street, New Bern, North Carolina, on Thursday, February 24, 1994, at 9:30 a.m.

Superior Courtroom, Room 317, Judicial Building, Corner of Fourth & Princess Streets, Wilmington, North Carolina, on Thursday, February 24, 1994, at 7 p.m.

Courtroom, Cherokee County Courthouse, Peachtree Street, Murphy, North Carolina, on Tuesday, March 15, 1994, at 7 p.m.

Courtroom #1, Transylvania County Courthouse, Main Street, Brevard, North Carolina, on Wednesday, March 16, 1994, at 7 p.m.

City Council Chambers, Second Floor, City Hall Building, Court Plaza, Asheville, North Carolina, on Thursday, March 17, 1994, at 9:30 a.m.

Courtroom #1, Watauga County Courthouse, 403 West King Street, Boone, North Carolina, on Thursday, March 17, 1994, at 7 p.m

Charlotte-Mecklenburg Government Center, Room 267, 600 East Fourth Street, Charlotte, North Carolina, on Tuesday, March 22, 1994, at 7 p.m., and Wednesday, March 23, 1994, at 9:30 a.m.

Council Chambers, Second Floor, City Hall, 101 North Main Street, Winston-Salem, North Carolina, on Wednesday, March 23, 1994, at 7 p.m.

Firefighters Training Center, Erwin Hills Road, Asheville, North Carolina, on Thursday, March 24, 1994, at 7 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 5, 6, 7, and 11, 1994 at 9:30 a.m.

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

APPEARANCES:

FOR CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA:

Edward S. Finley, Jr., and James L. Hunt, Attorneys at Law, Hunton and Williams, Post Office Box 109, Raleigh, North Carolina 27602

FOR THE PUBLIC STAFF:

James D. Little and A. W. Turner, Jr., Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For the Using and Consuming Public

FOR THE NORTH CAROLINA DEPARTMENT OF JUSTICE:

Margaret A. Force, Associate Attorney General, Post Office Box 629, Raleigh, North Carolina 27602
For the Using and Consuming Public

FOR PRO SE AND INTERVENOR: (Corolla Light Community Association)

James A. Alexy, Attorney at Law, 4713 North Croatan Highway, Post Office Drawer 270, Kitty Hawk, North Carolina 27949

BY THE COMMISSION: On September 11, 1992, the Commission issued an Order in Docket No. W-100, Sub 113, which required Carolina Water Service, Inc. of North Carolina (CWS, Company, or Applicant) to file, in its next general rate case application, information and data clearly setting forth the revenue requirements on a system specific basis and on an uniform rate basis.

On October 27, 1993, CWS filed an application with the Commission for authority to adjust its rates and charges for providing water and sewer service in all its service areas in North Carolina. CWS provided the information to set rates on a system specific and uniform rates basis in that filing.

By Order dated November 24, 1993, the Commission declared this matter to be a general rate case and suspended the proposed new rates. By Order issued on December 10, 1993, the Commission scheduled this matter for public hearings in

Fayetteville, Carthage, Kitty Hawk, Morehead City, New Bern, Wilmington, Murphy, Brevard, Asheville, Boone, Charlotte, Winston-Salem, and Raleigh. The Company was required to provide public notice of the hearings and the proposed rate increase on all customers.

On December 21, 1993, the Commission issued a protective order regarding the confidentiality of certain information related to salaries and capitalization ratios from the W-1 filing provided to the Commission and released to the Public Staff by CWS.

On January 5, 1994, the Commission issued an Order giving CWS until January 17, 1994, to give customer notice.

On January 24, 1994, the Public Staff filed a Motion to Compel Discovery of certain documents. CWS responded to the Motion of the Public Staff on February 2, 1994. CWS's response requested that the Commission prohibit additional discovery after February 4, 1994, that the Commission issue an order allowing CWS 10 days in which to respond to data requests by the Public Staff, that the Commission issue an order defining the scope of the Public Staff's discovery in this proceeding, and that the Commission issue an order prohibiting the Public Staff from adding to its positions subsequent to the filing of the Public Staff direct testimony. The Public Staff responded to CWS's response on February 4, 1994.

On February 7, 1994, the Public Staff filed its second motion to compel discovery. CWS responded to this request on February 9, 1994. CWS asked that the Commission either postpone ruling on the second motion to compel or deny such motion as moot. Also on February 9, the Public Staff filed a Motion to hold its second motion to compel discovery in abeyance; a revision to this Motion was filed on February 10.

On February 9, 1994, the Commission issued an Order requiring CWS to comply with certain data requests of the Public Staff, ruling on CWS's February 2, 1994, Motion for Protective Order, providing that the parties complete all discovery by March 29, 1994, providing that future data requests from the Public Staff shall be answered within five calendar days, providing that final revisions to prefiled testimony be completed and filed by March 31, 1994, requiring data responses to be sent so they could be received by the Public Staff no later than 4:30 pm, and requiring Arthur Andersen workpapers to be made available to the Public Staff in Raleigh.

On February 14, 1994, CWS prefiled the direct testimony of Carl J. Wenz, Director of Regulatory Accounting; Carl Daniel, Vice President and Regional Director of Operation; Sandra Berry, Regional Office Manager; and Dr. Robert Spann, Consultant with Charles River Associates.

On February 23, 1994, the Corolla Light Community Association filed a Motion to Intervene.

On February 24, 1994, the Attorney General filed a Notice of Intervention for the limited purpose of filing a brief on the issue of uniform versus system-specific rates.

On March 1, 1994, the Commission issued an Order scheduling an additional hearing for March 24, 1994 in Asheville, North Carolina. The hearing had been requested in letters received by the Commission on February 17, 1994, from customers in the Mt. Carmel/Lee's Ridge service area.

On March 1, 1994, a protest and Motion for Intervention on behalf of James A. Alexy was filed with the Commission. By Order issued on March 8, 1994, the Commission allowed the intervention of Corolla Light Community Association and the intervention of Mr. Alexy.

On March 10, 1994, the Public Staff filed Testimony and Exhibits of George T. Sessoms, Jr., Director, Economic Research Division; Kelly B. Dietz, Staff Accountant, Accounting Division; Pamela B. Pleasant, Staff Accountant, Accounting Division; David Kirkland Kibler, Staff Accountant, Accounting Division; and Kenneth E. Rudder, Utilities Engineer, Water Division.

On March 23, 1994, the Commission issued its Order Requiring the Filing of Revised Testimony to incorporate the results of the Order in Docket No. W-354, Sub 118.

On March 25, 1994, CWS filed Rebuttal Testimony of Wenz, Daniel, Andrew N. Dopuch, Vice President of Utilities, Inc., Dr. Spann, and Patrick J. O'Brien, Chief Financial Officer and Vice President of CWS.

On March 31, 1994, the Public Staff filed Revised Testimony and Exhibits of Dietz, Kibler, and Rudder.

On April 4, 1994, CWS filed a Schedule of Tap and Plant Modification Fees.

On April 18, 1994, the Company filed its financial schedules reflecting the final position of Carolina Water Service.

Public hearings were held as scheduled. The following public witnesses testified at the public hearings held in this case:

February 15--Fayetteville	None
February 15--Carthage	Douglas Baker, George Reaves, Henry J. Dernelle
February 16--Raleigh	Jeff Carver, Eric Bumgardner, Robert Ostar, Arthur H. Curtis, David Burchfiel, Audrey Pituk, Robert Thornburg
February 22--Kitty Hawk	Dave Holton, James A. Alexy
February 23--Morehead City	Representative Ronnie Smith, David Hasulak

February 24--New Bern	Bill Ritchie, Bob Morra, Gerry Ward, Alan Hiley, Stuart Miller, Raymond Delacqua, Martha Arlin, Lois Minnoe, Roger Cramer, John Proctor
February 24--Wilmington	Richard Collins
March 15--Murphy	Betty Mortlock, John A. Smith, Charles Smoot, Robert Chittenden
March 16--Brevard	John Stehr, Wynette Gregg, Dan Schifeling, Jeanette M. Sampson
March 17--Asheville	Mercer Davis, Raymond Burrows, Ralph K. Elliott, John Baggett, Cloice Plemmons, Elgie Dinsmore, James Tanner, John Milton, F. J. MacCoy, Roger Morrison.
March 17--Boone	Harvey L. Bauman, Robert Patton, James D. Wood, Chuck Hyatt, Carol Marton, Linda Lovekin
March 22--Charlotte	Joseph H. Constant, Kimberly Auger, Donna Miller, Barbara L. Zyats, Theodore Leverett
March 23--Charlotte	Bill Weidemann, Robert Toney, William Spatz, Bob Estridge, Kristen Haynes
March 23--Winston-Salem	Charles S. Pulliam
March 24--Asheville (Mt. Carmel)	Gene Rainey, Tom Sobol, Ken Jarvis, A. B. Kelchner, Donn Dyer, Robert D. Martinelli, Howard Keyes, Gary Mattson, Alison Phillips, Frederick Allen Olinger, Margaret Eckert, Elizabeth Long, James Burgess, Dick Allen, Jack Babb, Deborah Solomon, Tracy Page
April 5--Raleigh	William H. Richie, Jr., Bill Heffner, Dave Holton

The hearing in chief was held in Raleigh on April 5-7 and 11, 1994. The Applicant presented direct testimony of its witnesses Wenz, Daniel, Berry, and Spann.

The Public Staff presented the testimony of its witnesses Rudder, Sessoms, Kibler, Dietz, and Pleasant.

The Company presented the rebuttal testimony of Spann, Daniel, Wenz, Dopuch, and O'Brien. Mr. Wenz adopted O'Brien's testimony at the hearing.

Subsequent to the hearings, the Company and the Public Staff filed their Proposed Orders on May 12, 1994.

On May 13, 1994, the Public Staff filed a letter responding to certain parts of the Company's Proposed Order.

On May 27, 1994, CWS filed a Reply Brief and the affidavit of John Haynes for consideration by the Commission.

Because the Commission had not been requested to set a time for the parties to this proceeding to file reply briefs and had not been requested by any party to do so, the Commission, through its Chief Clerk and General Counsel, verbally notified CWS that its Reply Brief and affidavit would not be considered in deciding this case and that those pleadings would be returned to the Company.

On June 3, 1994, CWS filed a letter contesting the Commission's decision to not consider its Reply Brief and affidavit, objecting to the Public Staff's letter of May 13, 1994, and requesting that the Commission enter a written Order regarding those matters.

Accordingly, the Commission hereby rules that it would be inappropriate to consider either the Public Staff's letter of May 13, 1994, or the Company's Reply Brief and affidavit in deciding this case and that consideration of those pleadings is hereby denied. To consider those pleadings would merely invite adverse parties to demand an opportunity to respond or reopen the hearing.

Based on the application, the testimony and exhibits, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

General Matters

1. CWS is a corporation duly organized under the laws of and is authorized to do business in the State of North Carolina. It is a franchised public utility providing water and/or sewer service to customers in this State.

2. CWS is properly before the Commission, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its proposed rates.

3. The test period appropriate for use in this proceeding is the twelve months ended December 31, 1992.

4. The Applicant provides water utility service to 17,606 customers and sewer service to 8,274 customers in over 100 service areas in 25 counties in North Carolina.

5. The Company has requested that the Commission set rates in this proceeding based on the system-specific methodology. However, the Company also included uniform rates, as an alternative, in its application. The present, proposed, and alternate proposed rates are as follows:

WATER RATES

		Present Rates (Uniform)	Proposed Rates (System Specific)	Alternative Proposed Rates (Uniform)
METERED SERVICE				
	Base Facility Charges			
A.	Residential Single Family Residence	$ 9.35	$ 9.35	$ 9.35
B.	Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	9.35	9.35	9.35
C.	Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	8.35	8.35	8.35
D.	Commercial and Other (Based on Meter Size: 5/8 x 3/4" meter	9.35	9.35	9.35
	1" meter	24.00	24.00	24.00
	1-1/2" meter	47.00	47.00	47.00
	2" meter	76.00	76.00	76.00
	3" meter	142.00	142.00	142.00
	4" meter	236.00	236.00	236.00
	6" meter	472.00	472.00	472.00
E.	Pine Knoll Shores System - Customers within the Town of Atlantic Beach			
	I. Residential Single Family Residence (Inc. 4,000 gals./mth.)	n/a	9.00	n/a
	II. Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually (Inc. 4,000 gals/mth.)	n/a	9.00	n/a
	III. Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex) (Inc. 4,000 gals./mth.)	n/a	9.00	n/a

	Present Rates (Uniform)	Proposed Rates (System Specific)	Alternative Proposed Rates (Uniform)
IV. Commercial and Other (Based on Meter Size):			
5/8 x 3/4" meter (Inc. 4,000 gals./mth.)	n/a	9.00	n/a
1" meter (Inc. 5,000 gals./mth.)	n/a	11.25	n/a
1-1/2" meter (Inc. 7,500 gals./mth.)	n/a	16.88	n/a
2" meter (Inc. 12,500 gals./mth.)	n/a	28.13	n/a
3" meter (Inc. 62,000 gals./mth.)	n/a	140.63	n/a
4" meter (Inc. 67,500 gals./mth.)	n/a	151.88	n/a
6" meter (Inc. 137,500 gals./mth.)	n/a	309.38	n/a
USAGE CHARGE:			
A. Treated Water/1,000 gallons			
Subdivision Name			
Abington	2.90	1.83	3.36
Apple Creek/Farmwood/Habersham/Tarewoods	2.90	2.09	3.36
Bahia Bay	2.90	3.56	3.36
Atlantic Beach	2.90	2.50	3.36
Bainbridge	2.90	2.90	3.36
Bear Paw	2.90	8.88	3.36
Beechbrook	2.90	5.57	3.36
Belvedere	2.90	1.87	3.36
Bent Creek	2.90	3.30	3.36
Brandywine Bay	2.90	4.13	3.36
Cabarrus Woods/Victoria Park/Bradford Park/Cambridge	2.90	5.03	3.36
Carolina Forest	2.90	10.01	3.36
Chapel Hills	2.90	5.05	3.36
College Park	2.90	2.08	3.36
Corolla Light	2.90	3.28	3.36
Country Club Annex	2.90	2.87	3.36
Country Hills	2.90	2.32	3.36
Courtney	2.90	2.10	3.36
Crestview Estates	2.90	11.35	3.36
Crystal Mountain	2.90	8.22	3.36
Eastgate/Tanglewood	2.90	4.00	3.36
Eastwood Forest	2.90	3.26	3.36
Emerald Point/Rock Island	2.90	5.77	3.36
Farmington	2.90	3.94	3.36
Forest Brook/Old Camp Place	2.90	3.43	3.36
Forest Ridge/Wood Hollow/Southwoods/Williams Sta./Brandywine	2.90	2.19	3.36
Grandview/Lockhurst	2.90	3.05	3.36
Harbor House	2.90	3.65	3.36
High Meadows	2.90	5.92	3.36
Holly Acres	2.90	3.66	3.36
Hound Ears	2.90	7.86	3.36
Huntington Forest	2.90	5.85	3.36
Idlewood	2.90	2.64	3.36
Kings Grant (Gaston County)/Willow Run	2.90	2.92	3.36
Lamplighter Village East	2.90	2.56	3.36
Lamplighter Village South/Damby/Winghurst/Woodside	2.90	2.78	3.36
Lawyer's Station	2.90	1.94	3.36
Mallard Crossing	2.90	2.95	3.36
Misty Mountain	2.90	7.59	3.36
Monterey Shores	2.90	4.52	3.36

WATER AND SEWER - RATES

	Present Rates (Uniform)	Proposed Rates (System Specific)	Alternative Proposed Rates (Uniform)
Mt. Mitchell	2.90	10.86	3.36
Oakdale Terrace	2.90	3.39	3.36
Olde Point	2.90	2.64	3.36
Parks Farm/Raeburn	2.90	1.68	3.36
Pine Knoll Shores	2.90	2.18	3.36
Powder Horn Mt.	2.90	6.40	3.36
Providence Ridge/Roxbury/Hearthstone	2.90	2.31	3.36
Providence West	2.90	2.66	3.36
Quail Ridge	2.90	5.26	3.36
Queens Harbour/Pier Pointe/Yachtsman	2.90	4.28	3.36
Riverbend Estates/Canebrake/Lakemere/Lochbridge/Norbury Park	2.90	1.20	3.36
Riverpointe	2.90	1.59	3.36
Saddlebrook	2.90	3.00	3.36
Saddlewood/Oak Hollow	2.90	2.91	3.36
Sherwood Forest	2.90	4.29	3.36
Sherwood Park	2.90	3.78	3.36
Ski Mountain	2.90	7.74	3.36
Suburban Heights	2.90	4.42	3.36
Suburban Woods/Windsor Chase	2.90	4.07	3.36
Sugar Mountain/Grouse Forest/Mushroom Park/Western Highlands	2.90	2.88	3.36
Trexler Park	2.90	5.35	3.36
Watauga Vista	2.90	7.32	3.36
Westwood Forest	2.90	5.01	3.36
Whispering Pines	2.90	5.10	3.36
White Oak Plantation	2.90	1.84	3.36
Wildwood Green/McIlwaine Acres	2.90	3.45	3.36
Willowbrook Sub	2.90	3.76	3.36
Wolf Laurel/Blue Mountain	2.90	22.14	3.36
Woodhaven/Pleasant Hills	2.90	5.86	3.36
Woodrun	2.90	4.85	3.36
Yorktown	2.90	3.97	3.36
Zemosa Acres	2.90	3.12	3.36
B. Untreated Water/1,000 gals. (Brandywine Bay Irrigation Water)	2.00	2.00	2.00
FLAT RATE SERVICE: (until meters are installed)			
A. Single Family Residential			
Crystal Mountain	20.50	41.10	26.15
High Meadows	20.50	29.60	26.15
Misty Mountain	20.50	37.95	26.15
Mt. Mitchell	20.50	54.30	26.15
Powder Horn Mountain	20.50	32.00	26.15
Sherwood Forest	20.50	30.80	26.15
Sugar Mountain	20.50	19.43	26.15
Watauga Vista	20.50	36.60	26.15
B. Commercial (per single family equivalent(SFE))			
Crystal Mountain	20.50	41.10	26.15
High Meadows	20.50	29.60	26.15
Misty Mountain	20.50	37.95	26.15
Mt. Mitchell	20.50	54.30	26.15
Powder Horn Mountain	20.50	32.00	26.15
Sherwood Forest	20.50	30.80	26.15
Sugar Mountain	20.50	19.43	26.15
Watauga Vista	20.50	36.60	26.15
AVAILABILITY RATES:			
Applicable only to property owners in Carolina Forest and Woodrun Subdivisions in Montgomery County	2.00	2.00	2.00

SEWER RATES

	Present Rates (Uniform)	Proposed Rates (System Specific)	Alternative Proposed Rates (Uniform)
METERED SERVICE: (Commercial and other)			
A. Base Facility Charge (Based on Meter Size)			
Meter Size: 5/8 x 3/4" meter	10.00	10.00	10.00
1" meter	25.00	25.00	25.00
1-1/2" meter	50.00	50.00	50.00
2" meter	80.00	80.00	80.00
3" meter	150.00	150.00	150.00
4" meter	250.00	250.00	250.00
6" meter	500.00	500.00	500.00
B. Usage Charge/1,000 gals (based on Water Usage)	4.40	150% of Water Gallonage Rate	5.04
C. Minimum Monthly Charge	29.30	Applicable System-Specific Flat Rate/SFE	32.16
D. Sewer customers who do not receive water service from the company/SFE	29.30	Applicable System-Specific Flat Rate/SFE	32.16
FLAT RATE SERVICE: (Per Dwelling Unit)			
Abington	29.30	26.97	32.16
Apple Creek/Farmwood	29.30	47.68	32.16
Ashley Hills	29.30	29.98	32.16
Bear Paw	29.30	53.58	32.16
Belvedere	29.30	38.00	32.16
Bent Creek	29.30	33.01	32.16
Brandywine Bay	29.30	46.48	32.16
Cabarrus Woods	29.30	29.78	32.16
College Park	29.30	48.24	32.16
Corolla Light	29.30	54.33	32.16
Emerald Point	29.30	36.29	32.16
Hemby Acres/Beacon Hills	29.30	28.63	32.16
Hestron Park	29.30	33.92	32.16
Hound Ears	29.30	52.03	32.16
Huntwick	29.30	26.47	32.16
Kings Grant(Gaston County)	29.30	36.58	32.16
Kings Grant(Wake County)	29.30	33.54	32.16
Kynwood	29.30	27.30	32.16
Lamplighter Village East	29.30	24.82	32.16
Lamplighter Village South	29.30	31.22	32.16
Monteray Shores	29.30	85.70	32.16
Olde Point	29.30	31.41	32.16
Parks Farm	29.30	23.60	32.16
Queens Harbour	29.30	96.68	32.16
Riverbend	29.30	25.89	32.16
Riverpointe	29.30	58.77	32.16
Saddlewood	29.30	94.44	32.16
Sequoia Place	29.30	25.93	32.16
Spooners Creek	29.30	84.58	32.16
Steeple Chase	29.30	38.47	32.16
Suburban Woods	29.30	90.46	32.16
Sugar Mountain	29.30	22.24	32.16
White Oak	29.30	45.20	32.16
Willowbrook	29.30	43.54	32.16
Wood Hollow	29.30	29.03	32.16
COLLECTION SERVICE ONLY (When sewage is collected by utility and transferred to another entity for treatment - Mt. Carmel and Lee's Ridge)			
A. Single Family Residence	11.00	18.71	18.75
B. Commercial (per single family equivalent)	11.00	18.71	18.75

6. The Company is providing good quality water and sewer utility service in its service areas. The Company has responded promptly to all complaints addressed in this proceeding except those of a customer in Whispering Pines.

Rate Base

7. The appropriate level of total plant in service is $48,763,483, of which $28,174,084 is applicable to water operations and $20,589,399 is applicable to sewer operations.

8. An amount of $33,261 for a new well, a well house and the related engineering fees should be included in rate base as the proper investment related to the Mount Mitchell/Black Mountain Campground project. An amount of $46,643, which includes $33,788 associated with a water main to serve Black Mountain Campground, and an unsubstantiated amount of $12,855 should be disallowed in this proceeding.

9. The $8,427 cost of new mains at Whispering Pines should be included in rate base.

10. The well at Wolf Laurel should be allowed in rate base.

11. The appropriate level of accumulated depreciation for use in this proceeding is $3,907,439, of which $2,303,681 is applicable to water operations and $1,603,758 is applicable to sewer operations.

12. The appropriate level of contributions in aid of construction for use in this proceeding is $20,177,639, of which $10,176,246 is applicable to water operations and $10,001,393 is applicable to sewer operations.

13. The Company has not used the correct gross-up factor on all CIAC collected.

14. The appropriate level of advances in aid of construction for use in this proceeding is $206,342, of which $115,420 is applicable to water operations and $90,922 is applicable to sewer operations.

15. For purposes of this proceeding, the plant acquisition adjustment is $2,877,122, of which $1,709,742 is applicable to water operations and $1,167,380 is applicable to sewer operations.

16. The appropriate level of accumulated deferred income taxes (ADIT) for use in this proceeding is $967,076 of which $804,766 is applicable to water operations and $162,310 is applicable to sewer operations.

17. It is inappropriate to include in rate base the ADIT associated with the CIAC applicable to the Monteray Shores system.

18. CWS has properly included in rate base the ADIT associated with the CIAC received in 1992 applicable to the Olde Pointe system.

19. It is inappropriate to include in rate base the ADIT associated with the CIAC applicable to the Winghurst system.

20. The appropriate level of ADIT related to deferred rate case expense for purposes of this proceeding is $170,200.

21. The appropriate level of ADIT related to deferred maintenance for purposes of this proceeding is $130,022.

22. For purposes of this proceeding, the reasonable and appropriate amount of customer deposits is $145,737, of which $80,762 is applicable to water operations and $64,975 is applicable to sewer operations.

23. The appropriate amount of excess book value to be deducted in calculating the rate base in this proceeding is $4,098,130, of which $1,559,117 is applicable to water operations and $2,539,013 is applicable to sewer operations.

24. An amount of $80,000 for NCUC bonds should be included in rate base in this proceeding, of which $30,000 is applicable to water operations and $50,000 is applicable to sewer operations.

25. Gain on sale and flow back of taxes of $289,628 should be deducted from rate base for purposes of this proceeding, of which $196,947 is applicable to water operations and $92,681 is applicable to sewer operations.

26. It is appropriate in this proceeding to allow the Company's investment in rate base related to the plant capacity utilized fully at the end of the test year as a percentage of the total capacity of certain items of plant in service. This adjustment to exclude overbuilt plant is commonly referred to as the percentage utilization technique.

27. The proper method to calculate overbuilt plant is to determine the total cost of the overbuilt facility (e.g., elevated water storage tank, sewer treatment plant), subtract any developer CIAC that was paid for that particular part of the plant that is overbuilt, and then apply the percentage utilization ratio. Tap fees, plant modification fees, and prepaid taps by developers should not be deducted from the plant prior to the overbuilt plant adjustment. Rather, these fees should be used to reduce the used and useful portion of the plant and not the total plant.

28. The proper design criteria for water systems (per residential equivalent connection) appropriate for use in this proceeding are as follows:

Elevated water storage tanks: 200 gpd (gallons per day)

Wells: 400 gpd = 0.56 gpm (gallons per minute) based upon a 12 hour pumping day.

29. The proper design criterion for evaluating the wastewater treatment capacity of the Brandywine Bay, Cabarrus Woods - Stonehedge - Cambridge - Steeplechase, and the Danby - Lamplighter South - Woodside Falls systems is 400 gpd per dwelling unit.

30. The net investment of the Company in the Brandywine Bay elevated water storage tank is $250,000. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method and the 200 gpd design standard, is $162,000. The net investment to include in rate base (prior to reduction for tap fees, plant modification fees, or prepaid tap fees) is $88,000.

31. The net investment of the Company in the Brandywine Bay sewer treatment plant is $408,738. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method and the 400 gpd design standard, is $194,968. The net investment to include in rate base (prior to reduction for tap fees, plant modification fees, or prepaid tap fees) is $213,770.

32. The net investment of the Company in the Cabarrus Woods elevated water storage tank is $367,459. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method and the 200 gpd design standard, is $179,320. The net investment to include in rate base (prior to reduction for tap fees, plant modification fees, or prepaid tap fees) is $188,139.

33. The net investment of the Company in the Cabarrus Woods sewer treatment plant is $626,597. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method and the 400 gpd design standard, is $201,764. The net investment to include in rate base (prior to reduction for tap fees, plant modification fees, or prepaid tap fees) is $424,833.

34. The net investment of the Company in the Danby sewer treatment plant is $209,000. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method and the 400 gpd design standard, is $117,876. The net investment to include in rate base (prior to reduction for tap fees, plant modification fees, or prepaid tap fees) is $91,124.

35. The appropriate level of excess capacity to be deducted in calculating the rate base for this proceeding is $855,928, of which $341,320 is applicable to water operations and $514,608 is applicable to sewer operations.

36. The appropriate level of Water Service Corporation (WSC) plant in service is $668,981, of which $454,907 is applicable to water operations and $214,074 is applicable to sewer operations.

37. The appropriate level of WSC accumulated depreciation is $232,415, of which $158,042 is applicable to water operations and $74,373 is applicable to sewer operations.

38. The appropriate level of WSC accumulated deferred income taxes (ADIT) for use in this proceeding is $39,671, of which $26,976 is applicable to water operations and $12,695 is applicable to sewer operations.

39. The appropriate level of working capital allowance is $464,511, of which $276,781 is applicable to water operations and $187,730 is applicable to sewer operations.

40. The appropriate level of deferred charges is $767,538, of which $594,873 is applicable to water operations and $172,665 is applicable to sewer operations.

41. No amount of unamortized VOC testing costs should be included in deferred charges.

42. The appropriate level of unamortized deferred rate case expense to include in rate base relating to prior proceedings is as follows: Sub 69 appeal, $2,278; Sub 81, $4,038; Sub 111, $48,431; system specific, $136,452; and Sub 118, $74,074.

43. Unamortized deferred rate case expense should be included in rate base for the Sub 111 appeal and the Sub 128 proceeding, consisting of $46,751 and $123,102, respectively.

44. CWS's reasonable rate base used and useful in providing service is $16,947,386, consisting of utility plant in service of $48,763,483; NCUC bonds of $80,000; WSC plant in service of $668,981; working capital allowance of $464,511; and deferred charges of $767,538; reduced by accumulated depreciation of $3,907,439; contributions in aid of construction of $20,177,639; advances in aid of construction of $206,342; plant acquisition adjustment of $2,877,122; accumulated deferred income taxes of $967,076; customer deposits of $145,737; excess book value of $4,098,130; gain on sale and flow back of taxes of $289,628; excess capacity of $855,928; WSC accumulated depreciation of $232,415; and WSC accumulated deferred income taxes of $39,671.

Revenue

45. The appropriate level of end-of-period service revenue is $7,861,696, of which $4,976,704 is applicable to water operations and $2,884,992 is applicable to sewer operations.

46. The appropriate level of miscellaneous revenue to include in this proceeding is $143,520, of which $100,007 relates to water operations and $43,513 relates to sewer operations.

47. It is appropriate to calculate uncollectibles on both service revenue and miscellaneous revenue for purposes of this proceeding.

48. The appropriate level of uncollectibles is $68,845, of which $43,660 is applicable to water operations and $25,185 is applicable to sewer operations.

49. Total revenue to be reflected in this proceeding is $8,005,216 of which $5,076,711 is applicable to water operations and $2,928,505 is applicable to sewer operations. Gross service revenue is $7,861,696, of which $4,976,704 is applicable to water operations and $2,884,992 is applicable to sewer operations.

Miscellaneous revenue is $143,520, of which $100,007 relates to water operations and $43,513 relates to sewer operations. Total revenue is reduced by uncollectibles of $68,845, of which $43,660 is applicable to water operations and $25,185 is applicable to sewer operations.

Customer Growth

50. The appropriate customer growth rates to include in this case are:

Water	0.90%
Sewer	2.26%

This water growth rate should be applied to the following expense categories: chemicals, maintenance and repair, electric power for pumping, and office supplies. The sewer growth rate should be applied to chemicals, maintenance and repair, and office supplies.

Operation and Maintenance Expenses

51. The appropriate level of salaries and wages to include in operation and maintenance expense is $1,195,974, of which $688,961 is applicable to water operations and $507,013 is applicable to sewer operations.

52. The appropriate level of purchased power to include in this proceeding is $742,279, of which $461,927 relates to water operations and $280,352 relates to sewer operations.

53. The appropriate level of maintenance and repair is $827,736, of which $431,606 relates to water operations and $396,130 relates to sewer operations.

54. The appropriate level of chemicals expense is $177,542, of which $122,185 is applicable to water operations and $55,357 is applicable to sewer operations.

55. The appropriate level of transportation expense for purposes of this proceeding is $147,276, of which $84,841 relates to water operations and $62,435 relates to sewer operations.

56. The appropriate level of operating expenses charged to plant is $(254,923), of which $(180,646) is related to water operations and $(74,277) is related to sewer operations.

57. The appropriate level of operation and maintenance expenses is $3,316,328, of which $1,898,432 is applicable to water operations and $1,417,896 is applicable to sewer operations.

General Expenses

58. The appropriate level of salaries and wages to include in general expenses is $205,934, of which $141,941 is applicable to water operations and $63,993 is applicable to sewer operations.

59. The appropriate level of office supplies and other office expense to include in this proceeding is $109,292, of which $75,152 relates to water operations and $34,140 relates to sewer operations.

60. The rate case costs found to be proper for the Company's previous general rate case in Docket No. W-354, Sub 111, should not be updated in this proceeding.

61. It is appropriate for the shareholders to share in the costs of the Sub 118 proceeding.

62. The annual amortization of the Sub 118 proceeding to be included in expenses is $18,519.

63. The appropriate amortization period for the Sub 111 appeal costs is 3 years, and the normalized level to be included in expenses is $23,375.

64. The Public Staff adjustment to legal fees for this proceeding is appropriate.

65. The Public Staff adjustment to remove time of WSC personnel related to Sub 111, which was included in the cost of this proceeding, is appropriate. The Public Staff adjustment to offset the increase in one employee's time with an hour-for-hour decrease in another employee's time is inappropriate.

66. The appropriate normalized level of regulatory costs for the Sub 128 proceeding to be included in expenses is $123,103.

67. The appropriate level of total rate case expense to include in this proceeding is $253,859, of which $172,624 is applicable to water operations and $81,235 is applicable to sewer operations.

68. The appropriate level of pension and other benefits to include in this proceeding is $339,355, of which $204,984 relates to water operations and $134,371 relates to sewer operations.

69. The appropriate level of insurance to include in this proceeding is $140,427, of which $80,731 relates to water operations and $59,696 relates to sewer operations.

70. For purposes of this proceeding, it is appropriate to reduce by 15% the amounts allocated to CWS from WSC for WSC plant in service, WSC accumulated depreciation, WSC ADIT, WSC depreciation expense, and indirect expenses.

71. For purposes of this proceeding, it is appropriate to reduce general expenses by $58,320 related to Northbrook office expenses allocated to North Carolina.

72. The appropriate level of general expenses is $1,303,589, of which $844,130 is applicable to water operations and $459,459 is applicable to sewer operations.

Other Operating Revenue Deductions

73. The appropriate level of depreciation expense for use in this proceeding is $598,161, of which $394,226 is applicable to water operations and $203,935 is applicable to sewer operations.

74. The appropriate level of depreciation expense allocated to CWS from WSC is $41,213, of which $28,025 is applicable to water operations and $13,188 is applicable to sewer operations.

75. The appropriate level of payroll taxes to include in this proceeding is $135,423, of which $81,716 relates to water operations and $53,707 relates to sewer operations.

76. Based on the other findings and conclusions set forth in this Order, the appropriate level of regulatory fees is $4,278 for water operations and $2,468 for sewer operations.

77. Based on the other findings and conclusions set forth in this Order, the appropriate level of gross receipts tax is $201,322 for water operations and $174,199 for sewer operations.

78. Based on the other findings and conclusions set forth in this Order, the appropriate level of state income taxes is $70,466 for water operations and $23,606 for sewer operations.

79. Based on the other findings and conclusions set forth in this Order, the appropriate level of federal income taxes is $285,184 for water operations and $95,538 for sewer operations.

80. The appropriate level of other operating revenue deductions is $1,664,817, of which $1,087,653 is applicable to water operations and $577,164 is applicable to sewer operations.

81. The overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $6,284,734, of which $3,830,215 is applicable to water operations and $2,454,519 is applicable to sewer operations.

Overall Cost of Capital

82. The appropriate capital structure to employ for purposes of this proceeding consists of 56.95% debt and 43.05% equity. The embedded cost of debt associated with this capital structure is 9.45%.

83. The overall risk premium methodologies employed by Company witness Spann, before consideration of his specific adjustment and recommendation related to the size of CWS and the lack of liquidity associated with an investment in its common stock, should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding.

84. Application of the DCF model as presented by Public Staff witness Sessoms should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

85. Company witness Spann's inclusion of 50 basis points in his recommended cost of equity in recognition of the size and liquidity of the Company is inappropriate for purposes of this proceeding.

86. The cost of common equity capital to CWS for purposes of this proceeding is 12.00%.

87. The overall fair rate of return which the Company should be allowed the opportunity to earn on its rate base is 10.55%.

Rates, Fees, and Other Matters

88. The Commission finds that the Applicant's rates should be changed by amounts which, after pro forma adjustments, will produce an increase in total annual revenue of $237,917. This increase will allow CWS the opportunity to earn a 10.55% overall rate of return on its rate base, which the Commission has found to be reasonable upon consideration of the findings in this Order.

89. It is not appropriate to set rates in this proceeding on a system specific basis.

90. CWS should continue to maintain system specific data for each of its systems and should work to refine the Company's allocation methodology.

91. The attached Schedule of Rates is fair and reasonable and will allow the Company a reasonable opportunity to earn the authorized rate of return.

92. The Company has not applied for a franchise to serve the Black Mountain Campground in Yancy County nor is the Black Mountain Campground contiguous with any CWS service territory.

93. The definition of adequate service is a generic issue affecting all water and sewer companies.

94. The Company has not included CIAC received in the form of plant during 1991 and 1992 in its North Carolina taxable income reported in 1991 and 1992.

95. The Company should review its plant retirement policy for accuracy and compliance with the Uniform System of Accounts and file a report detailing the results of its investigation.

96. The Company should review its deferral policy to ensure that such policy complies with applicable Commission guidelines.

97. The Company should review and evaluate the appropriateness and accuracy of its allocation methods in conjunction with preparation of an allocation manual.

98. The Company should not accrue allowance for funds used during construction (AFUDC) on excess capacity or overbuilt plant investment excluded from rate base in this proceeding.

99. The Company is required to follow the Commission's Rule R12-2 when customers seek to establish credit.

100. The Company imposed a mandatory moratorium on water usage in Corolla during the summer of 1993, without Commission approval.

101. It is proper to allow CWS to pass-through the cost of EPA mandated water testing.

102. All meter fees collected under contracts dated after February 3, 1987, must be grossed-up unless specified differently on contracts filed with and approved by this Commission.

103. For purposes of this proceeding, any management fees or oversizing fees collected under contracts dated after February 3, 1987, will be treated as contributions in aid of construction, subject to gross-up.

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

These findings are in the Commission's official records and in the Company's application. They are essentially informational, procedural, and jurisdictional in nature, and the matters that they involve are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the Company's application and the testimony of Public Staff witness Rudder and Company witness Wenz.

CWS has removed 730 customer equivalents from the Pine Knoll Shores service area in calculating its revenue requirement because the residents in the Atlantic Beach section have been paralled by the Town of Atlantic Beach (Town) and many have connected to the Town's water system. This took place after the end of the test year, but prior to the end of the hearing in this proceeding. Company witness Wenz testified that he removed revenues and adjusted operating expenses for these customer because they are no longer customers of CWS.

CWS has also removed 175 customers from the Farmwood service area. On November 18, 1993, CWS filed an application to transfer the Farmwood service area to the Charlotte Mecklenburg Utility Department (CMUD). However, this is a proposed sale and the Commission has not made a determination in this matter. The fact is that CWS is still serving the customers in Farmwood and still collecting revenues from these customers.

The Public Staff, through its witness Rudder, indicated that it included the Pine Knoll Shores customers and the Farmwood customers because it needed to bring the customer count to the end of test year number.

The Commission agrees with the Public Staff that the appropriate level of customer numbers is the customers on line at the end of the test year so that the revenues, rate base, and expenses are matched to customers actually using the utility service. To do otherwise would distort the matching concept and result in rate base and expenses associated with the Pine Knoll Shores and Farmwood customers being assigned to customers in other service areas. The Commission further notes that the Company did not include the customers added in other systems subsequent to the test year. The Public Staff showed that the Company's meter and tap summaries for December 31, 1992, and December 31, 1993, showed only a net loss of 24 customers over the entire Company system. The Commission concludes it is not appropriate for CWS to update one aspect of the case that benefits the Company (i.e., customer losses) without updating any other aspects (i.e., customer growth).

We agree with the Public Staff that the situation in Pine Knoll Shores is different from the sale of a system to another entity. The Company is still serving customers and receiving revenues in a part of Pine Knoll Shores. Further, because the system was not sold, the Company still owns and can reuse meters, hydrants, and other plant.

The Commission concludes the appropriate level of customers at the end of the test year is 17,606 water CE's and 8,274 sewer CE's.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the Company's application and in the Commission's official files. This finding is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission has received slightly over 100 letters from customers during this case. The great majority have objected to the rate increase or the system specific rate proposal. Few have alleged service or quality complaints. The Public Staff has forwarded copies of all complaint letters to the Company as they were received by the Public Staff. The Company has responded to all quality or service complaints in a prompt manner.

Approximately 60 customers appeared and testified at the customer hearings held around the state. The Company has responded to the service and/or quality complaints and will follow up on those requiring additional contact.

However, CWS did not respond to the complaints of one witness, Mr. Bill Heffner of Whispering Pines, who testified in Raleigh on April 5, 1994. Mr. Heffner's complaints were the following:

- Although the Company has promised to provide the Village of Whispering Pines a copy of the monthly water quality test results, one has not been provided in over a year

- A resident of Whispering Pines, Mr. Lon Cook, has repeatedly complained of dirty water but has received no satisfactory answer

- Mr. Cook has also complained of high billing and being overcharged; CWS has checked his meter but has not responded with the final results

- The Country Club of Whispering Pines has had to install a water filtration system because of poor water quality

- The employees of CWS at the local office drink bottled water, not the water provided by CWS

- Water pressure dangerously high - in one incedent, the plastic hose connection on a refrigerator icemaker at the home of Mr. George Pence burst and caused $1,200 in water damage. In another incedent, Mr. Rhet Hall lost the end of his finger when a valve exploded on a water filter when Mr. Hall was changing the filter

- The location of well no. 14 makes it susceptible to lightning strikes

- The hardness of the water from well no. 14 and the design of the softening equipment at that well

- High levels of chloride in effluent water to pond no. 6

- The chloride conductivity analyzer-transmitter is not in operation

- The Company has not been able to document that it has ownership of the water mains in Whispering Pines.

Company witness Berry presented testimony concerning CWS's efforts to assure excellent customer service. She testified that after the last rate case, in which the Commission assessed a rate of return penalty against CWS for poor service, CWS initiated a program that focused on improving customer relations throughout North Carolina.

Ms. Berry testified that, as part of CWS's program to improve customer relations, the Company implemented several procedures, such as explaining rates and procedures to new customers, avoiding transferring customer calls from person to person, scheduling monthly videos to educate employees about customer service, and attending homeowners' meetings to educate CWS customers about issues in the water utility industry.

Ms. Berry testified that the entire CWS company produced a guide for customer service standards. The guide is divided into several areas: Communication, Training and Education, and Community Involvement.

Ms. Berry also testified concerning the procedure for service orders. All service orders relating to water quality receive a same-day response by operations. CWS attempts to contact the customer personally to explain the results of the service order, but, if the customer is not home, CWS will leave a door tag notifying the customer of the results of the service order. Both the

Office Manager and the Regional Manager review the service orders to ensure that the customer is satisfied. She testified that service requests are also handled after hours, with an effort made to respond to quality problems before the next day.

On cross examination, Ms. Berry testified that CWS has several 800 numbers that are listed on the customers' bills and that customers who call reach real human voices, even at night. Finally, Ms. Berry testified that she had received many positive comments about service from customers throughout North Carolina.

Company witness Daniel presented testimony concerning the Company's ongoing efforts to improve its quality of water and of service. Mr. Daniel testified that CWS's ongoing programs to ensure high water quality included:

1. Routine testing and periodic water main flushings to improve water quality;

2. Cleaning 10% of sewer collection mains to minimize the potential for backups;

3. Use of sequestering agents to reduce the effects of iron and manganese which occur naturally in ground water;

4. Providing 24-hours-a-day, seven-days-a-week on-call emergency service;

5. Company-wide facility and safety standards to ensure that systems are properly operated and maintained.

Mr. Daniel also testified that the Company has implemented new quality assurance programs since the conclusion of the Sub 111 case. These new programs include weekly service order review program, the monthly review of service complaints for each subdivision, and monthly progress reports to the Commission.

Mr. Daniel testified that of the more than 18,000 water customers and 8,000 sewer customers, the Public Staff had received only 16 complaints over nearly two years. Moreover, the Company had addressed all of these complaints.

On cross examination, Mr. Daniel testified that CWS provided notice to its customers of a violation of an EPA regulation concerning water contaminants. He addressed certain complaints by customers concerning iron levels in the water in Corolla Light and also concerning nitrate levels in some water. He testified that the original lab tests concerning nitrate had been mistaken and that the State had therefore notified CWS customers that the water was safe. He also addressed what follow-up actions had been taken with regard to specific customer complaints at the hearings, and particularly customers' complaints concerning billing.

The Commission concludes that CWS's quality of water and service is good. At the hearings held throughout North Carolina, several customers commented on the excellent service provided by CWS's employees. Still others testified that they had no problems with the quality of CWS water. Many residents testified that the quality of water and service has improved since the Sub 111 rate case.

CWS also has taken affirmative steps to improve the quality of both its water and its service. These improved customer relations were reflected in the hearings with comments from customers about CWS's dedicated employees. The Company has promptly followed up on customers' complaints, issuing service orders and performing testing on the water. There appear now to be only a few isolated problems with the quality of CWS water.

The Commission directs the Company to investigate the concerns expressed by witness Heffner and submit a late-filed exhibit detailing the results of its investigation and the steps the Company will take to satisfy the complaint of Mr. Heffner. This exhibit should be filed no later July 29, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-44

The evidence for Findings of Fact Nos. 7-44 is found in the testimony of Public Staff witnesses Rudder, Pleasant, Kibler, and Dietz as well as Company witnesses Daniel, Dopuch, O'Brien, Wenz, and Spann. The following tables summarize the amounts which the Company and the Public Staff contend in their proposed orders are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$28,220,535	$28,125,312	$(95,223)
Accumulated depreciation	(2,301,714)	(2,303,681)	(1,967)
Contributions in aid of construction	(10,176,246)	(10,176,246)	0
Advances in aid of construction	(115,420)	(115,420)	0
Plant acquisition adj.	(1,709,742)	(1,709,742)	0
Accumulated deferred income taxes	(828,185)	(842,391)	(14,206)
Customer deposits	(80,762)	(80,762)	0
Excess book value	(1,559,117)	(1,559,117)	0
NCUC bonds	30,000	30,000	0
Gain on sale and flow back of taxes	0	(196,947)	(196,947)
Excess capacity	0	(341,320)	(341,320)
Water Service Corporation plant in service	612,663	454,907	(157,756)
Water Service Corporation accumulated depreciation	(213,153)	(158,042)	55,111
Water Service Corporation acc. deferred income taxes	(36,404)	(26,976)	9,428
Working capital allowance	281,280	276,407	(4,873)
Deferred charges	722,245	512,723	(209,522)
Total original cost rate base	$12,845,980	$11,888,705	$ (957,275)

SEWER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$20,588,995	$20,589,042	$ 47
Accumulated depreciation	(1,602,474)	(1,603,758)	(1,284)
Contributions in aid of construction	(10,001,393)	(10,001,393)	0
Advances in aid of construction	(90,922)	(90,922)	0
Plant acquisition adj.	(1,167,380)	(1,167,380)	0
Accumulated deferred income taxes	(74,797)	(182,923)	(108,126)
Customer deposits	(64,975)	(64,975)	0
Excess book value	(2,539,013)	(2,539,013)	0
NCUC bonds.	50,000	50,000	0
Gain on sale and flow back of taxes	0	(92,681)	(92,681)
Excess capacity	0	(514,608)	(514,608)
Water Service Corporation plant in service	72,803	214,074	41,271
Water Service Corporation accumulated depreciation	(60,120)	(74,373)	(14,253)
Water Service Corporation acc. deferred income taxes	(10,268)	(12,695)	(2,427)
Working capital allowance	191,535	187,554	(3,981)
Deferred charges	213,774	134,007	(79,767)
Total original cost rate base	$5,605,765	$4,829,956	$ (775,809)

As shown in the preceding tables, the Public Staff and the Company agree on several components of rate base for both water and sewer operations. The Company and the Public Staff agree on the amounts for contributions in aid of construction, advances in aid of construction, plant acquisition adjustment, customer deposits, excess book value, and NCUC bonds. Therefore, the Commission concludes that the appropriate level of contributions in aid of construction is $20,177,639, with $10,176,246 applicable to water operations and $10,001,393 applicable to sewer operations; advances in aid of construction is $206,342, with $115,420 applicable to water operations and $90,922 applicable to sewer operations; the appropriate level of plant acquisition adjustment is $2,877,122, with $1,709,742 applicable to water operations and $1,167,380 applicable to sewer operations; the appropriate level of customer deposits is $145,737, with $80,762 applicable to water operations and $64,975 applicable to sewer operations; the appropriate level of excess book value is $4,098,130, with $1,559,117 applicable to water operations and $2,539,013 applicable to sewer operations; and the appropriate level of NCUC bonds is $80,000, with $30,000 applicable to water operations and $50,000 applicable to sewer operations.

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The Public Staff recommends an amount of $28,125,312 for water operations, which is $95,223 less than the Company's proposed amount of $28,220,535, and an amount of $20,589,042 for sewer operations, which is $47 more than the Company's proposed amount of $20,588,995.

The difference in the level of plant in service recommended by the Company and the Public Staff is composed of the following items:

Item	Amount Water	Sewer
Pro forma projects	$ (94,930)	$ 0
Transportation equipment	(293)	47
Total	$ (95,233)	$ 47

Pro Forma Projects

The Company is claiming the cost of a new well and well house along with the cost of a main extension to the Black Mountain Campground. The total claimed cost of this work is $79,904. Public Staff witness Rudder testified that the 1992 Annual Report shows the combined pumping capacity of the existing three wells to be 211 gallons per minute (gpm). The pumping capacity to serve the 164 end of period customers is 92 gallons based on the State design criteria of 0.556 gpm per customer.

The Company has included in CWIP a cost of $79,904 for the well and a main extension. The Public Staff review of the submitted invoices shows only $67,049 spent for this project. Analysis of these invoices shows $20,598 for the well construction, controls, well house, and tie-in to the existing system. The invoices show $33,788 associated with a 12,000+' 4" water main to serve Black Mountain. The remainder of the $12,663 is for engineering fees for the project.

The Public Staff recommends that the total cost of $79,904 not be allowed because:

(1) the well capacity is not needed to serve existing customers,
(2) the main extension is for new customers not on line at the end of the test year,
(3) there were no revenues included for these new customers, and
(4) the Company failed to file the contract as required by prior Commission orders.

Company witness Daniel addressed Mr. Rudder's adjustment on rebuttal. He testified that as Mount Mitchell Lands is a mountain system, it is extremely difficult to find water sources. He testified that the well is needed to replace a well that has been shut down because of contamination from agricultural chemicals used on the adjacent golf course, reducing the total yield to 163 gpm. He testified further that another well has been reduced by 40 gpm, bringing the yield to 123 gpm or 0.75 gpm per connection. Under cross examination, witness Daniel stated the two subdivisions (Mt. Mitchell Lands and Mt. Mitchell Lands

West) were interconnected with a main and a one way pump that feeds water from the subdivision with the higher yield into the other subdivision where the new well is located.

Mr. Daniel stated that for these reasons the Company was able to purchase a well from the United States Forest Services at a cost substantially less than what it would take to install a new well. As part of the transaction for the well, the Forest Services asked CWS to provide water services to an adjacent campground.

Mr. Daniel testified that the well is now on line and providing service to the residents of Mount Mitchell. He stated that Mr. Brown of the Public Staff conducted a field investigation and confirmed that the well is operational and in service. He further testified that at the field investigation he personally explained to Mr. Brown, using the water system plans, that the well is needed based on the configuration of the system. He stated that the well would be most beneficial should the Company be forced to take another well offline due to chemical contamination.

In response to the Public Staff's position that the well is not needed because there is enough water available to serve existing customers according to minimum state standards, Mr. Daniel stated that this position ignores the configuration of the Mount Mitchell system, the difficulty of obtaining water is mountainous areas and the problems of chemical contamination that have already been experienced. He argued that the Commission should not base its conclusion strictly on minimum standards. Mr. Daniel stated that it would have been inappropriate to wait until there was a water shortage, a well failure or before a well became contaminated before finding more supply.

Witness Daniel admitted that the Company had entered into a contract with the Forest Service in September 1992. This contract was <u>never</u> submitted to either the Commission or the Public Staff for review and comment. The contract provided that, in exchange for the well, the Company would serve the Forest Service Basic Work Area (where the well is located), construct a main to serve the Black Mountain Campground located within the Pisgah National Forest, and allow the Forest Service to tap on to the water line along Forest Service Road 472 without charge.

The Commission notes that in its Recommended Order in Docket No. W-354, Sub 111, the Company was ordered in ordering paragraph 6,

> ...In addition, CWS shall, within 30 days of the effective date of this Order, file any other contracts it has entered into with developers through the date of this Order that have not previously been filed. CWS shall <u>henceforth</u> (emphasis added) file all contracts with developers with the Commission within 30 days of signing, or in the case of informal agreements or contracts that are effective without signing, within 30 days from the date the agreement is reached. The requirements of this paragraph shall apply to <u>all</u> (emphasis added) contracts, including those covering contiguous expansions.

The effective date of the Recommended Order was August 17, 1992. The Company filed exceptions. The Final Order was dated October 12, 1992. The ordering paragraph above was repeated in its entirety in the Final Order. The Company did not except to this paragraph and should have known the paragraph would remain in force. The Commission notes the contract was signed by Jim Camaren, Vice President, an officer of the Company, on September 15, 1992. Because CWS did not file the contract, both the Commission and the Public Staff were denied the opportunity to review and make recommendations on the subject matter.

The Commission agrees that the Black Mountain Campground is not a contiguous expansion of the Mt. Mitchell service area. The Company's argument is inconsistent with the Company's position in the Mid South case involving Bradfield Farms where it argued exactly the opposite in a case strikingly similar to the situation here. There Mid South sought to reach out across an unoccupied expanse and claim a contiguous extension, and the Commission ruled against that Company. To agree here that this expansion is contiguous would essentially declare the whole Pisgah National Forest to be a contiguous expansion. Clearly the Company is not proposing to offer service throughout the Forest, nor has this Commission ever approved such an expansion.

The Commission has analyzed the evidence submitted by the parties on this issue. The terrain at Mountain systems is such that well capacity in one area cannot be used to serve the needs in another area. The intervention of high hills or peaks often presents the Company from economically getting water from an existing well to the area where water is needed. The cost of installing wells is independent of the amount of water a well produces. The Company has acted prudently in obtaining this well for a reduced cost in an area where well yields have fallen and where wells have been taken out of service due to chemical contamination of groundwater.

Based on the foregoing, the Commission concludes that the new well at Mount Mitchell Lands should be included in rate base. An amount of $33,261, consisting of $20,598 for the well construction, controls, well house, and a tie-in to the existing system, and $12,663 for the engineering fees for the project, is the proper investment to be reflected in this proceeding. However, the remaining difference of $46,643, consisting of $33,788 associated with the water main to serve Black Mountain Campground and an unsubstantiated amount of $12,855, is disallowed in this rate proceeding because:

(1) the main extension is for new customers not on line at the end of the test year,
(2) there were no revenues included for these new customers, and
(3) the Company failed to file the contract as required by prior Commission orders.

The Public Staff reviewed additional information offered by the Company prior to the hearing and recommends the $8,427 cost of the main at Whispering Pines be included in rate base. The Commission accepts the recommendation and will include it in rate base.

Public Staff witness Rudder has recommended the removal of a new well at Wolf Laurel because the Company has not submitted the DEH Plan Approval Letter showing the need for the new well. Mr. Rudder makes no claim that either the funds expanded for the well were not incurred prior to the close of the hearing, or that the well has not been drilled. The Commission concludes that based on the limited information provided by the parties, the amount of investment to be included in plant in service for the Wolf Laurel well is $15,026.

Transportation Equipment

The first difference between the Company and the Public Staff regarding the transportation equipment relates to the original cost of a backhoe. The Public Staff has included the cost of this backhoe as $26,000, while the Company has included the cost as $27,000. Neither party has provided evidence to support their position. However, both parties appear to believe that this backhoe should in fact be included in plant in service. The difference between the parties, $1,000, is relatively immaterial to this Company's rate base. The Commission is not persuaded that the amount requested by the Company is unreasonable. Therefore, the Commission concludes that the backhoe should be included at a cost of $27,000 as requested by the Company.

The remaining difference in transportation equipment results from allocation differences. Both parties have agreed that for purposes of this proceeding it is reasonable to allocate transportation equipment based upon operators' salaries. However, it appears that the schedules filed by the Public Staff did not flow this allocation methodology through to the rate base schedules. This error is the source of the allocation difference. For purposes of this proceeding the Commission accepts the allocation methodology advocated in testimony by both parties. Therefore, the Commission determines that the total level of transportation equipment to include in this proceeding is $718,210, of which $413,737 is applicable to water operations and $304,473 is applicable to sewer operations.

Based on the foregoing, the Commission concludes that the appropriate level of plant in service for use in this proceeding is $48,763,483, of which $28,174,084 is applicable to water operations and $20,589,399 is applicable to sewer operations.

ACCUMULATED DEPRECIATION

The next area of disagreement between the parties is accumulated depreciation. The Public Staff recommends an amount of $2,303,681 for water operations, which is $1,967 greater than the Company's proposed amount of $2,301,714, and an amount of $1,603,758 for sewer operations, which is $1,284 greater than the Company's proposed amount of $1,602,474.

In its final position, the Company appears to have adopted the Public Staff's revised position accumulated depreciation amounts. These amounts differ from the Public Staff's final position as a result of changes in operators' salaries, which directly impacts the allocation of accumulated depreciation for transportation equipment. It does not appear that the Company has given consideration to any such changes or any differences between itself and the Public Staff regarding operators' salaries when it presented its level of accumulated depreciation. In Finding of Fact No. 51 the Commission has accepted

the Public Staff's level of operators' salaries as reflected in its final position. Therefore, the Commission finds that the level of accumulated depreciation recommended by the Public Staff, which is $2,303,681 for water operations and $1,603,758 for sewer operations, is appropriate for use in this proceeding.

GROSS-UP OF CONTRIBUTIONS IN AID OF CONSTRUCTION

Public Staff witness Kibler testified that the Company is not using the gross-up factors which were requested by the Company and approved by the Commission in Docket No. W-354, Sub 107. The Commission concludes that the Company should use the appropriate gross-up factors which were approved in Docket No. W-354, Sub 107. Future overcollections of gross-up will be subject to refund plus interest of 10%.

ACCUMULATED DEFERRED INCOME TAXES

The parties disagree on the level of accumulated deferred income taxes (ADIT). The Public Staff recommends an amount of $842,391 for water operations, and an amount of $182,923 for sewer operations. The Company recommends an amount of $828,185 for water operations and $74,797 for sewer operations. The following table summarizes the differences between the Public Staff and the Company concerning ADIT:

Item	Company	Public Staff	Difference
Woodside Falls - CIAC	$ (89,280)	$(44,640)	$ 44,640
Monteray Shores - CIAC	(134,171)	0	134,171
Olde Pointe - CIAC	(10,984)	0	10,984
Winghurst - CIAC	(45,695)	0	45,695
Deferred rate case expense	220,449	122,946	(97,503)
Deferred maintenance	145,675	130,022	(15,653)
Rounding	2	0	(2)
Total	$ 85,996	$208,328	$(122,322)

Woodside Falls

The Company and the Public Staff are in agreement that the ADIT related to Woodside Falls should be included in rate base. The Commission notes that the difference of $44,640 is actually due to an error in Schedule T of the Company's final position. Public Staff witness Kibler included the ADIT for Woodside Falls in his revised filing, and the Company's Schedule T begins with Mr. Kibler's revised ADIT number. The Company then added the ADIT for Woodside Falls to Mr. Kibler's revised ADIT number which results in a double counting of the ADIT associated with Woodside Falls. Therefore, the Commission concludes that $44,640 is the appropriate level of ADIT related to Woodside Falls.

Monteray Shores

The next difference between the parties relates to the ADIT associated with the Monteray Shores system. The Commission carefully analyzed this issue in

Docket No. W-354, Sub 111, and the Commission determined that it was inappropriate to include the income tax paid by the Company in rate base. The Commission also stated in Sub 111,

> The majority of the issues raised by the Company have been discussed at length in the tax docket, Docket M-100, Sub 113. The Commission was aware of those issues when it issued its Order...stating specifically that the full gross-up method for collecting taxes on CIAC is mandatory for water and sewer companies unless receiving prior Commission approval to use another method.

The Company has presented no new information but has in fact presented the same arguments it did in the prior rate case. Reconsideration is not justified. The Commission sees no reason or justification to reverse its prior decision. A reversal of the Commission's Orders in Docket No. W-354, Sub 111, and Docket M-100, Sub 113, would lead to a disintegration of the Commission's policy of requiring gross-up on CIAC. Every utility in the state could petition the Commission for the same treatment that CWS is seeking and every utility could present the same arguments that CWS has presented. As stated earlier, all of these issues were raised in the tax docket and they were considered by the Commission before the Commission determined its policy. Therefore, the Commission will not include in rate base any ADIT associated with the Monteray Shores system.

Olde Pointe

The next difference between the parties relates to ADIT with respect to the Olde Pointe system. The Company has proposed to include $10,984 of ADIT in rate base from CIAC received in the Olde Pointe system in 1992. The Public Staff has disallowed this amount. The disagreement between the parties is due to different interpretations of the Order issued in Docket No. W-354, Sub 92, which approved the transfer of Olde Pointe to CWS.

Public Staff witness Kibler testified that the agreement between the Public Staff and the Company limited the rate base treatment of the taxes paid to approximately $25,000. Mr. Kibler also pointed out that the amount of ADIT now proposed by the Company is "substantially greater than the estimate of $25,000" which was included in Docket No. W-354, Sub 92.

The Commission, in the last rate case, included $25,727 in rate base for the taxes paid with respect to Olde Pointe. The Commission included the $25,727 because the amount in the stipulation was approximately $25,000.

The Company's position is that any tax liability arising from the future expansion of the Olde Pointe system should be allowed in rate base. Mr. Wenz testified that CWS has invested approximately $38,000 in state and federal taxes resulting from both the original CIAC in 1991 and the subsequent CIAC in 1992. He further testified that as an offset, CWS has collected 37 water and sewer connection fees. Based on this position, the Company has included the ADIT related to CIAC received in 1992 in the Olde Pointe system.

Mr. Wenz testified that the additional taxes sought for rate base treatment in this case relate to water and sewer facilities that were installed and contributed to CWS by the Olde Point developer. He further testified that the Commission's Order in the transfer proceeding states:

> 5. CWS may apply to receive rate base treatment of any tax liability on CIAC related to this transfer in a future general rate case.

The Commission agrees with the Company that the Commission Order in Docket W-354, Sub 92, does not limit the amount of CIAC generated tax that was approved for rate base treatment. Therefore, the Commission is of the opinion that the $10,984 ADIT related to CIAC received in the Olde Pointe system in 1992 should be included in rate base in this proceeding.

Winghurst

The next difference between the Public Staff and the Company relates to ADIT with respect to the Winghurst system. Two questions are involved. First, the Company did not collect any gross-up on the CIAC received in Winghurst. The Commission's Orders in Docket No. M-100, Sub 113, do not require gross-up on CIAC arising from contracts prior to February 3, 1987. The Public Staff did not include any ADIT related to this system because the contract covering this area is a post February 3, 1987 contract. Company witness Wenz testified that the contract is actually a pre-1987 contract although the written contract was not formalized until October 11, 1991.

At this point the Commission notes an inconsistency in the Company's position that the agreement is a pre-1987 contract. In the revised tariff filed by the Company on April 27, 1994, the Company shows that it is collecting full gross-up on the connection fees in Winghurst. Since the Company argued strongly and successfully in Docket No. W-354, Sub 118, that connection fees based on pre-February 3, 1987, contracts are not subject to gross-up, why would the Company collect full gross-up on connection fees if this contract were actually a pre-February 3, 1987, contract? Also, if this is a pre February 3, 1987 contract, why does the contract discuss, on page 3, article 4, taxes on CIAC and the fact that the Company is authorized by the Commission to collect the taxes due from the Developer?

The Company is claiming to rely on an oral contract here. These questions clearly show why the Commission is not convinced of the claim. Faced with a written contract dated long after 1987 and the Company's inconsistent claims, the Commission concludes that no oral contract existed.

The second issue relates to the Public Staff's request for documentation for the cost of the Winghurst system. According to the Public Staff, the Company provided the Public Staff with only a journal entry for the amount of plant booked in Winghurst. Company witness Wenz testified that the journal entry "was based on an estimate of the original cost of facilities that were actually in the ground." The Company did not provide any documentation to support the amount of plant booked nor did the Company provide a copy of the estimate. Therefore, the Public Staff had no way to audit the Company's calculation of CIAC and the related ADIT. This reason, by itself, would be sufficient to disallow any ADIT

related to the Winghurst system. Coupled with the determination that the Winghurst contract is actually a post-February 3, 1987, contract, the Commission finds that it is totally inappropriate to include in rate base any ADIT related to the Winghurst system.

Deferred Rate Case Expense

The difference related to the ADIT resulting from deferred rate case expense arises from the level of rate case expense recommended by each party in this proceeding. As determined in Findings of Fact Nos. 42-43 the appropriate level of rate case expense is $435,126; therefore the appropriate level of ADIT related to deferred rate case expense is $170,200.

Deferred Maintenance

The difference related to the ADIT resulting from deferred charges arises from the level of deferred charges recommended by each party in this proceeding. As determined in Findings of Fact Nos. 40, 42, and 43, the appropriate level of deferred maintenance is $332,412 (total deferred charges of $767,538 less deferred rate case expense of $435,125); therefore, the appropriate level of ADIT related to deferred charges is $130,022.

Based on the foregoing, the Commission concludes that the appropriate level of ADIT for use in this proceeding is $967,076, of which $804,766 is applicable to water operations and $162,310 is applicable to sewer operations.

GAIN ON SALE AND FLOW BACK OF TAXES

Another area of disagreement between the parties is the appropriateness of including cost free capital related to the gain on sale and flow back of taxes determined by this Commission in Docket No. W-354, Sub 111. The Public Staff has included $289,628 as cost free capital in each of its filings. The Company's position on the inclusion of cost-free capital has fluctuated throughout this proceeding. In its original filing, the Company did not include any cost-free capital. In its updated filing, the Company did include $289,628 as cost-free capital. In its final position, the Company reverted to its original position and did not include any cost-free capital.

Company witness O'Brien's rebuttal testimony, which was adopted by Mr. Wenz, states that given the language in recent Commission orders involving other utilities regarding the gain on sale issue, the Commission may wish or choose to reconsider its decision in the Sub 111 proceeding.

This issue has already been settled. The Commission ruled in the Sub 111 proceeding that the gain on sale should reduce rate base. The Company appealed that decision to the North Carolina Supreme Court, which upheld the Commission's ruling. Reconsideration here is not justified. Therefore, the Commission finds it appropriate to reduce rate base by $289,628 for the gain on sale and flow back of taxes, of which $196,947 relates to water operations and $92,681 relates to sewer operations.

EXCESS CAPACITY

Guidelines

The proper amount to use for calculating used and useful wastewater treatment plant capacity at the systems for Brandywine Bay, Cabarrus Woods-Stonehedge-Cambridge-Steeplechase, and the Danby-Woodside Falls-Lamplighter South was disputed. The Public Staff used 400 gallons per day (gpd) per residential equivalent connection as the amount of capacity needed for each customer on these systems. The Company did not present any position on a specific per day capacity, but rather stated an "obligation to provide public service" in Company Rebuttal Witness Dopuch's testimony. It is unclear, then, whether there is disagreement in the 400 gpd per connection standard. The Commission concludes that the standard for evaluating the used and useful portion of the wastewater treatment plants serving the Brandywine Bay, Cabarrus Woods, and Danby subdivisions should be 400 gpd per connection, which has been used and accepted by CWS and the Public Staff for these systems in the Company's previous rate cases.

The Public Staff maintains that the design pumping capacity of the wells should be set at 400 gpd per residential connection, which equates to 0.556 gallons per minute (gpm) per connection, in a twelve hour pumping day. While the Company does not disagree that this is the state design criterion for well supply, it does argue that this is a minimum and should not be used to limit its investment in wells or to acquire new wells.

The appropriate amount to use in calculating used and useful capacity of elevated storage tanks in water systems is again an issue in this case. The Company argues that 400 gallons per connection is the proper amount. Public Staff witness Rudder testified that the proper amount is 200 gallons per connection.

Public Staff witness Rudder referred the Commission to its Order in Docket W-354, Sub 111, where the history of this subject was discussed in the Evidence and Conclusions for Findings of Fact Nos. 7-60. The Commission has taken judicial notice of this information, finds it pertinent to this case, and will incorporate its conclusions in this case as appropriate.

In Docket W-354, Sub 111, the Company and the Public Staff disagreed on the amount of elevated storage. The Company argued for a 400 gallons per day capacity while the Public Staff presented evidence supporting a 200 gpd capacity. The Commission determined the correct calculation was 200 gpd per connection. The Commission relied largely on testimony from DEH personnel and the Company's own record of obtaining storage tank approval. The Company appealed this issue to the State Supreme Court.

In a decision issued January 22, 1994, the Court stated,

> As there was competent, material, and substantial evidence presented that the minimum design criteria has always been 200 gpd per connection, the decision of the Commission is affirmed.

The next concern for the Commission is the adequacy of 200 gpd in providing acceptable service. While the Company stated that it needed 400 gpd in elevated storage in order to provide adequate service, the Public Staff pointed out that several of the Company's own systems have less than 400 gpd and some even have less than 200 gpd. The Company provided no evidence of any service problems (water shortage, low pressure, or any other) in any of these areas.

The Company argued that discussions with DEH indicated that additional capacity should be included in elevated storage to allow for water needed for fire protection. The Company's belief is that DEH requires builders of elevated storage tanks to have extra capacity beyond the 200 gpd per connection when the design plans for a subdivision call for fire hydrants to be attached to the system. Public Staff witness Rudder testified regarding a memorandum from Mr. Wally Venrick to Mr. J. C. Lin of the Public Water Supply Branch of DEH. Witness Rudder read the memorandum which stated that the total volume of storage required shall be the value calculated from DEH policy and the Rules Governing Public Water Systems or the minimum Insurance Service Office (ISO) value, whichever is greater. Witness Rudder further testified that a discussion with Mr. Venrick confirmed that the requirement is not additive, but is an either/or situation.

The Commission notes the importance of the combined well pumping capacity or well yield. While the elevated storage tank does not limit the customers to specific gallonage, the water source, or wells in this instance, do. Consequently, DEH and the Public Staff agree that the well pumping capacity should be designed to provide 400 gpd per connection based on a 12 hour pumping day. The Commission recognizes that the elevated storage tank only provides a mechanism to obtain pressure, and the limiting factor for adequate service is the well yields.

The Commission concludes that 200 gpd per connection is the appropriate standard to use in determining how much elevated water storage capacity is used and useful. The reasons supporting this are:

1. CWS does not itself adhere to the 400 gpd.

2. Building more capacity than is presently needed may be prudent when growth is expected, but this does not make it presently used and useful. The economies of scale and advance planning that come from installing larger elevated storage tanks are to be commended, but the financing of plant for future customers should come from developers or the utility at its stockholders' risk, not from present customers.

3. The 200 gpd per connection of elevated storage is the design capacity, but the customers' usage is not limited to that amount only. The system's wells must be able to pump 400 gpd per connection into the system in a twelve hour day in addition to the 200 gpd per connection that is in the tank.

4. The Commission has seen no evidence that use of this standard results in customers receiving inadequate service in any of the contested service areas.

In summary, the Commission concludes that the appropriate standard for elevated water storage tanks is 200 gpd per connection and the appropriate amount for wastewater treatment plants is 400 gpd per connection.

Another issue concerns rate base calculation and the inclusion of a capacity margin for growth. In Docket No. W-354, Sub 69, the Commission matched rate base to revenues and expenses through the end of the test year. The Company appealed that issue, but the State Supreme Court upheld the Commission's decision.

In the next two rate cases, Sub 81 and Sub 111, the Commission did not match rate base to revenues and expenses but instead gave the Company a 35% capacity margin. The Sub 81 case was not appealed, but in the interim between the two Carolina Water cases, a case involving Carolina Trace was appealed. In that case the Supreme Court held that its decision in Carolina Water I (the Sub 69 appeal) was not discretionary, i.e., if the rate base includes a growth margin, it must be matched with both expenses and revenues.

Before the Carolina Trace decision was published, the Commission issued its decision in the Sub 111 case. Again, following the methodology of the Sub 81 case, the Commission allowed a 35% growth margin with no matching. The Public Staff appealed this case, and the Supreme Court stood firmly by its decision involving Carolina Trace. The Court noted the absence of evidence of growth rates in the service areas in dispute, the lack of evidence of the planning period for growth, and the failure to match and reversed, stating:

> The Commission failed to provide any fact specific support for determining that a 35% increase is a valid figure and did not follow the "approved practice" of setting out a matching adjustment for proforma revenues that will be obtained due to the potential increase in customers in the near future.

This Carolina Water II decision relied strongly on Carolina Water I.

In the present case, as in the past three Carolina Water rate cases, the Company has not proposed any matching adjustment. The question of how to match beyond the end of the test year is not an easy one. It involves many issues, such as the appropriate planning horizon, the formula for calculating the growth rate, the timing of when to assume new customers will be contributing revenues and when new plant and expenses will be needed, and a host of others. In the absence of a specific proposal from the Company to match in this case, the Commission believes the approach approved in Carolina Water I should be used. There, as here, the Commission was faced with no proposal for how to match, and the Commission therefore matched with the information that was available, i.e., end-of-period (EOP) data.

Therefore, the Commission concludes that the approach adopted by the Commission in the Sub 69 case and approved in Carolina Water I, i.e., EOP matching, should be used in this case.

Brandywine Bay Storage Tank

This issue involves the amount of investment that should be allowed in rate base for the elevated water storage tank in the Brandywine Bay Subdivision. Public Staff witness Rudder recommended that $162,000 of the Company's investment in this facility be excluded from rate base, whereas the Company includes its entire investment. The Public Staff explained that Carolina Water, in conjunction with the developer of Hestron Park Shopping Center located next to Brandywine Bay, constructed a 250,000 gpd elevated storage tank to serve both Hestron Park and Brandywine Bay. The main purpose of the elevated storage facility was to provide fire protection capacity for the Hestron Park commercial center. The tank cost $450,000, with the Hestron Park developer contributing $200,000. The tank has the capacity to serve 1,250 customers (250,000 gpd ÷ 200 gpd/customer). There are 440 residential equivalent customers being served jointly in Brandywine Bay and Hestron Park according to Company information. As can be seen on Public Staff Daniel Rebuttal Cross Examination Exhibit 6 and Daniel Rebuttal Exhibit 4, there is ample and adequate water supply when the pumping capacity of the wells is factored in.

Regarding the different calculations used by witnesses Rudder and Daniel, the Commission concludes there is an adequate supply of water in either case. The Commission does note, however, that Public Staff Late Filed Exhibit No. 1 demonstrates that the twelve hour pumping duration is a design standard. The Commission sees no limitation on the time a utility may actually operate its wells. Therefore, 35.2% (440 current customers ÷ 1,250 customer capacity), or $88,000, of the Company's investment should be allowed in rate base and $162,000 (or $250,000 - 88,000) should be disallowed as excess capacity.

The Company argues that if it had provided the elevated storage in a piecemeal fashion, the cost of the elevated tank would have been $545,600. This is in excess of the investment in the tank and, therefore, there is no excess capacity.

The Commission finds the Company position to be speculative and points out that it ignores the reality of the situation. Rates cannot be set on what a facility might have cost, but must be set on actual costs which in this case are significantly less than the Company's hypothetical position. The Commission agrees with the Public Staff position and concludes that the appropriate amount to include in rate base for the Brandywine Bay elevated water storage tank is $88,000.

Brandywine Bay Sewer Plant

This issue involves the amount of investment that should be allowed in rate base for the wastewater treatment plant in the Brandywine Bay Subdivision. Public Staff witness Rudder recommended that $194,968 of the Company's investment in this facility be excluded from rate base, whereas the Company includes its entire investment. The Public Staff determined that the combined capacity of the old and new plant is 375 customers (150,000 gpd ÷ 400 gpd/customer). The 196 end of period customers require 52.3% of the capacity, leaving 47.7% as excess capacity. The Public Staff recommends that $194,968 ($408,738 of plant cost x 47.7% excess capacity) be excluded from rate base.

The Company argued that the effluent line and holding pond would have been needed regardless of plant expansion and therefore should not be a part of the calculation. The Public Staff argued that the pond and effluent line in question were part of the expansion of the treatment plant. The Public Staff pointed out through cross-examination of Company witness Dopuch that (1) the existing plant used a subsurface drain field for disposal of treated effluent; (2) the new effluent line and holding pond were needed as part of the expansion of the plant; and (3) an existing holding pond was used to store water pumped from the water system wells to irrigate the golf course before the sewer plant was expanded.

The Commission agrees with the Public Staff that the additional holding pond and effluent line are part of the sewer plant expansion. They would not have been constructed except to accommodate plant expansion.

The Company then proceeds to take a similar position to the Brandywine Bay elevated storage tank. It argues that if it had provided the wastewater treatment plant in a piecemeal fashion, the cost of the plant would have been $273,600. This is in excess of the investment in the plant and, therefore, there is no excess capacity.

The Commission again finds the Company position to be speculative and rejects it for the reasons discussed above. The Commission agrees with the Public Staff position and concludes that the appropriate amount to include in rate base for the Brandywine Bay wastewater treatment plant is $213,770.

Cabarrus Woods Storage Tank

This issue involves the amount of investment that should be allowed in rate base for the elevated water storage tank in the Cabarrus Woods Subdivision. Public Staff witness Rudder recommended that $179,320 of the Company's investment in this facility be excluded from rate base, whereas the Company includes its entire investment. The Public Staff explained the storage capacity of the elevated tank serving Cabarrus Woods, Victoria Park, Bradford Park, and Cambridge subdivisions is 250,000 gallons. The tank has capacity to serve 1,250 customers (250,000 gpd ÷ 200 gpd/customer). As can be seen on Public Staff Daniel Rebuttal Cross Examination Exhibit 5, there is ample water supply when the pumping capacity of the wells is factored in. In fact, in this example, at least one of the larger wells could be lost and an adequate supply would still be available.

Regarding the different calculations used by witnesses Rudder and Daniel, the Commission concludes there is an adequate supply of water in either case. The Commission does note, however, that the Public Staff late filed Exhibit No. 1 demonstrates that the twelve hour pumping duration is a design standard. There is no limitation on the time a utility may actually operate its wells. A total of 640 customers were being served by the tank at the end of the test year period, requiring 51.2% (640 ÷ 1,250) of the capacity. The Public Staff recommends disallowing $179,320 of the Company's $367,459 investment ($367,459 x 48.8%).

The Company argues that if it had provided the elevated storage in a piecemeal fashion, the cost of the elevated tank would have been $814,680. This is in excess of the investment of the tank and, therefore, there is no excess capacity.

The Commission again rejects this speculative argument. The Commission agrees with the Public Staff position and concludes that the appropriate amount to include in rate base for the Cabarrus Woods elevated water storage tank is $188,139.

Cabarrus Woods Sewer Plant

This issue involves the amount of investment that should be allowed in rate base for the wastewater treatment plant in the Cabarrus Woods Subdivision. Public Staff witness Rudder recommended that $201,764 of the Company's investment in this facility be excluded from rate base, whereas the Company includes its entire investment. The Public Staff determined that the combined capacity of the existing 150,000 gpd plant and the 300,000 gpd expansion is 450,000 gpd. There were 763 sewer customers being served in Cabarrus Woods, Victoria Park, Stonehedge (renamed Bradford Park), Cambridge and Steeplechase Subdivision at the end of the test year. The treatment plant has capacity to serve 1,125 customers (450,000 gpd ÷ 400 gpd/customer). The 763 end of test year customers required 67.8% (763 ÷ 1,125) of the plant's capacity, resulting in 32.2% excess capacity. Carolina Water's investment in the plant expansion is $626,597. The Public Staff recommends that $201,764 be disallowed as excess capacity ($626,597 x 32.2%).

The Company again takes a similar position to the Brandywine Bay elevated storage tank. It argues that if it had provided the wastewater treatment plant in a piecemeal fashion, the cost of the plant would have been $761,400. This is in excess of the investment of the plant and, therefore, there is no excess capacity.

The Commission again finds the Company position to be speculative and therefore rejects it. The Commission agrees with the Public Staff position and concludes that the appropriate amount to include in rate base for the Cabarrus Woods wastewater treatment plant is $424,833.

Danby Sewer Plant

This issue involves the amount of investment that should be allowed in rate base for the wastewater treatment plant in the Danby Subdivision. Public Staff witness Rudder recommended that $117,876 of the Company's investment in this facility be excluded from rate base, whereas the Company includes its entire investment. The Public Staff determined the plant was expanded from 130,000 gpd to 630,000 gpd at a cost of $209,000 to Carolina Water. In this rate case there are 686 end of test year customers being served by the treatment plant. The plant has capacity to serve 1,575 (630,000 gpd ÷ 400 gpd/customer) customers. The 686 customers are utilizing 43.6% (686 ÷ 1,575) of the capacity. The Public Staff recommends disallowing $117,876 ($209,000 x 56.4%) as excess capacity.

The Company argues similarly to its position on the previous facilities. It states that if it had provided the wastewater treatment plant in a piecemeal fashion, the cost of the plant would have been $273,600. This is in excess of

the investment of the plant and, therefore, there is no excess capacity. Secondly, the Company argues that since it was able to acquire a larger used plant at a substantially lower price than it would have paid for a plant of this size, it should be allowed to base capacity calculations on the basis of 200,000 gpd, not on 500,000 gpd.

The Commission again finds the Company position to be speculative and rejects it. As to the Company's second argument, the Commission points out that it has already rejected this approach in other cases. Rates cannot be set on avoided costs or what a company might have spent. The Commission agrees with the Public Staff position and concludes that the appropriate amount to include in rate base for the Danby wastewater treatment plant is $91,124.

WATER SERVICE CORPORATION PLANT IN SERVICE

The parties disagree on the amount of plant in service allocated to CWS from WSC. The Public Staff recommends an amount of $454,907 for water operations, which is $157,756 less than the Company's proposed amount of $612,663, and an amount of $214,074 for sewer operations, which is $41,271 more than the Company's proposed amount of $172,803.

The differences in the level of plant in service allocated to CWS from WSC recommended by the Company and the Public Staff is composed of the following items:

Item	Amount	
	Water	Sewer
Allocation Adjustment	$ (78,546)	$ 78,546
Excessive Plant Items	1,067	503
WSC Adjustment	(80,277)	(37,778)
Total	$(157,756)	$ 41,271

Allocation Adjustment

The parties agree that plant in service should be allocated between water and sewer based on customer equivalents. However, the Company made an error in allocating WSC plant in service between water and sewer operations in its Final Exhibit. Therefore, the difference between the parties concerning the allocation between water and sewer is due to an error made by the Company and the proper allocation methodology is uncontroverted.

Excessive Plant Items

Public Staff witness Pleasant stated in her prefiled testimony that there were excessive items included in the WSC rate base. She stated, "For example, included in rate base is a $4,100 bird cage, a $2,400 toilet, capitalized landscaping, and design time for an interior decorator." Ms. Pleasant further stated concerning the 15% WSC adjustment, "It should be noted that I did not factor into my analysis any adjustments for the excessive plant items."

Company witness Wenz, in his adoption of Mr. O'Brien's prefiled rebuttal testimony, said that he agreed with the net addition to CWS rate base for WSC plant recommended by the Public Staff but stated that this amount should be further reduced by $1,570, which represents the CWS portion of the parrot cage and toilet mentioned by Public Staff witness Pleasant in her prefiled testimony. As discussed later in this Order, Ms. Pleasant made an overall adjustment to reduce costs allocated to CWS from WSC due to problems encountered during the audit. Although the excessive plant items were not included in the calculation of the WSC adjustment, the overall adjustment was intended to adjust for various problems encountered during the audit, including these excessive items included in the WSC rate base.

As is discussed later in this Order, the Commission concludes that the Public Staff's overall WSC adjustment is proper. The Commission concludes that an adjustment need not be made for the excessive plant items included in the WSC rate base, but that these items are handled properly in the WSC adjustment.

WSC Adjustment

As discussed elsewhere in this Order, the Commission concludes that the WSC rate base allocated to CWS should be reduced by 15%.

WATER SERVICE CORPORATION ACCUMULATED DEPRECIATION

The parties disagree on the amount of accumulated depreciation allocated to CWS from WSC. The Public Staff recommends an amount of $158,042 for water operations, which is $55,111 less than the Company's proposed amount of $213,153, and an amount of $74,373 for sewer operations, which is $14,253 more than the Company's proposed amount of $60,120.

The differences in the level of accumulated depreciation allocated to CWS from WSC recommended by the Company and the Public Staff are composed of the following items:

Item	Amount	
	Water	Sewer
Allocation Adjustment	$(27,327)	$ 27,327
Excessive Plant Items	106	51
WSC Adjustment	(27,890)	(13,125)
Total	$(55,111)	$ 14,253

Allocation Adjustment

The parties agree that accumulated depreciation should be allocated between water and sewer based on customer equivalents. However, the Company made an error in allocating WSC accumulated depreciation between water and sewer operations in its Final Exhibit. Therefore, the difference between the parties concerning the allocation between water and sewer is due to an error made by the Company and the proper allocation methodology is uncontroverted.

Excessive Plant Items

As discussed previously, the Commission concludes that an adjustment need not be made for the excessive plant items included in the WSC rate base. These items are handled properly in the WSC adjustment.

WSC Adjustment

As discussed elsewhere in this Order, the Commission concludes that the WSC accumulated depreciation allocated to CWS should be reduced by 15%.

WATER SERVICE CORPORATION ACCUMULATED DEFERRED INCOME TAXES

The parties disagree on the amount of ADIT allocated to CWS from WSC. The Public Staff recommends an amount of $26,976 for water operations, which is $9,428 less than the Company's proposed amount of $36,404, and an amount of $12,695 for sewer operations, which is $2,427 more than the Company's proposed amount of $10,268.

The differences in the level of ADIT allocated to CWS from WSC recommended by the Company and the Public Staff is composed of the following items:

Item	Amount Water	Sewer
Allocation Adjustment	$(4,667)	$ 4,667
WSC Adjustment	(4,761)	(2,240)
Total	$(9,428)	$ 2,427

Allocation Adjustment

The parties agree that ADIT should be allocated between water and sewer based on customer equivalents. However, the Company made an error in allocating WSC ADIT between water and sewer operations in its Final Exhibit. Therefore, the difference between the parties concerning the allocation between water and sewer is due to an error made by the Company and the proper allocation methodology is uncontroverted.

WSC Adjustment

As discussed later in this Order, the Commission concludes that the WSC ADIT allocated to CWS should be reduced by 15%.

WORKING CAPITAL ALLOWANCE

The Company and the Public Staff are recommending different amounts of working capital due to the differing levels of expenses and tax accruals recommended by each party. The Company included an amount of $281,280 for its water operations and an amount of $191,535 for its sewer operations. The Public Staff included an amount of $276,407 for CWS's water operations and $187,554 for CWS's sewer operations.

Based upon its conclusions reached elsewhere in this Order regarding the appropriate level of expenses and certain taxes, the Commission determines that the appropriate level of working capital is $464,511, of which $276,781 is applicable to water operations and $187,730 is applicable to sewer operations.

DEFERRED CHARGES

The final component of rate base on which the Public Staff and the Company disagree is deferred charges. The Company has recommended that deferred charges in the amount of $936,019 be included in rate base. The Public Staff has recommended that $646,730 of deferred charges be included. The difference of $289,289 is composed of VOC testing costs of $40,015 and rate case expense of $249,274.

The Company is advocating that $40,015 of VOC testing costs be included in deferred charges. Company witness Wenz addressed this issue in his rebuttal testimony. He stated that there is not an ongoing cycle of VOC tests as presumed by the current regulatory treatment since VOC testing requirements are on a three or five year schedule. He testified that it was appropriate to amortize these testing costs over three to five years and to include the unamortized cost in rate base. The Commission points out, however, that CWS has not proposed to amortize costs in this proceeding since the Company accepted the Public Staff's level of on-going costs.

In her prefiled testimony, Public Staff witness Dietz stated that she removed VOC testing costs from deferred charges consistent with the Commission's decision in Docket No. W-354, Sub 111. During cross-examination, Ms. Dietz further testified that it was her understanding that the testing requirements have changed from the three and five year schedule to an annual testing requirement. Ms. Dietz explained that the Public Staff has included an annual level in the on-going expenses for VOC testing costs as well as an additional amount in the surcharge based upon current testing requirements. She reiterated her belief that her adjustment was consistent with the Commission's decision in Sub 111 that a representative level of VOC testing costs can be and has been determined and therefore there is no unamortized balance to include in deferred charges.

The Commission continues to believe that VOC tests are regular tests and should not be included in deferred charges. In Docket No. W-354, Subs 81 and 111, the Company's last two general rate proceedings, the Commission did not authorize specific cost recovery of VOC testing expenses but instead included a normalized level of what those ongoing costs would be. Therefore, consistent with our Orders in the Company's last two rate proceedings, the Commission has determined that the Public Staff adjustment to reduce rate base by $40,015 for VOC costs is appropriate and that no amount of deferred VOC testing charges should be included in rate base.

The parties also disagree on the appropriate amount of unamortized rate case expense to include in deferred charges. The unamortized balances included by the Company and the Public Staff are summarized as follows:

Item	Company	Public Staff	Difference
Sub 69 appeal	$ 2,278	$ 4,557	$ 2,279
Sub 81	4,038	8,077	4,039
Sub 111 approved	48,431	96,862	48,431
Sub 111 additional	52,461	0	(52,461)
System specific	136,452	136,452	0
Sub 118	148,150	68,370	(79,780)
Sub 111 appeal	35,063	0	(35,063)
Sub 128	136,719	0	(136,719)
Total	$563,592	$314,318	$(249,274)

In Finding of Fact No. 67, the Commission determined the appropriate level of rate case expense to include in this proceeding. The first area of disagreement between the Company and the Public Staff pertains to the proper unamortized balance related to the Sub 69 appeal, Sub 81, and Sub 111 approved proceedings. Both parties agreed on the amount and the time period of the amortization, however, it appears that the Public Staff's unamortized balances for the above proceedings also included the annual expense portion reflected in the cost of service. Therefore, the Commission concludes that the proper level of unamortized balances related to rate case expense for Sub 69 appeal, Sub 81, and Sub 111 approved proceedings, to be included in deferred charges, a component of rate base, is $2,278, $4,038, and $48,431, respectively.

The next difference between the parties relates to Sub 111 additional rate case costs. The Company included an unamortized balance of $52,461 in its deferred charges whereas the Public Staff disallowed the entire amount related to these additional rate case costs. As stated earlier, the discussion related to this category is found in Finding of Fact No. 67. The Commission is in agreement with the Public Staff and concludes that the entire unamortized balance in respect to Sub 111 additional rate case costs of $52,461, as proposed by the Company, be disallowed in this proceeding.

Another difference in unamortized rate case expense relates to Sub 118, the tap fee investigation, which is also discussed in Finding of Fact No. 67. The Public Staff recommends an unamortized balance of $68,370, while the Company proposed an unamortized balance of $148,150. Based on the evidence and conclusions discussed elsewhere in the Order, the Commission finds the proper level of unamortized balance related to the tap fee investigation proceeding to be $74,074.

The essence of the final disagreement between the Company and the Public Staff is whether the adjustments to amortize the rate case expenses over two years and the Sub 111 appeal costs over three years are a normalization of test year expenses or a setting aside of specific costs for specific recovery. Public Staff witness Dietz clearly testified that the intent of the Public Staff's adjustments was to normalize expenses. In her prefiled testimony, she stated that there are "two approaches to amortization. In one approach the regulator

explicitly creates a regulatory asset or regulatory liability to be amortized over a period of years." According to Ms. Dietz, this approach is appropriate for an unusually large item. She went on to explain that the other approach is normalization in which "the regulator recognizes that the test year revenue and or expense levels contain some abnormalities. The regulator's goal is to determine a representative level of this type of item for the purpose of setting rates. The regulator does not intend to create a regulatory asset or liability." Ms. Dietz concluded by stating that rate case expenses should be handled under the normalization approach because of their ordinary nature.

During cross-examination, Ms. Dietz was questioned about the Commission's order in the Nantahala Power and Light rate proceeding, Docket No. E-13, Sub 157, in which the topic of normalization versus amortization for rate case expense was discussed. Ms. Dietz responded that it was true the Public Staff had proposed the same type of normalization treatment for rate case expense in that docket, but the Commission had rejected the Public Staff's recommendation. However, Ms. Dietz went on to state that she believed there to be certain important distinctions between Nantahala and CWS. Ms. Dietz testified that in its Order in the Nantahala proceeding, the Commission specifically mentioned that Nantahala did not have a regulatory staff on hand to review matters on a day in and day out basis. That is not the case with CWS. Furthermore, Ms. Dietz stated that Nantahala had not had a rate proceeding for approximately ten years. CWS, on the other hand, has a fairly regular schedule for seeking rate relief. According to Ms. Dietz, these two distinctions are very important when setting an accurate representative level.

In his rebuttal testimony, Company witness Wenz argued that once again CWS was being "placed at the leading edge of regulatory policy changes desired by the Public Staff." He further testified that the Public Staff has not provided "a compelling case for the Commission to deviate from past practice. The Company has submitted documentation for recovery of specific expenses." He also stated that the method proposed by the Public Staff would not allow the Company to recover its prudently incurred regulatory costs.

This Commission has, in the past, consistently included unamortized rate case expense in deferred charges. This is the second case in which this issue has been contested. Excluding operating ratio companies and cases that were settled prior to being resolved by the Commission, there has not been one case in which a public utility company had sought to amortize rate case expenses and the Commission had denied such treatment and instead treated rate case expenses as a normalized test year expense. We believe that this treatment is fair and should be continued. The Public Staff has offered insufficient justification for altering this long-standing policy based on its testimony in this case. Therefore the Commission concludes that the unamortized rate case expenses for Sub 111 appeal and Sub 128 rate case should be included in deferred charges in the amount of $46,751 and $123,102, respectively.

Based on the foregoing, the Commission finds that the appropriate deferred charges to be included in this proceeding is $767,538, of which $594,873 is applicable to water operations and $172,665 is applicable to sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the Company's reasonable rate base used and useful in providing service is $16,947,386, comprised as follows:

Item	Water Operations	Sewer Operations	Total
Plant in service	$28,174,084	$20,589,399	$48,763,483
Accumulated depreciation	(2,303,681)	(1,603,758)	(3,907,439)
Contributions in aid of construction	(10,176,246)	(10,001,393)	(20,177,639)
Advances in aid of construction	(115,420)	(90,922)	(206,342)
Plant acquisition adj.	(1,709,742)	(1,167,380)	(2,877,122)
Accumulated deferred income taxes	(804,766)	(162,310)	(967,076)
Customer deposits	(80,762)	(64,975)	(145,737)
Excess book value	(1,559,117)	(2,539,013)	(4,098,130)
NCUC bonds	30,000	50,000	80,000
Gain on sale and flow back of taxes	(196,947)	(92,681)	(289,628)
Excess capacity	(341,320)	(514,608)	(855,928)
Water Service Corporation plant in service	454,907	214,074	668,981
Water Service Corporation accumulated depreciation	(158,042)	(74,373)	(232,415)
Water Service Corporation acc. deferred income taxes	(26,976)	(12,695)	(39,671)
Working capital allowance	276,781	187,730	464,511
Deferred charges	594,873	172,665	767,538
Total original cost rate base	$12,057,626	$4,889,760	$16,947,386

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 45

The Public Staff calculates service revenues at $7,861,696 while the Company calculates service revenues at $7,608,683, for a difference of $253,013. This difference is due to a dispute between the parties with respect to the number of end-of-period customers. As stated earlier, the Public Staff has included revenues for customers in the Atlantic Beach section of the Pine Knoll Shores service area and the Farmwood B service area while the Company has deleted customers in these areas.

The Commission concludes that it is appropriate to include the Farmwood B and Atlantic Beach customers in order to correctly match revenues and expenses to end of period. Accordingly, the Commission concludes that the appropriate level of service revenues for use in this proceeding is $7,861,696 of which $4,976,704 relates to water operations and $2,884,992 relates to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 46

The Company and the Public Staff agree that the appropriate level of miscellaneous revenue to include in this proceeding is $143,520, of which $100,007 is applicable to water operations and $43,513 is applicable to sewer operations. Therefore, the Commission concludes that these levels are reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 47-49

The evidence for these findings of fact is contained in the testimony and exhibits of Company witness Wenz and Public Staff witness Dietz.

Witnesses for both the Company and the Public Staff agree that the appropriate rate of uncollectible revenue is .86%. The Public Staff applied this rate to both service revenue and miscellaneous revenue. The Company applied this rate to both service revenue and miscellaneous revenue until it filed its final position on April 18, 1994. At that point, however, the Company only applied the uncollectibles rate to service revenue. The Commission notes that this change of position came well after the March 31, 1994, deadline for updated prefiled testimony established by earlier Order in this docket. The remaining difference in the levels recommended by the parties is due to the differing levels of service revenue recommended by the parties.

There is little, if any, evidence in the record on this issue. At the time of the hearing it was not apparent that the parties disagreed on the method of calculating the appropriate level of uncollectibles to include in this proceeding. In its final position, which was filed after the close of the hearing, the Company changed its methodology yet provided no basis or reasoning for this change. Therefore, the Commission concludes that it is appropriate to calculate uncollectibles on both service revenue and miscellaneous revenue as the Public Staff has proposed.

Based upon the above and the levels of revenue found reasonable in Findings of Fact Nos. 45-46, the Commission concludes that the appropriate level of uncollectibles is $68,845, of which $43,660 is applicable to water operations and $25,185 is applicable to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate end of period level of gross service revenue is $4,976,704 for water operations and $2,884,992 for sewer operations and that the appropriate level of miscellaneous revenue is $100,007 for water operations and $43,513 for sewer operations. The Commission also concludes that it is appropriate to reduce these amounts by $43,660 for water operations and $25,185 for sewer operations as uncollectible revenue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 50

The Company and Public Staff disagreed on the appropriate customer growth factors in this case. The Company based its factor on the loss of all the Pine Knoll Shores customers while the Public Staff used the end of period customers.

The Commission has already concluded that it is appropriate to use the end of period customers as espoused by the Public Staff. As such, the Commission finds that the customer growth rates calculated by the Public Staff are the proper factors to be applied in this case. Additionally, the Commission agrees with the Public Staff that it is not appropriate to apply the customer growth rate to transportation expense and that a customer growth should be applied to purchased power for water only.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 51-57

The evidence supporting these findings of fact is found in the testimony of Public Staff witnesses Rudder and Dietz and Company witnesses Daniel and Wenz.

The following table summarizes the positions of the parties for operation and maintenance expenses:

Item	Company	Public Staff	Difference
System specific costs	$ 38,253	$ 0	$(38,253)
Salaries and wages - O&M	1,194,954	1,195,974	1,020
Purchased power	731,195	742,279	11,084
Purchased water	59,742	59,742	0
Maintenance and repair	808,137	827,736	19,599
Maintenance testing	214,602	214,602	0
Chemicals	172,048	177,542	5,494
Transportation	148,900	147,276	(1,624)
Operating expenses charged to plant	(200,000)	(254,923)	(54,923)
Outside services - other	77,621	77,621	0
Water service charges - O&M	128,479	128,479	0
Total	$3,373,931	$3,316,328	$(57,603)

As the above table indicates, the Public Staff and the Company agree on the amounts for purchased water, maintenance testing, outside services - other, and water service charges - O&M. Therefore, the Commission concludes the appropriate levels for these items are the ones set forth by both parties.

In its Proposed Order, the amounts reflected by the Company include certain amounts related to system specific costs. There is no evidence in the record to support the inclusion of such costs and such amounts were not included by the Company prior to the filing of its Proposed Order. Inasmuch as there is no basis or reasoning for this change of position, the Commission concludes that such amounts shall be excluded from operation and maintenance expenses as well as general expenses as hereinafter set forth.

SALARIES AND WAGES - O&M

The difference in the Company's position and the Public Staff's position regarding salaries and wages - O&M is the Public Staff's adjustment to reallocate salaries based upon the customer numbers used by the Public Staff. Also, the Public Staff made an adjustment to treat CWS and non-CWS systems consistently regarding salary allocation. In Finding of Fact No. 4, the

Commission determined that the customer numbers advocated by the Public Staff are the appropriate numbers to use for this proceeding. Therefore, the Commission concludes that the Public Staff's adjustment to salaries and wages - O&M is appropriate and the reasonable level to include in this proceeding is $688,961 for water operations and $507,013 for sewer operations.

PURCHASED POWER

There are two differences in the parties' positions on the appropriate level of purchased power to include in this proceeding. The first difference is customer growth. In Finding of Fact No. 50, the Commission determined the appropriate customer growth rates and the accounts impacted by customer growth. Based upon that finding of fact, it is appropriate to apply a .90% growth rate to purchased power for water operations.

The second difference between the parties relates to certain alleged increases in electric rates charged to CWS by its electric power suppliers. On CJW Rebuttal Exhibit 6, Company witness Wenz provided a list of six power suppliers along with a calculation of the impact of the electric rate increases which the Company believes should be included in this proceeding.

In her revised testimony, Public Staff witness Dietz testified that she adjusted test year purchased power to reflect increases by two of the Company's power suppliers. Ms. Dietz contended that the Company did not provide documentation to adequately support the other power rate increases. During cross-examination, Ms. Dietz explained that after reviewing the information provided by the Company on March 24, 1994, it was clear that the Company had not considered all aspects of a rate change. For example, Ms. Dietz discussed one situation where it appeared the Company had only considered the change to the base facility charge without considering the change to the cost per kWh.

The concerns cited by Ms. Dietz regarding the Company's calculations are valid concerns. It is not appropriate to only consider the portion of a change in costs that favors the Company. If there is an increase in the base facility charge but a decrease in the cost per kWh, then certainly it is only equitable to consider both sides. Based upon the information provided and the uncertainty of the actual dollar impact of the changes in power costs disputed by the parties, the Commission finds that the Public Staff's adjustment to include only two of the power suppliers' rate increases is appropriate.

Therefore, the Commission determines that the appropriate level of purchased power to include in this proceeding is $742,279, of which $461,927 relates to water operations and $280,352 relates to sewer operations.

MAINTENANCE AND REPAIR

The difference in the parties' positions regarding maintenance and repair is solely customer growth. The Commission addressed this topic in Finding of Fact No. 50. Based upon that decision, the Commission determines that the appropriate level of maintenance and repair is $827,736, of which $431,606 relates to water operations and $396,130 relates to sewer operations.

CHEMICALS

The difference in the parties' positions regarding chemicals is customer growth. This issue was addressed in Finding of Fact No. 50. Based upon that decision, the Commission determines that the appropriate level of chemicals is $177,542, of which $122,185 relates to water operations and $55,357 relates to sewer operations.

TRANSPORTATION

There are several differences in the parties' calculations of the appropriate level of transportation expense to include in this proceeding. One difference is customer growth. The Commission addressed this issue in Finding of Fact No. 50. Another difference relates to the allocation of transportation expense between CWS and non-CWS and then between water and sewer operations. Both parties have agreed that transportation expense should be allocated on the basis of operators' salaries for this proceeding. However, the parties have recommended different levels of operators' salaries. The Commission determined the appropriate level of operators' salaries in Finding of Fact No. 51, and has used this determination when calculating the appropriate level of transportation expense.

A third difference relates specifically to the transportation expense allocated to sewer operations. In its final position, the Company erroneously included the amount of transportation expense allocated to water operations as also being allocated to sewer operations. This resulted in $22,449 being allocated to sewer above the amount actually calculated on the Company's supporting workpapers.

Finally, the Company has proposed increasing transportation costs to reflect a 4.3% increase in the gasoline excise tax. Public Staff witness Dietz argued in her prefiled testimony that the Company's proposal should be rejected. She stated that "many factors impact the retail cost of gasoline" and that "it is not reasonable to single out one component of the price of gasoline without considering how all of the other components have changed." Finally, Ms. Dietz testified that the Company had not provided support for an increase in its annual level of gasoline cost above the test year level. During cross-examination, Ms. Dietz reiterated her belief that the Company's adjustment was not proper because the Company had not provided any documentation to support the impact of its adjustment which was to increase total test year gasoline costs by 4.3%.

The Company has not actually stated that its overall, on-going level of gasoline costs has increased by 4.3% over the test year level. However, that is the impact of the Company's adjustment. The Commission does not believe one can assume that a 4.3% increase in the gasoline excise tax has led to a 4.3% increase in the Company's cost of gasoline. To so conclude would mean the pump price of gasoline increased in lock-step with the tax increase, which was not proven. Ms. Dietz has specifically testified that she believes the Public Staff's recommended level of transportation expense is representative of the Company's on-going level and the Commission agrees. In summary, the Commission finds that the Company's adjustment to increase transportation expense for the increase in the gasoline excise tax is not appropriate.

After considering the above, the Commission has determined that the appropriate level of transportation expense to include in this proceeding is $147,276, of which $84,841 relates to water operations and $62,435 relates to sewer operations.

OPERATING EXPENSES CHARGED TO PLANT

The final difference in the parties' positions on operation and maintenance expenses relates to operating expenses charged to plant. In this instance, the Company and the Public Staff have used different methodologies to calculate this contra-expense.

In his original and updated filings, Mr. Wenz testified that the Company adjusted operating expenses charged to plant "proportional to the change in operators' salaries and wage expense." Mr. Wenz further stated that "this methodology is consistent with past rate cases." However, the Company's position changed when it filed its rebuttal testimony. In his rebuttal, Mr. Wenz testified that the Company now believes "the formula used to calculate operating expense charged to plant as a function of salaries is not appropriate" despite the fact that this is the methodology used by both the Company and the Public Staff in previous cases. Mr. Wenz stated that he does not believe this methodology provides the appropriate on-going level of operating expenses charged to plant because the number of major projects for capital improvements is diminishing. Therefore, Mr. Wenz recommends using an amount of $200,000 for operating expenses charged to plant. This level was estimated based upon the 1993 per books level.

The Public Staff calculated operating expenses charged to plant for this proceeding by determining the test year per books ratio of operating expenses charged to plant to operators' salaries. This ratio was then applied to the Public Staff's recommended level of operators' salaries.

After reviewing the evidence on this issue, the Commission is left with many questions. Mr. Wenz's discussion in his rebuttal does not address all of the possible aspects of the circumstances he describes. The $200,000 proposed by the Company is an estimate based upon the 1993 per books amount. There could be a variety of reasons the 1993 level is less than the 1992 test year level. Operating expenses charged to plant is a contra-expense not only for salaries, but also for benefits, such as insurance, pensions, and payroll taxes. The decrease in the level of operating expenses charged to plant in 1993 could be the result of a change in the mix of benefits. Another possible explanation is that the employees previously performing the work for the capital projects for CWS have been re-assigned to affiliates to complete capital projects for those companies. The Commission does not believe the Company has supported its position, nor has it provided enough information to cause the Commission to deviate from the methodology used in the past. The Commission does not know how the 1993 per books level of expenses charged to plant correlates to the pro forma levels of salaries, employee benefits, and transportation expenses as calculated in this rate case.

Based upon the above and the Commission's finding on the appropriate level of operators' salaries, the Commission finds that the appropriate level of operating expenses charged to plant is $(254,923), of which $(180,646) is related to water operations and $(74,277) is related to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expenses is $3,316,328, of which $1,898,432 is applicable to water operations and $1,417,896 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 58-72

The evidence supporting these findings of fact is found in the testimony of Public Staff witnesses Rudder, Dietz, and Pleasant and Company witnesses Daniel, Wenz, and O'Brien. The following chart indicates the differences between the Public Staff and the Company for general expenses:

Item	Company	Public Staff	Difference
System specific costs	$ 15,005	$ 0	$ (15,005)
Salaries and wages - general	203,816	205,934	2,118
Office supplies and other office expense	105,912	109,292	3,380
Rate case expense	350,142	249,459	(100,683)
Pension and other benefits	338,628	339,355	727
Rent	48,530	48,530	0
Insurance	140,427	140,427	0
Office utilities	108,897	108,897	0
Meter reading	8,301	8,301	0
Miscellaneous	10,052	10,052	0
Water service charges - G&A	128,478	128,478	0
Interest on cust. deposits	8,784	8,784	0
Northbrook	(15,815)	(58,320)	(42,505)
Total	$1,451,157	$1,299,189	$(151,968)

As shown above, the Company and the Public Staff agree on the amounts for rent, office utilities, meter reading, miscellaneous, water service charges G&A, and interest on customer deposits. Therefore, the Commission concludes the appropriate levels for these items are the ones set forth by both parties. The above table also indicates that the Company and the Public Staff are in agreement for total insurance. However, there is some difference in the parties' allocation of insurance between water and sewer operations. Therefore, insurance will be discussed as a separate item.

SYSTEM SPECIFIC COSTS

As the Commission so concluded in Evidence and Conclusions for Findings of Fact Nos. 51-57, the amount proposed by the Company for system specific costs will be excluded from general expenses for purposes of this proceeding.

SALARIES AND WAGES - GENERAL

The next area of disagreement between the parties on general expenses is salaries and wages - general. Both the Company and the Public Staff have made adjustments to include the salary of an employee omitted from the Company's original filing and to allocate the regional office manager's salary to all systems. However, the adjustments recommended by the parties differ slightly, presumably due to allocation differences that result from the parties using different customer numbers. Also, the Public Staff has included additional adjustments for the Pine Knoll Shores and Charlotte offices to reflect the customer numbers it is advocating.

In Finding of Fact No. 4, the Commission determined that the customer numbers advocated by the Public Staff are the appropriate numbers to use for this proceeding. Therefore, the Commission concludes that the Public Staff's calculation of salaries and wages - general is reasonable. The Commission finds that the appropriate level of salaries and wages - general to include in this proceeding is $141,941 for water operations and $63,993 for sewer operations.

OFFICE SUPPLIES AND OTHER OFFICE EXPENSE

The difference in the parties' positions regarding office supplies and other office expense is solely customer growth. The Commission addressed this topic in Finding of Fact No. 50. Based upon that decision, the Commission determines that the appropriate level of office supplies and other office expense is $109,292, of which $75,152 relates to water operations and $34,140 relates to sewer operations.

RATE CASE EXPENSE

The following table summarizes the parties' positions on the various components of rate case:

Item	Company	Public Staff	Difference
Sub 69 appeal	$ 2,279	$ 2,279	$ 0
Sub 81	4,039	4,039	0
Sub 111 approved	48,431	48,431	0
Sub 111 additional	52,461	0	(52,461)
System specific	34,113	34,113	0
Sub 118	37,037	17,093	(19,944)
Sub 111 appeal	35,063	23,375	(11,688)
Sub 128	136,719	120,129	(16,590)
Total	$350,142	$249,459	$(100,683)

The parties agree on the expense amount to include for the Sub 69 appeal, Sub 81, Sub 111 approved, and system specific. Therefore, the Commission concludes the appropriate levels for these items are the ones set forth by both parties.

Sub 111 Additional

The first difference between the parties regarding rate case expense is the inclusion of costs for the Sub 111 proceeding above and beyond the level found reasonable in that proceeding. In the Sub 111 rate case, the Commission determined that $217,939 was the reasonable cost for that proceeding and authorized amortization of that amount over three years. Now the Company seeks to include additional costs it incurred above the $217,939 found reasonable by the Commission. In its original filing, the Company included $125,970 amortized over three years as the additional Sub 111 costs. In Company witness Wenz's rebuttal testimony, the Company updated its position to include $104,922 amortized over two years for the additional Sub 111 costs. Mr. Wenz testified that some of the additional cost was attributed to a controversy caused by the Public Staff regarding customer numbers, Public Staff post-hearing discovery, and exceptions to the Recommended Order filed by both parties. He further stated that "it would be unfair and inappropriate for CWS to be denied recovery of these costs, as they were not within our control, were unforeseen costs associated with participation in the regulatory arena, and are extraordinary in nature."

Public Staff witness Dietz testified that she had not included the Sub 111 additional costs consistent with the Commission's Order in Docket No. W-354, Sub 81, which found that it was improper to go back in time and allow additional regulatory costs. During cross-examination, Ms. Dietz also testified that she had been advised by counsel that inclusion of additional Sub 111 costs may constitute retroactive ratemaking. Ms. Dietz further testified that her treatment of the Sub 111 costs was consistent with her treatment of other expense items. Generally, the Commission sets what it considers to be a representative level of all expenses in a rate case proceeding. In the next rate case, there is no true-up of prior expenses whether they are rate case expenses, salaries, transportation expenses, or any other expense. Rather the Commission once again sets a representative level on a going-forward basis. Ms. Dietz reiterated her belief that the position taken by the Public Staff was consistent with Commission policy on the issue of additional rate case expense as well as every other expense determined in a rate case.

The Commission agrees with the Public Staff that it would be improper to go back in time and allow these additional regulatory costs for the same reasons set forth in our Orders in Docket No. W-354, Subs 69 and 81 and Docket No E-13, Subs 29, 35, and 44. Given the information available, the Commission sets a reasonable level for rate case expense in each proceeding. If the Commission were to true-up past expenses to guarantee utilities exact recovery, not only would the past procedure of setting rates prospectively for a representative level of expenses would be negated, but the Commission would be advocating retroactive ratemaking. Therefore the Commission concludes that rate expense should be reduced by $52,461 to reflect the removal of Sub 111 additional costs.

Sub 118

There are two issues for Sub 118 costs on which the parties do not agree. The first area of dispute relates to the legal costs incurred for the Sub 118 hearing. The Public Staff has included $14,261 less than the amount included by the Company. Public Staff witness Dietz testified during cross-examination that she had been informed by the Company just prior to taking the stand that there

was an additional legal invoice for the Sub 118 proceeding that she had not reviewed. Ms. Dietz stated that it was her understanding the Public Staff would be provided that invoice, and any change warranted based on that review would be reflected in the Public Staff's final position. The Public Staff's recommended level of costs for Sub 118 did not change from the revised filing to the final position filing. In its Proposed Order, the Public Staff indicated that in fact the invoice had never been received by the Staff for review.

In its rebuttal testimony the Company has removed the estimated cost related to legal fees and has replaced it with actual invoiced amounts. According to the Company, it is not clear as to whether the adjustment by Ms. Dietz to remove $14,261 related to legal fees is an effort to reduce the legal fees or to calculate an accurate amount.

Given the limited amount of evidence in the record on this issue, the Commission is not persuaded that the amount requested by the Company is unreasonable. Therefore, the Commission finds that the Public Staff's adjustment to exclude the $14,261 is inappropriate and the total cost associated with the Sub 118 proceeding is $185,187.

The second area of dispute relates to the Public Staff's adjustment to split the costs of the Sub 118 proceeding 50-50 between the shareholders and ratepayers. In her prefiled testimony, Ms. Dietz stated that she did not "believe that it is reasonable for the ratepayers to pay in rates for all of the costs of a proceeding concerning the Company's noncompliance with Commission rules, regulations, and orders." Ms. Dietz testified during cross-examination that although in Sub 118 the Commission had not accepted the Public Staff's recommended adjustment to rate base, the Commission had found that the Company's books were not in accordance with the Uniform System of Accounts or with generally accepted accounting principles. The Commission ordered the Company to correct its books as well as to conform its tariffs to its actual practices. Ms. Dietz further testified that the Commission had noted in its Sub 118 Order that all parties shared in the responsibility of failing to pursue certain issues in a timely manner, and that she believed that if all parties shared in the responsibility, then certainly CWS should share in the costs.

In his rebuttal testimony, Company witness Wenz stated that the Company believes all costs associated with the Sub 118 proceeding should be recovered from ratepayers by CWS. He testified that the Company was defending itself against an action brought about by the Public Staff, and since the Commission rejected the rate base adjustment proposed by the Public Staff in that proceeding, there is no basis for not allowing CWS to fully recover all of its Sub 118 costs.

After considering the evidence presented by the parties as well as reviewing Docket No. W-354, Sub 118, the Commission has determined that the 50-50 sharing of the costs associated with that proceeding is appropriate. The Commission rejected the Public Staff's proposed rate base adjustment, but as Ms. Dietz testified, the Commission ordered the Company to make several adjustments and corrections to its books and records. Furthermore, the Company was ordered to conform its tariffs on file with this Commission to its actual practices. The Commission also found that the Company had not complied with Commission gross-up requirements. The Company certainly contributed to the necessity of the Sub 118

proceeding and shares in the responsibility of these issues not being resolved earlier. The Commission points out that our Order in that case generally found for the Company only on the rate base adjustment issue and for the Public Staff on all CIAC and other accounting issues. Therefore, the Commission finds that it is appropriate for the shareholders to share equally in the costs of the Sub 118 proceeding.

The Commission concludes that the appropriate level of rate case expense related to Sub 118 to be included in the cost of service is $18,519.

Sub 111 Appeal

The next issue on which the parties disagree is the period of time over which Sub 111 appeal costs should be amortized in order to include a reasonable level in expenses. The Public Staff has used a period of three years while the Company has amortized the cost over two years.

In her prefiled testimony, Public Staff witness Dietz testified that she had amortized the costs for the Sub 111 appeal in order to include a normalized level in expenses.

At this point, the question is what level of costs should be included in expenses so that a representative level is achieved. Both the Company and the Public Staff have agreed that the costs of the current proceeding should be amortized over a two-year period. Presumably, this is because this Company generally has a rate proceeding approximately every two years. However, not every rate case will be appealed, so the Commission does not believe it is appropriate to amortize the costs of appeal proceedings and the costs of rate case proceedings over the same period of time. The Commission points out that the Subs 69 and 111 cases were appealed and the Sub 81 case was not appealed. Therefore, the Commission concludes that amortizing the costs of the Sub 111 appeal over three years will result in a representative level of $23,375 being included in rate case expense.

Sub 128

The final area of rate case expense on which the parties disagree is the cost for the current proceeding. The following table sets forth the positions of each party:

Item	Company	Public Staff	Difference
Legal fees	$110,000	$ 87,500	$(22,500)
Outside witness	12,500	12,500	0
Travel	7,000	7,000	0
Customer notice	32,829	32,829	0
Other	6,000	6,000	0
Printing	3,761	3,761	0
WSC personnel	100,848	90,168	(10,680)
Filing fee	500	500	0
Total	$273,438	$240,258	$(33,180)

As the table above shows, there are two specific areas on which the Public Staff and the Company disagree. The legal fee issue specifically relates to a Public Staff adjustment which Public Staff witness Dietz discussed in her prefiled testimony. Ms. Dietz testified that the Company had included $110,000 for estimated legal fees. She was informed by the Company that its attorney's current hourly rate was $220. Ms. Dietz further testified that the Public Staff had observed legal fees ranging from $95 per hour to $175 per hour and that CWS may pay the highest hourly legal fee on any water utility in the state. Ms. Dietz then explained that after consultations with counsel, she had recalculated legal fees as $87,500 based on an hourly rate of $175. During cross-examination, Ms. Dietz admitted that the Public Staff had made certain assumptions when calculating the adjustment to legal fees. However, Ms. Dietz went on to explain that she had requested information on rate case expense on five separate occasions, and four of the requests were very detailed in nature. The Company never provided the information detailing its calculation of legal expenses as requested by the Public Staff. Ms. Dietz testified that the information requested by the Public Staff was necessary to evaluate the reasonableness of the legal fees proposed by the Company.

Company witness Wenz testified on rebuttal that the Public Staff's calculation was "over simplistic and inaccurate." He argued that the Company strives to keep its legal costs low and has "reflected that philosophy by budgeting lower costs than have been incurred in the last two cases." He further testified that the Company estimated $110,000 for legal expenses "based on the actual expense incurred in the most recent cases for the Company and the allowance approved by the Commission in those cases."

Based upon the testimony of Ms. Dietz, the Company's responses were inadequate. Ms. Dietz looked at comparable attorney fees when calculating what the Public Staff believes to be a reasonable level of legal fees for this case. The Commission finds that a rate of $220 per hour, as proposed by the Company, is unreasonable. The Public Staff's rate of $175, in the opinion of the Commission, seems to be more reasonable. Therefore, the Commission concludes that the Public Staff's normalization adjustment to reduce legal fees by $22,500 is appropriate for this proceeding.

The next area on which the parties disagree is WSC personnel costs. The Public Staff has made two adjustments to WSC personnel costs which were not accepted by the Company. According to Ms. Dietz, the first adjustment was for $4,733 and was to remove time related to the Sub 111 rate case. The Company argues that the time related to the planning stages of this case and is properly included in the cost of this proceeding.

The Commission is yet again faced with deciding an issue on which there is relatively little information in the record of this proceeding. Based on the information provided by the Company, the Commission is not convinced that the adjustment recommended by the Public Staff is unreasonable. The Commission believes that the most reliable information on this issue was presented by the Public Staff. The Commission therefore concludes that the Public Staff's adjustment to remove WSC personnel time related to the Sub 111 proceeding is appropriate.

The second adjustment to WSC personnel costs made by the Public Staff was to offset the increase in Mr. Wenz's time with an hour-for-hour decrease to the time estimated for Company employee John Haynes.

The Commission is not convinced by the Public Staff's testimony that because Mr. Haynes filed no testimony his time for the proceeding had decreased as a result of Mr. Wenz's increased participation. There is no support for this supposition. It is also likely that Mr. Wenz was a supplement to Mr. Haynes' efforts and not a substitute. Therefore the Commission concludes that this WSC personnel adjustment recommended by the Public Staff is inappropriate.

Based on the foregoing, the Commission concludes that the total cost associated with this proceeding is $246,205. This amount should be amortized over two years for a reasonable and representative level of $123,103 to be included in rate case expense.

Based on the findings set forth above, the Commission concludes that the appropriate level of rate case expense to include in this proceeding is $253,859, of which $172,624 is applicable to water operations and $81,235 is applicable to sewer operations. This total is broken down as follows:

Item	Amount
Sub 69 appeal	$ 2,279
Sub 81	4,039
Sub 111 approved	48,431
System specific	34,113
Sub 118	18,519
Sub 111 appeal	23,375
Sub 128	123,103
Total	$253,859

PENSION AND OTHER BENEFITS

The differences between the parties relate to the differences in salary levels. Based on the Commission's approved level of salaries, the Commission finds that the level of pension and other benefits appropriate for use in this proceeding is $339,355, allocated $204,984 to water operations and $134,371 to sewer operations.

INSURANCE

There is no discussion of insurance in the record. Instead, the Commission must look to the schedules filed by the parties in this proceeding. At the time of the hearing, it appears that the parties were in agreement that insurance should be allocated $80,731 to water operations and $59,696 to sewer operations. However, in its final position schedules filed on April 18, 1994, the Company has changed this allocation to $80,914 to water operations and $59,513 to sewer operations. This change in position came well after the March 31, 1994, deadline. The Company put forth no justification for this change in allocation. The Commission also notes that the amount in question, $183, is immaterial, and the impact to the Company is $0 since the difference is merely an allocation

between water and sewer operations. Therefore, the Commission concludes that the appropriate level of insurance to include in this proceeding for water operations is $80,731 and the level to include for sewer operations is $59,696.

NORTHBROOK

The final component of general expenses on which the Company and the Public Staff disagree is Northbrook or Water Service Corporation (WSC) charges. The Public Staff recommends a net adjustment of ($58,320) to the WSC expenses while the Company recommends a net adjustment of ($15,815) to the WSC expenses.

The parties approached the issue of the reasonable level of Northbrook costs using two different methodologies. In its original filing, the Company included the costs related to WSC rate base as an expense item (interest charged as rent) and also included the per books depreciation expense. However, in its update filing, the Company changed its treatment of the costs of the WSC rate base and included these costs in rate base for this case rather than as an expense item. The Company also recalculated depreciation expense based on the amounts of WSC rate base for CWS. In its rebuttal filing, the Company made certain adjustments to insurance expense, rate base, and indirect charges.

Due to problems encountered by Ms. Pleasant in her audit, she was unable to accept the Company's amount of WSC charges allocated to CWS. Therefore, she performed an analysis considering adjustments for insurance expense, non-regulated allocations, and other expense adjustments. Based on her analysis, she determined that 15% of the WSC rate base, depreciation expense, and indirect expenses, should be disallowed in this case. She performed her analysis based upon the WSC costs included in the Company's original filing, in which the rate base costs were included as an expense item. She then applied her overall adjustment to rate base, depreciation, and indirect costs, which are the items included in its analysis. As indicated by Mr. Wenz in his direct testimony, theoretically the revenue impact of treating the WSC rate base costs as an expense item versus treating them as a rate base item is neutral. Therefore, the fact that Ms. Pleasant based her analysis on the original filing instead of the update filing should not change the end result of the analysis.

Although the Company disputed the individual adjustments included in the Public Staff's analysis, the Company did not dispute the methodology used by the Public Staff in determining its overall adjustment.

Ms. Pleasant provided many compelling reasons for her adjustment. She testified that the allocations to the non-regulated entities were not documented. She further testified that there were errors in the allocations for insurance expense, problems in determining allocations between direct and indirect expenses, and excessive items included in the expenses and rate base.

Ms. Pleasant submitted the analysis workpapers during the hearing showing the computation of the 15% factor. These workpapers were identified as Pleasant Exhibit 2 and showed the computation of the percentage as follows:

Indirect expenses per application	$457,091
Expense adjustments	(4,847)
Insurance expense adjustments	(27,528)
Non-regulated expense adjustments	(43,642)
Total adjustments	$(76,017)
Percent increase/decrease	-16.63%

Ms. Pleasant explained that she began with the amount allocated to CWS according to the Company's application filing. She then made an adjustment for various expense adjustments, an adjustment to correct insurance allocation problems, and an adjustment to the allocations to non-regulated operations. She then compared the adjusted amount with the amount in the Company's original application. The adjustments results in a $76,017, or approximately 15%, decrease in WSC costs allocated to CWS.

The Company disagrees with the Public Staff's calculation of its overall adjustment. However, Mr. O'Brien's prefiled rebuttal testimony adopted by Mr. Wenz acknowledged that there were some problems with the allocation of WSC charges and proposed adjustments to insurance expense, rate base, and indirect charges.

The Commission will address each aspect of the Public Staff's computation and the Company's position on each item separately.

Expense Adjustments

Ms. Pleasant stated during the hearing that the various expense adjustments were made to remove expenses not related to this rate case, out of period costs, fitness expense, expense for plant care, and correction of calculations.

Mr. Wenz indicated on POB Exhibit 6 that he agreed with $3,705 of the expense adjustments made by Ms. Pleasant in her analysis. The remaining difference of $1,142 between the Public Staff and the Company is an adjustment to depreciation expense on the office and office furniture.

According to testimony received during the hearing, the Public Staff and the Company agree on the amount of depreciation expense allocated to CWS from WSC based on the allocation method used in the Company's update. However, since the Public Staff used the original filing for the analysis it corrected certain errors in depreciation expense as originally filed resulting in the $1,142 difference.

This difference of $1,142 would decrease the Public Staff's percentage from 16.63% to 16.38%. As indicated by Ms. Pleasant, the Public Staff rounded this percentage down to 15% to be conservative and applied this percentage in making the overall adjustment. Therefore, whether the actual calculated percentage is 16.63% or 16.38% is immaterial since both percentages are greater than the 15% actually applied by the Public Staff. Since this difference is immaterial and is necessary to correct errors in the original filing, the Commission accepts the Public Staff's adjustment for use in this proceeding.

The Commission concludes that the expense adjustments included in the analysis are proper for use in this proceeding and the correct amount to be used is $(4,847) in determining the overall adjustment to WSC costs.

Insurance Expense Adjustments

Ms. Pleasant stated in her prefiled testimony that there were several problems with the allocations of insurance expense. She stated that the allocation method of the property and general liability insurance was not a good method to use and that the factors used to allocate this insurance could not be verified. She went on to state that there was a discrepancy between the number of vehicles used to allocate automobile insurance, that worker's compensation insurance contained an error in its allocation and was not allocated to the non-regulated entities, and the allocation method used to allocate other insurance was in no way related to this insurance.

Because of these problems, Ms. Pleasant made the following adjustments to insurance expense in her analysis:

Item	Amount
Auto insurance adjustment per Company	$ (9,939)
Worker's Comp. adjustment per Company	(2,526)
Worker's Comp. adjustment for error	(674)
Property and General Liability adjustment	(4,452)
Other insurance adjustment	(9,937)
Total Adjustment	$(27,528)

According to additional testimony given during the hearing, the Company agrees with the Public Staff's proposed adjustments for automobile insurance and worker's compensation insurance. The parties disagree on the proposed adjustments to property and general liability insurance and other insurance.

The first item of disagreement is the allocation methodology for property and general liability insurance. The Public Staff has made an adjustment of $4,452 in its analysis to allocate property and general liability insurance based on customer equivalents. The Company allocated this cost using an allocation factor based on net plant.

Ms. Pleasant stated in her prefiled testimony that net plant, the allocation method used by the Company to allocate property and general liability insurance, is not a good allocation basis due to contributions in aid of construction and purchase acquisition adjustments. She further stated that gross plant is a better allocation method to use, but that according to investigations by the Public Staff, it appeared that the Company may not have booked all of its plant. Therefore, gross plant would not be an accurate allocation basis.

Ms. Pleasant further stated in her prefiled testimony that the amounts for net plant used by the Company for its allocation did not match the amounts the Company reported to this Commission and other state commissions in its annual reports. Due to the lack of verifiable data for the amounts of net plant, this

basis is not reliable. Ms. Pleasant testified, "The only other alternative to allocate the general liability and property insurance is to use customer equivalents or revenues, or a combination of the two."

Witness Wenz stated in his rebuttal testimony that gross plant is an inappropriate method to allocate property and general liability insurance because mains are a significant portion of gross plant and are not insured. He further stated that the bulk of contributed facilities consists of mains and therefore it is appropriate to exclude CIAC.

Company witness Wenz stated during the hearing that the Public Staff had conveyed only two specific problems with trying to verify the net plant. However, when asked on cross examination if he was aware that the Public Staff had mentioned to Mr. O'Brien that there were other problems in verifying net plant than the two instances to which he was referring he stated, "No, I wasn't aware of that." Furthermore, when asked during cross examination about the findings of the Commission in Sub 118 concerning the reliability of the financial statements provided to the Public Staff to verify net plant, witness Wenz stated that the findings of the Commission would have affected a number of the entries in the financial statements.

The Commission agrees with the Public Staff that the plant amounts used to allocate these costs are not reliable. The plant amounts used by the Company do not reconcile to the financial statements provided to the Public Staff. The Commission found in Sub 118 that the Company has not recorded plant received under deferred payment plans on its books. Further, as discussed in Finding of Fact No. 94, there are several systems currently being operated by the Company which have yet to be booked. Therefore, the plant amounts used by the Company to allocate costs are unreliable.

The Commission concludes that for purposes of this proceeding, the allocation methodology to be used to allocate property and general liability insurance is customer equivalents. While a factor based on plant may be a more appropriate factor, the Commission agrees with Ms. Pleasant that due to the lack of verifiable data, the difference in the plant amounts used by the Company and the amounts in the Annual Reports filed with the Commission, and plant which is not recorded on the books, the allocation method used by the Company is not appropriate. Therefore, the only alternative the Commission in this case is to use customer equivalents.

Moreover, customer equivalents is the allocation methodology set forth in the service contract with WSC approved by the Commission in Sub 13 and amended in Sub 16. This contract states,

> All such costs which, because of their nature, cannot, without excessive effort or expense, be identified and related to services rendered to a particular Operating Company, shall be allocated among all the Operating Companies, or, in the case of costs incurred with respect to a particular group of the Operating Companies, among the members of such group, in a manner hereinafter set forth.

First, the allocable costs shall be distributed on an annual basis, unless the Parent should elect to make a supplementary analysis for a special purpose.

Secondly, these costs will be prorated in proportion to the average number of customers of each Operating Company during the calendar year.

Thus, the Company by using net plant, is not following the allocation methods set forth in the contract approved by this Commission.

The second area of disagreement is the allocation basis for other insurance. In its analysis, the Public Staff allocated other insurance based on customer equivalents while the Company allocated other insurance based on operators' payroll.

Ms. Pleasant stated in her prefiled testimony that the allocation method CWS used to allocate other insurance in no way is related to this insurance. During cross examination Ms. Pleasant stated, "As far as the other insurance is concerned, it was allocated on operator payroll. What is in this other insurance is directors' and officers' liability, key man life insurance, which is usually not allowed by this Commission, and I didn't feel that operator payroll was a correct allocation."

Mr. Wenz stated in his rebuttal testimony, "The bulk of the 'other' insurance is related to officers and directors liability. The insurance was allocated to utility operations based on operators payroll as a reflection of the level of activity in each company." Mr. Wenz stated during the hearing, "With respect to other insurance, the bulk of it pertains to officers' and directors' liability, about 55%. It is allocated based on operators' payroll as it is an excellent reflection of the level of activity of the officers and directors."

The Commission concludes that the appropriate allocation methodology for other insurance for use in this proceeding is customer equivalents. As indicated on Pleasant Exhibit I, Schedule 2-1, the Company used customer equivalents to allocate other general and administrative costs. The indirect officers' payroll is included in administrative salaries and is allocated using customer equivalents. It is appropriate to allocate insurance related to officers and directors using the same allocation factor that is used to allocate other indirect costs associated with the officers and directors, such as salaries and general administrative costs.

Also, as discussed above, customer equivalents is the allocation methodology set forth in the contract approved by this Commission. In fact, if customer equivalents were used to allocate all insurance costs as set forth in the contract, the adjustment to insurance expense would be greater than the adjustment proposed by the Public Staff.

Based on the evidence in this proceeding, the Commission is of the opinion that the allocation methods used by the Company to allocate property and general liability and other insurance are inappropriate. Therefore, the Commission concludes that the adjustment proposed by the Public Staff in its analysis is proper.

Non-regulated Expense Adjustment

The last item in the analysis is the allocation of expenses to the non-regulated operations. The parties disagree on the accounts to be allocated and the allocation methodology to be used.

As to the costs to be allocated, Ms. Pleasant testified that she allocated the same expenses as the Company except for certain insurance expenses and miscellaneous expenses, which were not included by the Company.

In his rebuttal testimony, Mr. Wenz agreed that property and general liability insurance and other insurance should be allocated to non-regulated operations.

The parties agree that property and general liability insurance and other insurance should be allocated to the non-regulated operations. Therefore, the Commission concludes that these expenses should be allocated to the non-regulated operations.

In its calculation, the Public Staff allocated excess liability insurance and miscellaneous insurance to the non-regulated operations. The Company did not address these expenses.

The Commission concludes that the insurance and miscellaneous expenses should be allocated to non-regulated operations. These costs are general administrative costs related to all corporate functions and entities, including the non-regulated operations, and therefore, should be allocated to the non-regulated operations.

The remaining difference between the Public Staff and the Company is the proper allocation method to use to allocate these common costs. The Public Staff allocated these costs based on revenues while the Company allocated the costs based on a study.

Ms. Pleasant stated in her prefiled testimony that the Company attempted in its application to allocate costs to the non-regulated entities, but could not produce any documentation to support these allocations. She further stated that because records were not available to support the allocations to the non-regulated entities, the revenue method should be used to allocate common costs to the non-regulated entities.

Ms. Pleasant testified during cross examination,

> I asked for documentation to support these allocations back in January. I have received no documentation to support the allocations. I was told by the Company that these allocations were estimates and that has been filed with the Commission in the motion to hold the second motion to compel discovery in abeyance. Listed on that document is data request 22, items 3 and 4, which I asked the Company to provide documentation to support the allocations to the non-regulated entities and on this motion, the Company states that they used its judgement and estimated the allocations.

Ms. Pleasant testified that she had asked for the study, but had not received the study. She was approached during cross examination to review a document in which the Company allocated expenses to the non-regulated operations, and asked if she recognized that this was the Company's study. Ms. Pleasant testified that she understood that the document was what the Company indicated was its study, but that the Company had provided no documentation to support any of the allocations on that study. She indicated that the document to which the Company referred as its study was the same document for which she had requested documentation to support and as indicated in the motion to hold the second motion to compel discovery in abeyance, was told that it was based on the Company's judgment and estimates.

Mr. Wenz stated in his rebuttal testimony that, "In 1992, the test year, we did a study to allocate the proper cost to these entities. The study included the nominal costs for payroll, accounting, management, and data processing functions. Also included was an allocation for the cost of operating the Northbrook office and an allocated portion of the WSC rate base." Mr. Wenz further testified that the Public Staff presented no reason to use revenues to allocate to the non-utility operations and that there was no evidence that could be used to determine if the revenue method was appropriate. Mr. Wenz testified that the Company provided the Public Staff with the study on allocation of cost concerning non-utility operations and that it was provided early in the case with the common expense allocation workpapers.

However, under cross-examination, Mr. Wenz confirmed that nothing was provided to Ms. Pleasant in response to her numerous requests for documentation to support the allocations to the non-regulated entities other than a one-page study.

Mr. Wenz testified that costs are allocated in accordance with contracts approved by the Commission and that the use of revenues is not a method approved in the contracts. However, during cross examination he testified that the contracts do not distinguish the non-regulated entities from any other entity of Utilities, Inc., and the allocation methods for the non-regulated operations are not specified in the contracts.

In fact, based on review of Commission files, the only contract approved by this Commission is the service contract between WSC and CWS. This contract addresses services provided to the "Operating Companies" which are defined in the contract as certain affiliated water and/or sewer companies. Nowhere does this contract address any services provided to non-regulated entities.

The Company contends that the Public Staff used an inappropriate number for the revenues for the non-regulated travel company in allocating to the non-regulated entities. Mr. Wenz stated in his rebuttal testimony that the Public Staff should have used revenues net of the cost of sales rather than gross revenues in its allocation to the non-regulated entities.

Ms. Pleasant testified during the hearing that the amount of revenues she used in her analysis for the non-regulated travel company was obtained from the Company's financial statements for the travel company and that she had used the gross revenues received by the Company.

The Company contends that the costs that should be allocated to the non-utility operations are far less than the costs produced by the revenue method used by the Public Staff in its analysis. The Company further contends that its allocation, based on the study performed by the Company, provides a better allocation basis than revenues.

As indicated by the evidence revealed in this proceeding, the Company has not provided any documentation to support the allocation factors used to allocate costs in its "study." Since the Company's allocations to the non-utility operations cannot be verified due to the lack of documentation, they must be rejected. Again the Commission points out that the burden of proof was on the Company, which failed to produce adequate documentation in a timely manner.

It is a well established principle that rates should be based only on the costs necessary to provide utility service. Thus, whenever a utility is engaged in non-utility business, the Commission must take care to ensure that non-utility costs are excluded from the utility's cost of service. To do otherwise would result in cross-subsidization of non-regulated businesses by ratepayers. It is preferable that costs be directly assigned whenever possible. However, if costs cannot be or have not been directly assigned, allocation procedures are appropriate. In this case, the Public Staff has used, due to the lack of reliable data, revenues as a basis to allocate costs between utility and non-utility operations. This method is not new to the Commission. It was used, for example, in setting rates for Public Service Company in Docket No. G-5, Sub 200. See North Carolina Utilities Commission Orders and Decisions, 75th Report 455, 470 (1985). It has also been used more recently in setting rates for Hydraulics, Ltd., in Docket No. W-218, Sub 88. Due to the lack of documentation to support any other allocation methodology, the Commission must conclude that the appropriate allocation methodology for non-regulated operations is revenues.

The Commission further concludes that gross revenues, as used by the Public Staff in its adjustment, is the appropriate level of revenues to use in its adjustment. The Commission is of the opinion that the Public Staff has been conservative in its adjustment in that it has not factored into its adjustment the contract operation revenues and the garbage revenues.

Therefore, based on the evidence revealed in this proceeding, the Commission concludes that the adjustment to the non-regulated operations is appropriate.

Summary Conclusion

The proper level of Northbrook costs has been an issue in previous cases. In the most recent CWS rate case, Sub 111, the Commission found that the level of Northbrook expenses had increased at an unreasonable level and should be adjusted to reflect a reasonable level based on the amount allowed in Sub 81 increased to recognize the increase in customer equivalents. In this case, the parties are again in disagreement concerning the reasonable level of Northbrook costs.

The Commission recognizes that the WSC costs appear to be overstated for various reasons. These reasons include the magnitude of the increase over the amount found reasonable in Sub 111, the Public Staff's discovery of excessive costs, the lack of documentation to support the allocations to non-regulated

operations, the lack of reliable data for the allocation of certain expenses and questions on the appropriateness of the allocation methods used for certain insurance costs. These factors lead the Commission to conclude that the WSC charges included in this case are unreasonable, and the level of expenses should be adjusted to arrive at a more reasonable and representative level for inclusion in the cost of service for this case.

As shown in Public Staff Wenz Cross-Examination Exhibit No. 8, the total direct and indirect WSC costs increased approximately 15% from the amount allowed in Sub 111 to the amount included in the filing in this case. This increase was during a period of one and one-half years during which overall inflation was approximately 5%. The Public Staff applied its 15% WSC adjustment only to indirect costs. The Public Staff's adjustment still allows an increase in total WSC costs of 12.56%.

The Commission has carefully considered the evidence of the parties in this proceeding and the adjustments proposed by the parties. The Commission concludes that the adjustments proposed by the Public Staff in its analysis are proper for this proceeding. The Public Staff has been thorough in its analysis and conservative in its adjustment. Therefore, the Commission agrees with the Public Staff on this issue and concludes that it is appropriate to reduce by 15% the amount of WSC rate base, depreciation expense, and WSC indirect charges allocated to CWS.

Based on the above discussion, the Commission concludes that the indirect expenses allocated to CWS from WSC should be reduced by 15% or $58,320.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the appropriate level of general expenses to include in the proceeding is $1,303,589, of which $844,130 is applicable to water operations and $459,459 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 73-80

The evidence supporting these findings of fact is found in the testimony of Public Staff witness Dietz and Company witness Wenz. The following chart summarizes the positions of the parties for other operating revenue deductions:

Item	Company	Public Staff	Difference
Depreciation	$ 622,782	$ 597,009	$(25,773)
Real estate tax	35,509	35,509	0
Personal property tax	38,757	38,757	0
Special assessments	330	330	0
Payroll taxes	135,160	135,423	263
Franchise taxes	95	95	0
Regulatory fee	65,337	6,746	(58,591)
Gross receipts tax	365,545	375,521	9,976
Income taxes - state	51,389	95,457	44,068
Income taxes - federal	207,974	386,324	178,350
Amortization of ITC	(519)	(519)	0
Total	$1,522,359	$1,670,652	$148,293

As the above table indicates, the Public Staff and the Company agree on the amounts for real estate tax, personal property tax, special assessments, franchise taxes, and amortization of ITC. Therefore, the Commission concludes the appropriate levels for these items are the ones set forth by both parties.

DEPRECIATION EXPENSE

The first area of disagreement between the parties concerns depreciation expense. The Public Staff and the Company agree on the depreciation rates used to calculate depreciation for all classes of water and sewer plant items. However, the amounts of depreciation expense proposed by the parties differ due to different amounts of plant in service, contributions in aid of construction, and excess capacity. The parties have also included different levels of depreciation expense for WSC. Furthermore, the Public Staff erroneously calculated depreciation expense twice on transportation equipment and computer equipment.

The parties agree on the amount of depreciation expense related to WSC rate base to be allocated to CWS. The parties however, disagree on the adjustment made by the Public Staff to reduce the allocated amount by 15%.

As discussed elsewhere in this Order, the Commission concludes that the depreciation expense allocated to CWS from WSC should be reduced by 15%.

Based on the discussion above and the Commission's conclusions in Findings of Fact Nos. 7-44 concerning the appropriate levels of plant in service, contributions in aid of construction, and excess capacity, the Commission finds that the appropriate level of depreciation expense is $598,161, of which $394,226 is applicable for water operations and $203,935 is applicable for sewer operations.

PAYROLL TAXES

The difference between the Public Staff and the Company concerning payroll taxes relates to the differing levels of salaries recommended by each party. Consistent with its determination of the appropriate level of salaries and wages to include in this proceeding as discussed in Findings of Fact Nos. 51 and 58, the Commission concludes that the appropriate level of payroll taxes to include in this proceeding is $135,423, of which $81,716 is applicable to water operations and $53,707 is applicable to sewer operations.

REGULATORY FEE

The next area of difference between the Public Staff and the Company concerns regulatory fee. The parties have used different rates and have applied those rates to different levels of revenue. The regulatory fee rate is .085%, which is the rate used by the Public Staff. The Commission has applied this rate to the level of revenue found reasonable in Finding of Fact No. 49. Therefore, the Commission finds that the appropriate level of regulatory fee to include in this proceeding is $6,746, of which $4,278 is applicable to water operations and $2,468 is applicable to sewer operations.

GROSS RECEIPTS TAX

The next area of disagreement between the parties relates to gross receipts tax. The difference between the Company and the Public Staff results from the parties' disagreement over revenue. The Commission, having determined the appropriate level of revenue in Finding of Fact No. 49, concludes that the appropriate level of gross receipts tax to be included in this proceeding is $201,322 for water operations and $174,199 for sewer operations.

STATE INCOME TAXES

The next area of difference between the parties concerns the level of state income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenue and expenses. The Commission, having determined the appropriate level of revenue and expenses, concludes that the appropriate level of state income tax to be included in this proceeding is $70,466 for water operations and $23,606 for sewer operations.

FEDERAL INCOME TAXES

The next item of disagreement between the parties relates to the level of federal income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenue and expenses. The Commission, having determined the appropriate level of revenue and expenses, concludes that the appropriate level of federal income tax to be included in this proceeding is $285,184 for water operations and $95,538 for sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the appropriate level of other operating revenue deductions to include in the proceeding is $1,664,817, of which $1,087,653 is applicable to water operations and $577,164 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 81

Based on our findings in Findings of Fact Nos. 51-80, the overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $6,284,734, of which $3,830,215 is applicable to water operations and $2,454,519 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 82

The Company and the Public Staff were not in agreement with respect to the appropriate capital structure to employ for ratemaking purposes in this case.

In its original application, the capital structure of Utilities, Inc., the parent company of CWS, consisted of 57.5% debt and 42.5% equity. According to the pre-filed direct testimony of Company cost of capital witness Spann, the capital structure consisted of "about 54.7% debt and 45.3% equity." Company witness Spann never changed that testimony. Finally, on April 18, 1994, after the close of the hearing, the Company filed financial schedules reflecting the final position of the Company. Those schedules reflected a capital structure consisting of 52.3% debt and 47.7% common equity.

Public Staff witness Sessoms recommended a capital structure consisting of 56.95% debt and 43.05% equity. He testified that that capital structure was determined using the most recent known and actual debt and equity balances. He also testified that his recommended capital structure, which contained 56.95% debt, was reasonable in comparison to the capital structure of the water utility industry which contained an average debt ratio of 55.3%.

On cross-examination, witness Sessoms was questioned as to why he did not change his recommended capital structure after receiving information from the Company reflecting an updated capital structure. Witness Sessoms explained that on February 18, 1994, he had requested the audited financial statements of Utilities, Inc. for December 31, 1993, through the discovery process. On March 31, 1994, and April 1, 1994, which was one or two work days prior to the hearing, he received information containing financial statements for Utilities, Inc. at December 31, 1993. However, he testified that these financial statements were not received until after the deadline for updates imposed by a Commission procedural order in this docket. Further, he testified he was unable to determine whether or not the figures in the financial statements had been audited. He also testified that after reviewing these financial statements he had several questions concerning the debt that should be included in the capital structure for ratemaking purposes and questions concerning the embedded cost of

debt, but that he was barred from conducting additional discovery because it was past the deadline imposed by a Commission procedural order in this case for conducting additional discovery.

After carefully considering all of the evidence of record on this issue, the Commission finds that the appropriate capital structure for ratemaking purposes in this case consists of 56.95% debt and 43.05% equity.

Company cost of capital witness Spann, who relied on an estimated capital structure in his pre-filed testimony, did not change his recommendation on the capital structure issue throughout the hearing. Yet, one day after witness Spann testified, the Company contended through its cross-examination of Public Staff witness Sessoms, that the capital structure should be updated based on information it furnished to the Public Staff after the deadline for updates and after the deadline for conducting discovery. By not furnishing updated information in a timely manner, the Company foreclosed the ability of the Public Staff to conduct discovery and then conduct cross-examination based on that discovery. All the Commission has on the capital structure from the Company are conflicting sets of unverified numbers. The Company has failed in its burden of proof on this issue. The capital structure found appropriate for ratemaking purposes in this case is the only capital structure in the record reflecting known and actual balances of debt and equity capital though the close of the hearing. That capital structure is also reasonable in comparison to the average capital structure of the water utility industry.

The Commission further finds and concludes that the embedded cost of debt associated with the capital structure found appropriate for ratemaking purposes is 9.45%. Such embedded cost of debt was recommended by both Company witness Spann and Public Staff witness Sessoms.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 83-87

The evidence in support of these findings of fact is contained in the testimony and exhibits of Company witness Spann and Public Staff witness Sessoms.

The Company and the Public Staff were not in agreement on the appropriate cost of common equity. Company witness Spann recommended a cost of common equity of 12.0% to 12.5%. Public Staff witness Sessoms recommended a cost of common equity of 11.0%.

To arrive at his recommendation, witness Spann began by utilizing data consisting of authorized returns on equity allowed by this Commission in certain cases involving natural gas and electric utilities over the time period 1981 to 1993, the Moody's AA utility bond rate for the six months prior to each authorized return, and the equity premium, or the difference in each authorized return and the average Moody AA rate. Using this data, he estimated a linear regression between the equity premium and the average Moody's AA rate. This estimated regression quantified the historical relationship between the allowed returns in his data sample group and interest rates at the time of each authorized return. Once this historical relationship was quantified, he could

then use the current interest rate, specified as the most recent six month average interest rate on Moody's AA rated utility bonds, to predict the current authorized return on equity which should be allowed by the Commission.

However, before employing the results of the regression equation to predict the return which should be allowed in this case for Carolina Water, witness Spann employed the regression equation to predict the return an electric utility and a gas utility would have been allowed at the time of each of the last three rate orders of this Company. After predicting the authorized returns a gas utility would have been granted, and predicting the authorized returns an electric utility would have been granted (at the time of each of the last three rate orders received by the Company), witness Spann compared the returns on equity actually authorized by the Commission for the Company to the predicted returns for a gas utility and the predicted returns for an electric utility. In two of the three comparisons, the Company was authorized a return which was similar to the return predicted by his regression model for a gas utility. Based on this comparison, he opined that Carolina Water Service should be authorized a return predicted for a gas utility by his regression model. His regression model estimated that natural gas utilities have been authorized returns that, on average, were higher than returns allowed for electric utilities.

Witness Spann then employed the regression model equation in two ways to obtain two estimates of the cost of equity. First, he simply substituted the most recent six month average rate on Moody's AA utility bonds into the regression equation. This method produced a cost of equity estimate of 12.21% for a natural gas utility and 11.76% for an electric utility. Second, he took the average equity premium calculated from the three prior rate orders of the Company and adjusted the average equity premium to account for the change in interest rates at the time of those orders to the current time using his regression coefficient. He then and added the adjusted equity premium to the most recent six month average interest rate on Moody's AA utility bonds. This approach resulted in a cost of equity estimate of 11.91% for the Company.

Witness Spann also testified that a risk premium equal to 0.50% should be added to each of his cost of equity estimates to account for the Company's small size. According to his testimony, a number of studies in the academic literature could be summarized by stating there is a greater risk associated with investments in small firms. In addition, he testified that since neither Carolina Water Service, nor its parent, Utilities, Inc., were publicly traded, investors demanded a premium for reduced liquidity. To measure the risk premium for small size, witness Spann compared the interest rate on the privately placed debt of Utilities, Inc. to the interest rate on the publicly traded debt of utilities with an A bond rating. This comparison showed a term-adjusted difference of 0.19%.

Public Staff witness Sessoms relied on the discounted cash flow (DCF) method applied to a group of publicly traded water companies to determine that the cost of equity to Carolina Water Service equaled 11.0%.

According to his testimony, the DCF model could not be applied directly to Carolina Water Service or Utilities, Inc. since neither are publicly traded. However, in recognition of the fact that the Company must compete for equity funds from investors on a risk-adjusted basis, he identified a group of publicly

traded companies he considered comparable in risk to the Company and applied the DCF to the comparable risk group to determine the cost of equity. His comparable risk group consisted of six water companies. Since each company in the group derived the majority of revenues from the provision of regulated water utility service, as does the Company, and the group exhibited a debt ratio similar to the debt ratio of the Company, it was reasonable in his opinion to assume that investors would consider the Company to be of comparable risk to the group on average.

To determine the dividend yield component of the DCF, he divided an estimated dividend to be paid over the next twelve months by each company's stock price. Yields calculated in this manner were then averaged over the most recent 26 week period. He testified that a 26-week average period should be used, rather than one recent stock price to eliminate price volatility. To estimate the expected growth rate in dividends, he used several different measures or sources such as the growth in earnings per share, book value per share, and dividends per share over different historical periods as well as several forecasts from different sources.

Based upon the DCF method, he determined that the cost of common equity to the Company was within the range of 10.5% to 11.5%, which was consistent with a dividend yield of 5.5% and an expected growth rate of 5.0% to 6.0%. Therefore, he concluded and recommended that the cost of common equity to the Company was 11.0%.

Witness Sessoms compared his recommended return on common equity of 11.0% to the recently earned rates of return on common equity and forecasted returns on common equity of the comparable risk group. This comparison he contended showed that his recommended return on common equity of 11.0% was reasonable. For example, the estimated return of the comparable risk group averaged exactly 11.0% for 1993. As an additional check on the reasonableness of his recommended return, he testified that his recommended return would provide the Company the opportunity to achieve a level of interest coverage of approximately 2.5 times. That level of interest coverage is within Standard & Poor's recommended interest coverage range for an A bond rating. Thus, witness Sessoms contended that his recommended return would allow the Company to maintain its credit worthiness.

Witness Sessoms also testified that the return allowed should not include a risk premium for small size or for any anticipated effect of the Safe Drinking Water Act (SDWA). With respect to small size, he testified that ratepayers should not be required to pay higher rates simply because they are served by a utility arbitrarily considered to be small. Further, if smaller utilities received higher rates of return, then an incentive would exist for large utilities to form subsidiaries so the smaller entities would be allowed higher returns. Additionally, he explained that the studies relied upon by witness Spann as a basis for his small size theory were not studies of regulated utilities. It was his opinion that size did not affect the risk of public utilities since a franchise prevented competition and regulation allowed cost recovery advantages not available to competitive firms. Therefore, he did not believe it was appropriate to include or adjust the allowed return for size considerations. With respect to the anticipated effect of the SDWA, witness Sessoms testified

that the DCF method, which relies in part upon stock prices determined by investors, would already account for the anticipated effect of the SDWA. The Commission also notes that witness Spann did not recommend any specific adjustment in the allowed return due to the anticipated effect of the SDWA.

The determination of the fair rate of return for the Company is of great importance and must be made with care because the return allowed will have an immediate impact on the Company, its stockholder, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed, the Commission must balance the interests of the Company's ratepayers and its investor and meet the test set forth in G.S. 62-133(b) (4) to:

> enable the public utility by sound management to produce a fair profit for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and its existing investors.

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133 (b):

> supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 388, 206 S.E.2d 269, 276 (1974).

The Commission is mindful that its conclusion regarding the appropriate rate of return must be based upon specific findings showing what effect it gave to particular factors in reaching its decision. State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 699, 370 S.E.2d 567, 573 (1988). Based on the entire evidence of record, the Commission concludes:

(1) The overall risk premium methodologies employed by Company witness Spann, before consideration of his specific adjustment and recommendation related to the size of CWS and the lack of liquidity associated with an investment in its common stock, should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding. The Commission's decision to place the greatest weight on the aforesaid methodology is based primarily on the fact that witness Spann's testimony was more persuasive in support of his risk premium methodologies than was the testimony of Public Staff witness Sessoms in support of his application of the DCF model in this case.

Essentially, witness Spann employed two approaches with respect to his risk premium analyses. Under both approaches, he developed equity risk premiums based largely upon the difference between previously allowed returns on equity and

average interest rates on Moody's AA utility bonds. Those equity risk premiums reflected or were adjusted to reflect, as noted by witness Spann, witness Spann's finding that when interest rates are low the difference between the equity return allowed by the Commission and contemporaneous interest rates is significantly higher than when interest rates are high.

Based upon his overall analysis of the data, witness Spann concluded that the current cost of common equity for gas utilities was 12.21% and for electric utilities was 11.76%. From his analysis of authorized returns on equity allowed CWS in its last three rate cases, Witness Spann concluded that the Company's current cost of common equity was 11.91%. Witness Spann testified that, with the exception of the Sub 111 stipulated return, the Commission had been granting CWS common equity returns that were similar to those granted natural gas utilities operating in North Carolina. Therefore, he indicated that the 12.21% cost of common equity for gas utilities as described above was indicative of the current cost of common equity to CWS. Thus, witness Spann's risk premium approaches yield cost of equity estimates for CWS of 11.91% and 12.21%, before consideration of his 0.50% specific adjustment and recommendation related to the size of CWS and the lack of liquidity associated with an investment in its common stock.

After careful consideration of the entire evidence of record the Commission finds and concludes (1) that witness Spann's conclusion regarding the correlation between interest rates and common equity risk premiums, i.e., when interest rates are low the difference between the equity returns allowed by the Commission and contemporaneous interest rates is significantly higher than when interest rates are high, is valid and useful for purposes of estimating the cost of common equity for purposes of this proceeding; (2) that the methodology employed by witness Spann in estimating the relationship between changes in interest rates and changes in the equity risk premium is reasonable and proper for purposes of this proceeding; (3) that the methodology employed by witness Spann in adjusting the equity risk premium derived from his analysis of returns on common equity allowed CWS in its last three rate cases to reflect the level of current interest rates is reasonable and proper; and (4) that returns on equity previously allowed natural gas utilities, as contended by witness Spann, have generally been similar to those granted CWS. The Commission, therefore, finds and concludes that witness Spann's risk premium approaches are reasonable and appropriate for use and should be assigned the greatest weight in determining CWS's cost of common equity for purposes of this proceeding.

(2) Application of the DCF model as presented by Public Staff witness Sessoms should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. Because the common stocks of CWS and/or Utilities, Inc. are not publicly traded, witness Sessoms applied the DCF methodology to a group of companies which he considered to be comparable in risk to CWS in order to derive his estimate of the cost of common equity capital to the Company. Witness Sessoms testified that it is reasonable to assume that investors would perceive CWS's risk characteristics to be similar to the risk characteristics of his group of comparable companies. Such companies are in the water utility business and according to witness Sessoms exhibit business and financial risk comparable to CWS.

The Company contended that the group of companies selected by witness Sessoms was not comparable to CWS or to Utilities, Inc. and consequently contended that use of such companies in estimating the cost of common equity to CWS would produce misleading and unmeaningful results. Specifically, CWS contended that certain of the companies were much more diversified than was Utilities, Inc., with many different operating characteristics, and that the companies exhibited many financial characteristics that were dramatically different from those of Utilities, Inc. Further, the Company contended that witness Sessoms made no use of financial indicators such as beta, safety factors, or debt quality measurements to determine the comparability of the six companies among themselves or to CWS. According to CWS, comparisons of such financial indicators as well as other financial and operating characteristics of the six companies among themselves and to the extent possible to CWS clearly show that the six companies provide a poor proxy for use in determining the cost of common equity to CWS.

CWS also questioned the propriety of witness Sessoms' use of a 26-week average in determining the stock price variable used in the yield parameter of his DCF model. The Company noted that reliance on a 26-week average may be appropriate in some situations to eliminate market aberrations. However, the Company further noted that great care must be taken to insure that, instead of eliminating aberrations, use of such an average does not mask significant and discernable trends that have a measurable impact on investors' expectations. In essence, because witness Sessoms employed a 26-week average in determining the stock price variable used in his DCF model, CWS contended that he failed to appropriately recognize and give effect to the pronounced and discernable trend of declining utility stock prices which began in September 1993 and accelerated when the Federal Reserve Board increased the discount rate in February and March 1994. There is no disagreement that there is a strong correlation between the price of public utility stocks and interest rates or that, all other things remaining equal, use of a stock price lower than a price that might otherwise have been used will increase the yield parameter of the DCF model and consequently the cost of common equity derived from the use of such a methodology.

The Commission, after careful, thoughtful, and lengthy consideration of the entire evidence of record, finds and concludes that it is generally in agreement with CWS's position regarding witness Sessoms' application of the DCF model. Specifically, the Commission, in this case, has significant, unresolved concerns regarding the comparability of the six companies selected by witness Sessoms for use in his DCF analysis. Also, in this case, the Commission has significant concerns regarding the appropriateness of witness Sessoms' use of a 26-week average in determining the stock price variable for use in the DCF model. Therefore, the Commission finds and concludes that witness Sessoms' application of the DCF model for purposes of this proceeding should be accorded only minimal weight. The Commission emphasizes, however, that its decision in this regard is based solely on the evidence presented in this case and is not intended to herein impugn the efficacy of use of the DCF model in future proceedings, including DCF

applications employing 26-week averages and comparable companies. As stated hereinabove, the Commission decision to assign the greatest weight to witness Spann's risk premium approaches is due primarily to the fact that witness Spann's testimony in this case was more persuasive than was the testimony of witness Sessoms.

(3) Company witness Spann's inclusion of 50 basis points in his recommended cost of equity in recognition of the size and liquidity of the Company is inappropriate for purposes of this proceeding. As previously indicated, witness Spann recommended that the allowed return be increased by 0.50% due to the small size of the Company and the lack of liquidity of common shares since the stock is not publicly traded. Witness Spann contended that four articles supported the theory that smaller firms are more risky. However, on cross-examination it was revealed that these articles are not so definitive on such a conclusion. Further, the data bases of these studies mostly include non-regulated companies which are not protected from competition. In fact, the record includes evidence that Standard & Poor's considers size to be an issue in determination of credit ratings only when size affects a company's ability to compete.

Also incorporated into witness Spann's small size adjustment was a risk premium for lack of liquidity since neither the stock of the Company nor its parent, Utilities, Inc., is publicly traded. It was his testimony that investors demand a premium for this reduced liquidity. His rebuttal testimony cited quotes from textbooks which he contended supported a liquidity premium. However, those quotes were not at all definitive as to the existence of a liquidity premium nor to the measurement of any such premium. On cross-examination witness Sessoms testified that the owners and managers of the Company keep the list of shareholders and share prices of the Company confidential. Therefore he contended that the Company has obviously discouraged liquidity, presumably to prevent dilution and loss of control.

When questioned under cross-examination about his measurement of a 0.50% adjustment for small size, witness Spann agreed that his debt cost measurement technique resulted in only a 0.19% interest cost difference. Further, he agreed that privately placed debt, such as that placed by Utilities, Inc., typically has a higher cost than publicly traded debt. When asked to explain how he recommended the 0.50% adjustment when the debt cost comparison yielded a result of only 0.19%, witness Spann explained that liquidity studies had shown that liquidity premiums could range between 100 to 800 basis points and that the 0.50% was based on judgement.

Given the evidence in this case with regard to this issue, the Commission does not believe it is appropriate to include a premium in the allowed return of the Company due to its size or due to the issue of liquidity. CWS is larger than the second and third largest regulated water and sewer companies combined that operate in North Carolina. Testimony in the record also indicates that owners of the Company have discouraged liquidity. All testimony in support of this type of adjustment was effectively refuted. Thus, for the foregoing reasons, and for the same general reasons as expressed by the Commission in denying this type of adjustment advocated by witness Spann in the Commission's Order Granting Partial Rate Increase in Docket No. E-13, Subs 157 and 142, the Commission finds and concludes that the Company's cost of equity established for purposes of this proceeding should not include a premium due to size or liquidity considerations.

(4) The cost of common equity capital to CWS for purposes of this proceeding is 12.00%. In reaching its decision in this regard, the Commission, as previously stated, has placed the greatest weight on the risk premium methodologies employed by Company witness Spann. That decision is based primarily on the fact that witness Spann's testimony in support of his risk premium methodologies was more persuasive than was the testimony of Public Staff witness Sessoms in support of his application of the DCF model. Witness Spann's risk premium approaches yielded cost of equity estimates of 11.91% and 12.21%. After having carefully considered the entire evidence of record, the Commission finds and concludes that the cost of common equity to CWS for purposes of this proceeding is 12.00%. Such cost rate is well within the range of returns bounded by the cost rates resulting from witness Spann's application of his risk premium approaches before consideration of his specific adjustment and recommendation related to the size of CWS and the lack of liquidity associated with an investment in its common stock. As previously discussed, the Commission has rejected witness Spann's proposed allowances related to CWS's size and lack of liquidity.

(5) The overall fair rate of return which the Company should be allowed the opportunity to earn on its rate base is 10.55%. Based on the Commission's findings with respect to the proper capital structure and the appropriate cost rates for debt and common equity capital, the Commission finds and concludes that the overall fair rate of return that the Company should be allowed the opportunity to earn on its rate base is 10.55%.

It is well-settled law in this State that it is for the administrative body in an adjudicatory proceeding to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E.2d 786 (1982); Commissioner of Insurance v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980). The Commission has followed these principles in good faith in exercising its impartial judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon careful consideration of a number of different methodologies weighed and tempered by the Commission's impartial judgment. The determination of rate of return in one case is not res judicata in succeeding cases. State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 395, 206 S.E.2d 269, 281 (1974). The proper rate of return on common equity is "essentially a matter of judgment based on a number of factual considerations that vary from case to case." State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 697, 370 S.E.2d 567, 570 (1988). Thus, the determination must be made based on the evidence presented and its weight and credibility in each case.

The Commission cannot guarantee that the Company, in fact, will achieve the levels of return on rate base and common equity found to be just and reasonable in this Order. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiency.

SCHEDULE I
CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
DOCKET NO. W-354, SUB 128
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
COMBINED OPERATIONS
For the Twelve Months Ended December 31, 1992

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$7,861,696	$237,917	$8,099,613
Miscellaneous Revenue	143,520	0	143,520
Uncollectibles	(68,845)	(2,046)	(70,891)
Total Operating Revenue	7,936,371	235,871	8,172,242
Operating Revenue Deductions:			
Operation, Maintenance, and General Expenses	4,619,917	0	4,619,917
Depreciation	598,161	0	598,161
Taxes Other Than Income Taxes	592,381	11,982	604,363
State Income Taxes	94,072	17,353	111,425
Federal Income Taxes	380,722	70,222	450,944
Amortization of ITC	(519)	0	(519)
Total Operating Revenue Deductions	6,284,734	99,557	6,384,291
Net Operating Income for Return	$1,651,637	$136,314	$1,787,951

SCHEDULE II
CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
DOCKET NO. W-354, SUB 128
STATEMENT OF RATE BASE AND RATE OF RETURN
COMBINED OPERATIONS
For the Twelve Months Ended December 31, 1992

Item	Amount
Plant in Service	$48,763,483
Less - Accumulated Depreciation	(3,907,439)
Contributions in Aid of Construction	(20,177,639)
Advances in Aid of Construction	(206,342)
Plant Acquisition Adjustment	(2,877,122)
Accumulated Deferred Income Taxes	(967,076)
Customer Deposits	(145,737)
Excess Book Value	(4,098,130)
Gain on Sale and Flow Back of Taxes	(289,628)
Excess Capacity	(855,928)
Water Service Corporation Accumulated Depreciation	(232,415)
Water Service Corporation Accumulated Deferred Income Taxes	(39,671)
Add - NCUC Bonds	80,000
Water Service Corporation Plant in Service	668,981
Working Capital Allowance	464,511
Deferred Charges	767,538
Total Rate Base	$16,947,386
Rates of Return:	
Present	9.75%
Approved	10.55%

SCHEDULE III
CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
DOCKET NO. W-354, SUB 128
STATEMENT OF CAPITALIZATION AND RELATED COSTS
COMBINED OPERATIONS
For the Twelve Months Ended December 31, 1992

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		Present Rates		
Long-Term Debt	56.95	$ 9,651,536	9.45	$ 912,070
Common Equity	43.05	7,295,850	10.14	739,567
Total	100.00	$16,947,386	-	$1,651,637
		Approved Rates		
Long-Term Debt	56.95	$ 9,651,536	9.45	$ 912,070
Common Equity	43.05	7,295,850	12.00	875,881
Total	100.00	$16,947,386	-	$1,787,951

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 89-90

The Company filed its application with both uniform rates and system specific rates for the individual systems across the state. As a part of the filing, the Company provided income, expense, and rate base information for each system. The Commission concludes on the basis of the evidence that the information as filed is inadequate and too incomplete to a determine system specific cost of service.

To determine a cost of service upon which to base rates for an individual system, detailed cost for the exact expenses should be provided to the extent reasonably possible. Unfortunately, only a few expense items were filed in this manner. The Public Staff has presented evidence showing the Company's filing to be insufficient for setting system specific rates. The Company in its pre-filed testimony and testimony given at the hearing takes a neutral position, stating it will agree with the Commission's conclusion on this issue.

The Commission, therefore, denies the proposed system specific rates. In reaching this decision, however, the Commission will require the Company to continue to keep system specific data in a manner that reflects actual expenses in a given individual system and not an allocated expense where such data can reasonably be identified. These should include, but not be limited to, rate base, chemicals, testing, operator salaries, purchased power, transportation, property taxes, and maintenance and repairs. The Company is also required to work with the Public Staff in refining its allocation methodology as discussed in Finding of Fact No. 97.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 91

This issue involves the Schedule of Rates. The Commission has determined that these rates will allow the Company to generate its revenue requirement and are fair and reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 92

The Commission addressed the allowable expenses in providing service to Black Mountain Campground in the Evidence and Conclusions for Finding of Fact No. 8. It was the Commission decision that the expense for the 12,000+ feet of 4" water main to serve Black Mountain Campground should be disallowed.

It is CWS' feeling that the Campground is contiguous to Mt. Mitchell Lands Subdivision because a part of the Forest Service property is contiguous to the subdivision. However, Mr. Daniel testified during cross-examination that the campgrounds is "probably three-quarters of a mile or so" away from Mt. Mitchell Lands Subdivision.

Witness Daniel admitted that the Company had entered into a contract with the Forest Service in September 1992. This contract was never submitted to either the Commission or the Public Staff for review and comment. The contract provided that, in exchange for the well, the Company would serve the Forest Service Basic Work Area (where the well is located), construct a main to serve the Black Mountain Campground located within the Pisgah National Forest, and allow the Forest Service to tap on to the water line along Forest Service Road 472 without charge.

The Commission notes that in its Recommended Order in Docket No. W-354, Sub 111, the Company was ordered in Ordering Paragraph 6,

> ...In addition, CWS shall, within 30 days of the effective date of this Order, file any other contracts it has entered into with developers through the date of this Order that have not previously been filed. CWS shall henceforth file all contracts with developers with the Commission within 30 days of signing, or in the case of informal agreements or contracts that are effective without signing, within 30 days from the date the agreement is reached. The requirements of this paragraph shall apply to all contracts, including those covering contiguous expansions.

The effective date of the Recommended Order was August 17, 1992. The Company filed exceptions. The Final Order was dated October 12, 1992. The ordering paragraph above was repeated in its entirety in the Final Order. The Company did not except to this paragraph and should have known the paragraph would remain in force. The contract was signed on September 15, 1992, clearly after the paragraph was known to Company management. The Commission notes the contract was signed by Jim Camaren, Vice President, an officer of the Company. Because CWS did not file the contract, both the Commission and the Public Staff were denied the opportunity to review and make recommendations on the subject matter.

The Commission is of the opinion that the Black Mountain Campground is not a contiguous expansion of Mt. Mitchell Lands Subdivision. To agree here that this expansion is contiguous to Mt. Mitchell Lands Subdivision would essentially declare the whole Pisgah National Forest to be a contiguous expansion. Clearly the Company is not proposing to offer service throughout the Forest, nor has this Commission ever approved such an expansion.

Based on the above, the Commission is of the opinion that CWS should be required to file an application to serve the Black Mountain Campground by July 29, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 93

The evidence for this finding of fact is contained in the testimony of Public Staff witness Rudder. The Company had requested guidance on the issue of the Commission's standards for adequate service. This request stems from the Commission's service penalty levied against CWS in its last rate case. That issue was remanded to the Commission by the North Carolina Supreme Court.

The Commission believes this rate case is not the appropriate docket to decide this question. Service adequacy for water and sewer utilities is an issue in which all regulated companies have an interest. Thus, every other water and sewer utility should have the opportunity to intervene.

The appropriate forum for such a broad question is a generic docket. The Commission, therefore, denies the Company's request to determine service adequacy in this case. CWS or any interested party may by petition request that a generic docket be established.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 94

The Company has not included all the CIAC reported on its federal income tax returns in its North Carolina income tax returns. Public Staff witness Kibler testified that a review of the Company's 1991 and 1992 North Carolina income tax returns revealed that CWS did not include any CIAC received in the form of plant in taxable income for those years. Mr. Kibler further testified that the Company has also not included in North Carolina taxable income $423,600 of CIAC received in the form of plant which was received by the Company prior to 1991.

Company witness Wenz testified that if the taxes associated with CIAC are not paid, there should be no taxes associated with that particular CIAC in rate base. Mr. Wenz also testified that the Company should not be allowed a return on taxes that it has not paid. Mr. Wenz even agreed that Mr. Kibler was correct in excluding any ADIT related to state income taxes in 1991 and 1992. The Company's final position was also in agreement with Mr. Kibler as to the fact that the $423,600, discussed earlier, has in fact never been included in North Carolina taxable income and therefore should not be included in ADIT in this rate case.

Yet it appears that the Company has done exactly the opposite in past rate cases. For example, in Docket No. W-354, Sub 111, based on the Company's testimony, the Commission included in rate base state income taxes paid on CIAC associated with the Olde Pointe system. We now know those income taxes have

never been paid. As early as Docket No. W-354, Sub 81, the Company tried to include the state income taxes associated with the $423,600 of CIAC in rate base. Company witnesses testified during the Sub 81 rate case that the income taxes had been paid on this CIAC. The Commission included the state income taxes associated with this CIAC in the Sub 111 rate case. Now the Commission learns that the Company has never paid the state income taxes associated with the $423,600 of CIAC.

In its initial filing, the Company included an amount in ADIT for state income taxes on CIAC paid in 1991 and 1992. Only after Mr. Kibler filed his testimony and revealed the actual practices employed by the Company did the Company withdraw its request for rate base treatment of the state income taxes.

Another area of concern to the Commission is the policy and practices of the Company that relate to the booking of CIAC received in the form of plant. As discussed in the Order in Docket No. W-354, Sub 118, the Company's method of booking CIAC is not in keeping with the Uniform System of Accounts and this Commission's Orders. In particular, the Commission points to the facts and circumstances associated with the Southwood sewer system to which Mr. Wenz testified. The date of the contract covering the Southwood sewer system is October 1, 1988. Company records filed in Sub 118 indicate that customers first connected to the system in 1988. Mr. Wenz testified that no plant has been booked related to the Southwood sewer system because the Company has not received the cost information from the developer. Mr. Wenz testified that it is Company policy not to book the plant until the cost information is received. The Company has been operating this system for over 5 years and it still does not have the cost information to book the plant. However, when confronted with this fact, Mr. Wenz testified that the Company can now get the information or make estimates on the original cost of the plant in Southwood and other systems within 6 months.

The overall concern that the Commission has as it relates to these matters is one of defining the potential unrecorded tax liability that faces the Company. The impact that income taxes can have on the financial fitness of a Company is well documented by the Commission in its Orders in Docket No. M-100, Sub 113, and forms the basis of the gross-up policy that has been adopted by the Commission. As stated by the Commission in Docket No. W-354, Sub 118, there are numerous systems currently being operated by the Company which have yet to be booked by the Company. The Company has repeatedly stated that an "unidentified CIAC" amount, which is based solely on an estimate without regards to any specific system, is included in its federal taxable income to cover any potential tax liability. The Commission notes, however, that the "unidentified CIAC" amount allocated to CWS in 1992 for previous years' CIAC was not reported as taxable income in North Carolina in 1992. By its own definition of the "unidentified CIAC," the Company cannot be confident that all potential income tax liability has been recorded.

The Commission is always concerned when any utility has an unrecorded potential income tax liability. Therefore, the Commission will require the Company to file a schedule calculating the potential income tax liability associated with (a) CIAC received but not booked by the Company and (b) CIAC received but not included in North Carolina taxable income. Such schedule should be filed within 90 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 95

The Public Staff has requested that the Commission require the Company to review its plant retirement policy for accuracy and compliance with the Uniform System of Accounts and file a report of its findings and any proposed changes to its retirement policy within 60 days of the Final Order in this case. In her testimony, Public Staff witness Dietz explained the Company's methodology for retiring plant. She explained that the Public Staff was concerned that the Company's plant retirement policy was causing the account balances on its books to be incorrect. To support this concern, Ms. Dietz cited systems which have debit balances in accumulated depreciation and contributions in aid of construction, two accounts that typically have credit balances.

During cross-examination, Company witness Wenz agreed to the Public Staff's recommendation.

The Commission believes there is reason for the concern expressed by the Public Staff. The examples cited by Ms. Dietz indicate there are problems with the Company's records, at least regarding accumulated depreciation and contributions in aid of construction. Therefore, the Commission will require the Company to review its plant retirement policy for accuracy and compliance with the Uniform System of Accounts and file a report of its findings and any proposed changes to its plant retirement policy within 60 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 96

The Public Staff has requested that the Commission require the Company to file its deferral policy with specific guidelines that follow Commission requirements within 60 days of the Final Order in this case. Public Staff witness Dietz explained the Company's deferral policy in her prefiled testimony. She testified that the Public Staff was concerned about the type of item and the dollar amount of the items being deferred. According to Ms. Dietz, the Company has deferred "major repairs" amounting to $879 and sludge hauling expenses of $3,625 as extraordinary expenses on its books. Ms. Dietz also discussed the deferral criteria established by the Commission in Docket No. E-13, Sub 136.

During cross-examination, Company witness Wenz agreed to the Public Staff's recommendation.

The Commission believes that it is appropriate for CWS to review its deferral policy. The examples cited by Ms. Dietz seem to be at odds with the criteria established by the Commission in Docket No. E-13, Sub 136. Therefore, the Commission will require the Company to file its deferral policy with specific guidelines that follow Commission requirements within 60 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 97

Ms. Pleasant testified that under the stipulation in CWS Systems, Inc., Docket No. W-778, Sub 20, CWS is to prepare an allocation manual. Ms. Pleasant recommended that in preparing this allocation manual, the Company should evaluate the appropriateness and accuracy of its allocation methods.

Mr. Wenz testified that preparation of an allocation manual would be very helpful.

Based on the problems with the Company's allocations of WSC costs in this case, the Commission believes that it is appropriate for the Company to evaluate the appropriateness and accuracy of its allocation methods in preparing its allocation manual. Therefore, the Commission orders the Company to work with the Public Staff in refining its allocation methodology.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 98

As a part of his least cost proposal, Company witness Spann testified that if the Commission accepts the Public Staff position on excess capacity, the Company should be allowed to accrue AFUDC on the amount of plant not included in rate base. The Company is proposing to accrue AFUDC for an indefinite period of time on projects until the cost of the projects are included in rate base. Witness Spann testified during cross examination that for systems that will never be built out, an allowance for funds used during construction (AFUDC) should be accrued forever.

The Commission finds that the Company proposal is unreasonable and conflicts with generally accepted accounting principles as well as our decision on a related proposal in the Company's last rate case. First, the accrual of AFUDC should cease when the construction of the project is completed. Additionally, amounts should only be capitalized if the inclusion of those costs in the cost of service is probable. The Commission fails to see how capitalized interest that will, or could, accrue forever would ever be included in rate base for ratemaking purposes. Furthermore, the accrual of AFUDC would have the effect of negating the Commission's decision that the plant related to excess capacity is not used and useful in rendering service to end of period customers. Therefore, the Commission finds that the Company should not be allowed to accrue AFUDC on the portion of the investments that are related to excess capacity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 99

The evidence for this finding of fact is found in the testimony of Company witness Daniel; and public witnesses David Burchfiel, a resident of Will Brook Subdivision in Johnston County; and Robert Martinelli, a resident of Lees Ridge Subdivision in Buncombe County. Both public witnesses complained about having to pay a sizable deposit although they owned their homes.

CWS witness Daniel explained how the Company interprets Commission Rule R12-2. Under questioning from Commissioner Cobb, he admitted that he has not sought advice of counsel on how the Rule should be applied.

Mr. Daniel pointed out that under Rule R12-2, subdivisions (1), (2), (3), (4), and (5) of subsection (a) are all followed by the word "or." Under his reasoning the Company may therefore choose to require a customer to meet any one of the five.

The focal point of the controversy is the Company's refusal to allow a customer to establish credit under provision (a)(1). The Company always requires the customer to satisfy (a)(2) as well. This interpretation flies in the face

of the wording of the Rule. Why would the Rule give (a)(1) as an independent option if a customer always had to satisfy (a)(2) as well? The answer obviously is that it would not.

The Commission concludes that CWS has been interpreting and applying Rule R12-2 incorrectly, and consequently the Company requires customers to do more to establish credit than the Rule allows. Therefore, the Company shall, effective immediately, begin applying Commission Rule R12-2 correctly.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 100

The evidence for this finding of fact is found in the testimony of CWS witness Daniel and public witness Holton. Mr. Daniel confirmed Mr. Holton's testimony that CWS imposed a moratorium on irrigation in Corolla without seeking prior Commission approval. Gwen Davis, the CWS office manager at the Morehead City regional office, then followed up with a letter to customers informing them that Commission Rule R7-20(c) authorized the Company to disconnect any customer who violated the moratorium. Upon discovering a customer watering his lawn, the Company disconnected the customer pursuant to this moratorium.

The Commission concludes that the Company has misinterpreted this Rule and exceeded its authority in all aspects of this situation. First of all, except for those that are purely voluntary, a utility has absolutely no authority to impose a moratorium on utility service usage. This authority rests exclusively with the Commission. Mr. Daniel acknowledged that many utilities seek Commission approval to impose moratoria. The Company offered no explanation as to why it chose not to do so. Rule R7-20(a) explicitly requires a water utility to "properly file with the Commission" any regulation on which it intends to rely to disconnect a customer. The Commission reviews these regulations and either approves or disapproves them. The Company did not comply with the Rule or with what Mr. Daniel knew all other utilities were doing, i.e., seeking Commission approval of the moratorium.

Furthermore, the Company disconnected a customer for failure to comply with this illegal moratorium based on what it decided was an emergency under subsection (c) of the Rule. As Mr. Daniel acknowledged under questioning of Commissioner Cobb, "an emergency [is] something that comes up suddenly so that you wouldn't have time to get prior approval for your action," not "something that goes on and on and then one day you see somebody watering their lawn and that's an emergency."

The Company apparently does not understand how limited this emergency provision is. The Commission cautions the Company that the number of times it has been used in the last decade to disconnect a customer without prior Commission approval by any utility can be counted on one hand. Its use here was especially inappropriate given the length of time the Company had been aware of the drought conditions.

The Commission therefore concludes that CWS has misinterpreted and misapplied this Rule. The Company may not impose any future moratorium without following the procedure all other utilities are required to follow; i.e., asking for and obtaining Commission approval before imposing it. The Commission also

warns the Company that its use of the emergency provision of Rule R7-20(c) was inappropriate, and CWS should use it in the future only in the limited circumstances for which it was intended.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 101

The evidence for this finding of fact is found in the testimony of Public Staff witness Rudder.

Testing for lead and copper (Pb/Cu), volatile organic chemicals (VOCs), and synthetic organic chemicals and pesticides (SOC) are newly required tests resulting from the Safe Drinking Water Act (SDWA) passed by Congress. These tests have high first year costs. In accordance with the provisions of the Order issued in Docket No. M-100, Sub 120, on August 27, 1993, Mr. Rudder recommended that the high first year cost be recovered in a one year surcharge to the base rate (the ongoing level of expense for these tests will be recovered in the normal manner). The amount to recover in a surcharge in the first year is as follows:

Test	Test Cost	Annual # of Tests	1st Year Annual Expense	Ongoing Annual Expense	1st Year Extra Expense
Pb/Cu(≤100)	$ 37.50	120	$ 4,500	$ 2,250	$ 2,250
Pb/Cu	$ 37.50	940	$ 35,250	$ 8,813	$ 26,437
Pb/Cu(>500)	$ 37.50	960	$ 36,000	$ 9,000	$ 27,000
VOC	$ 200.00	696	$139,200	$38,400	$100,000
SOC	$1,200.00	696	$835,200	$ 0	$835,200
				TOTAL	$991,687

Because some systems have populations of fewer than 101 persons, the SOC and VOC tests are not required until a year later. Therefore, the high first year cost impacts the Company a year later and a different amount to recover in a surcharge should be applicable in the second year, as follows:

Test	Test Cost	Annual # of Tests	2nd Year Annual Expense	Ongoing Annual Expense	2nd Year Extra Expense
VOC	$ 200	246	$49,200	$38,400	$10,800
SOC	$1,200	72	$86,400	$ 0	$86,400
				TOTAL	$97,200

Witness Rudder recommended that the high first year cost of water testing be recovered through a monthly surcharge of one year duration and that the monthly residential surcharge (which provides an allowance for the 4% gross receipts tax) for the first and second year be as shown:

Service Area	Annual Extra Expense	Customers	Monthly Surcharge
CWSNC (First year)	$991,687	17,606	$4.89
CWSNC (Second year)	$ 97,200	17,606	$0.48

The number of customers has been weighted by meter size. The actual surcharge would be weighted by the same factor that is applied to a base charge as follows:

Meter Size	Factor	1st Year Surcharge	2nd Year Surcharge
Standard 5/8" meter	1	$ 4.89	$ 0.48
1"	2.5	$ 12.23	$ 1.20
1-1/2"	5	$ 24.45	$ 2.40
2"	8	$ 39.12	$ 3.84
3"	15	$ 73.35	$ 7.20
4"	25	$122.25	$12.00
6"	50	$244.50	$24.00

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 102 AND 103

It is the Commission's opinion that all meter fees collected under contracts dated after February 3, 1987, must be grossed-up unless specified differently on contracts filed with and approved by this Commission.

The Company proposed to treat management and oversizing fees as revenues rather than as contributions in aid of construction. However, the Public Staff removed management and oversizing fees from revenues in this rate case believing they were more appropriately considered as contributions in aid of construction for purposes of this rate proceeding. The Company agreed with the adjustment. The Commission agrees with the Public Staff's adjustment and is of the opinion that management and oversizing fees should be treated as contributions in aid of construction for purposes of this rate proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That CWS shall adjust its water and sewer rates and charges so as to produce, based upon the adjusted test year level of operations, an increase in water revenues of $119,604 and an increase in sewer revenues of $118,313.

2. That the Schedule of Rates, attached as Appendix A, is approved for water and sewer service rendered by CWS. These rates shall become effective for service rendered on and after the date of this Order. The Commission considers this Schedule of Rates to be filed as required by G.S. 62-138.

3. That CWS shall file a report, as discussed in the Evidence and Conclusions for Finding of Fact No. 6, by July 29, 1994, that discusses the Whispering Pines complaint.

4. That a copy of the attached Appendices A and B shall be delivered by CWS to all its customers in conjunction with the next billing statement after the date of this Order.

5. That CWS shall file the attached Certificate of Service, properly signed, and notarized, within 10 days of completing the requirement of Ordering Paragraph No. 4.

6. That CWS shall file, within 90 days of the date of this Order, a schedule calculating the potential income tax liability associated with (a) CIAC received but not booked by the Company and (b) CIAC received but not included in North Carolina taxable income.

7. That CWS shall use the appropriate gross-up factors approved in Docket No. W-354, Sub 107. Future overcollections of gross-up will be subject to refund plus interest of 10%.

8. That the Company shall review its retirement policy for accuracy and compliance with the Uniform System of Accounts and file a report of its findings and any proposed changes to its retirement policy within 60 days of the date of this Order.

9. That CWS shall file its deferral policy with specific guidelines that follow Commission requirements within 60 days of the date of this Order.

10. That in preparing its allocation manual, CWS shall evaluate the appropriateness and accuracy of its allocation methods and work with the Public Staff in refining its allocation methodology.

11. That CWS shall by July 29, 1994, file an application to serve the Black Mountain Campground.

12. That CWS shall continue to maintain its books and records so that it may provide the Commission with system-specific data.

13. That CWS shall, effective immediately, begin applying Commission Rule R12-2 correctly as discussed in the Evidence and Conclusions for Finding of Fact No. 99.

14. That the letter in this docket by the Public Staff on May 13, 1994, and the Reply Brief and Affidavit of John Haynes filed by CWS on May 27, 1994, be, and the same are hereby, not accepted for consideration in deciding this case.

15. That CWS and the Public Staff shall review the attached Schedule of Rates and notify the Commission of any inconsistencies or errors by June 24, 1994.

16. That all meter fees, management fees, or oversizing fees collected under contracts dated after February 3, 1987, unless specified differently on contracts filed with and approved by this Commission, shall be treated as contributions in aid of construction, subject to gross-up.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of June 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk.

(SEAL)

Commissioners Allyson K. Duncan and Laurence A. Cobb, dissent.

APPENDIX A

SCHEDULE OF RATES
for
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA

for providing water and sewer utility service in

ALL ITS SERVICE AREAS IN NORTH CAROLINA

WATER RATES AND CHARGES

METERED SERVICE:

BASE FACILITIES CHARGES

A. Residential Single Family Residence	$ 10.10
B. Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	$ 10.10
C. Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	$ 9.10
D. Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	$ 10.10
1" meter	$ 25.25
1-1/2" meter	$ 50.50
2" meter	$ 80.80
3" meter	$151.50
4" meter	$252.50
6" meter	$505.00

USAGE CHARGE:

A. Treated Water/1,000 gallons	$ 2.90
B. Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	$ 2.00

FLAT RATE SERVICE:

A. Single Family Residential	$ 21.65
B. Commercial/SFE	$ 21.65

AVAILABILITY RATES:

Applicable only to property owners in Carolina Forest and Woodrun Subdivision in Montgomery County	$ 2.00

CONNECTION CHARGES (CC) AND PLANT IMPACT FEES (PIF) [1]:

A. 5/8" Meter

Subdivision	CC	PMF
Bahia Bay	$ 100.00	$400.00
Bainbridge	$ 100.00	$400.00
Bainbridge II	$ 0.00	$ 0.00
Bainbridge III	$ 100.00	$400.00
Bear Paw Resort	$ 100.00	$400.00
Beechbrook	$ 100.00	$400.00
Belvedere Utility Company	$ 100.00	$400.00
Blue Mountain at Wolf Laurel	$ 925.00	$ 0.00
Brandonwood	$ 200.00	$ 0.00
Brandywine Bay	$ 100.00	$400.00
Cabarrus Woods	$ 100.00	$400.00
Cambridge	$ 382.00	$ 0.00
Chapel Hills	$ 150.00	$400.00
College Park	$ 100.00	$400.00
Corolla Light	$ 500.00	$ 0.00
Country Hills	$ 100.00	$400.00
Country Club Annex	$ 100.00	$400.00
Courtney/Hampton Green	$ 100.00	$400.00
Crest View Estates	$ 100.00	$400.00
Crystal Mountain	$ 100.00	$400.00
Danby	$ 100.00	$400.00
Eastgate	$ 100.00	$400.00
Eastwood Forest	$ 100.00	$400.00
Farmington	$ 100.00	$400.00
Farmwood/Apple Creek/Tara Woods	$ 100.00	$400.00

Subdivision	CC	PMF
Farmwood 20	$ 0.00	$ 0.00
Farmwood 21	$ 100.00	$400.00
Grandview at T-Square	$ 100.00	$400.00
Habersham	$ 100.00	$400.00
Harbor House Estates	$ 100.00	$400.00
High Meadows	$ 100.00	$400.00
Holly Acres	$ 100.00	$400.00
Hound Ears	$ 300.00	$ 0.00
Huntington Forest	$ 100.00	$400.00
Idlewood	$ 100.00	$400.00
Lamplighter Village East	$ 100.00	$400.00
Lamplighter Village South	$ 100.00	$400.00
Mallard Crossing	$ 100.00	$400.00
Mallard Crossing (Summey Bldrs.)	$ 0.00	$ 0.00
Misty Mountain	$ 100.00	$400.00
Monteray Shores	$ 500.00	$ 0.00
Monteray Shores at Degabrielle	$ 0.00	$ 0.00
Mossy Creek	$ 100.00	$400.00
Mt. Mitchell	$ 100.00	$400.00
Oakdale Terrace	$ 100.00	$400.00
Olde Point	$ 100.00	$400.00
Pine Knoll Shores	$ 100.00	$400.00
Powder Horn Mountain	$ 100.00	$400.00
Providence Ridge/Hearth Stone	$ 100.00	$400.00
Providence West	$ 100.00	$400.00
Quail Ridge	$ 750.00	$ 0.00
Riverbend	$ 100.00	$400.00
Riverbend (Plantation Landing)	$ 100.00	$400.00
Riverbend (Lakemere)	$1,250.00	$ 0.00

WATER AND SEWER - RATES

Subdivision	CC	PMF
Riverbend (Norbury Park)	$ 100.00	$400.00
Riverbend (Pier Pointe)	$1,250.00	$ 0.00
Riverbend (Canebrake)	$1,250.00	$ 0.00
Riverbend (Lochbridge)	$1,250.00	$ 0.00
Riverpointe	$ 300.00	$ 0.00
Riverpointe Simonini	$ 0.00	$ 0.00
Roxbury	$ 100.00	$400.00
Saddlebrook	$ 100.00	$400.00
Saddlebrook (Summey Bldrs.)	$ 0.00	$ 0.00
Saddlewood/Oak Hollow	$ 100.00	$400.00
Saddlewood/Oak Hollow (Summey Bldrs.)	$ 0.00	$ 0.00
Sherwood Forest	$ 950.00	$ 0.00
Sherwood Park	$ 100.00	$400.00
Ski Mountain	$ 100.00	$400.00
Ski Country	$ 100.00	$ 0.00
Stonehedge-Bradford Park	$ 441.00	$ 0.00
Suburban Heights	$ 100.00	$400.00
Suburban Woods	$ 100.00	$400.00
Sugar Mountain	$ 100.00	$400.00
Tanglewood Estates	$ 100.00	$400.00
Tanglewood South	$ 100.00	$400.00
Trexler Park	$ 100.00	$400.00
Victoria Park	$ 344.00	$ 0.00
Watauga Vista	$ 100.00	$400.00
Westwood Forest	$ 100.00	$400.00
Whispering Pines	$ 100.00	$400.00
Wildwood Green/McLlwaine Acres	$ 100.00	$400.00

Subdivision	CC	PMF
Windsor Chase	$ 100.00	$400.00
Winghurst	$ 100.00	$400.00
Wolf Laurel	$ 925.00	$ 0.00
Wood Hollow-Forest Ridge	$ 100.00	$400.00
Woodhaven/Pleasant Hills	$ 100.00	$400.00
Woodside Falls	$ 500.00	$ 0.00
Yorktown	$ 100.00	$400.00
Zemosa Acres	$ 100.00	$400.00
B. Meters Larger than 5/8"	Actual Cost	N/A
C. Commercial and Other/SFE (Payable by Developer or Builder)	N/A	$400.00

METER TESTING FEE [2]: $20.00

NEW WATER CUSTOMER CHARGE: $27.00

RECONNECTION CHARGES [3]:

If water service is cut off by utility for good cause: $27.00
If water service is disconnected at customer's request: $27.00

CMUD BILLING CHARGES: $ 2.20/billing

EPA TESTING SURCHARGE:

	1st Year Surcharge	2nd Year Surcharge
Standard 5/8" Meter	$ 4.89	$ 0.48
1"	$ 12.23	$ 1.20
1-1/2"	$ 24.45	$ 2.40
2"	$ 39.12	$ 3.84
3"	$ 73.35	$ 7.20
4"	$122.25	$12.00
6"	$244.50	$24.00

MANAGEMENT FEE (in the following subdivisions only):	
Cambridge	$250.00
Habersham	$613.00
Riverbend (Lochbridge)	$250.00
Riverbend (Canebrake)	$250.00
Riverbend (Lakemere)	$250.00
Riverbend (Pier Pointe)	$250.00
Southwood/Brandywine at Mint Hill	$300.00
Windsor Chase	$ 63.00
Wolf Laurel	$150.00
OVERSIZING FEE (in the following subdivision only):	
Winghurst	$400.00
METER FEE (in the following subdivisions only):	$ 50.00

Abington
Bainbridge
Bainbridge II
Bainbridge III
Bent Creek
Blue Mountain at Wolf Laurel
Brandywine
Cambridge
Eastgate
Emerald Point (Rock Island)
Farmington
Farmwood 21
Grandview at T-Square (Lockhurst)
Habersham
Hidden Hills
Monteray Shores
Mossy Creek
Olde Pointe
Parks Farm/Raeburn
Powder Horn Mountain
Providence Ridge (Hearthstone)
Riverbend (Norbury Park)
Riverbend (Lochbridge)
Riverbend (Canebrake)
Riverbend (Pier Pointe)
Riverbend (Lakemere)
Riverpointe
Ski Country
Southwood (Brandywine at Mint Hill)
Stonehedge (Bradford Park)
Tanglewood East
Tanglewood South
Victoria Park
Willowbrook
Windsor Park
Winghurst
Wolf Laurel

SEWER RATES AND CHARGES

METERED SERVICE: Commercial and Other

A. Base Facility Charge (Based on Meter Size)

5/8" x 3/4" meter	$ 10.10
1" meter	$ 25.25
1-1/2" meter	$ 50.50
2" meter	$ 80.80
3" meter	$151.50
4" meter	$252.50
6" meter	$505.00

B. Usage Charge/1,000 gallons (based on metered water usage) $ 4.55

C. Minimum Monthly Charge $ 30.55

D. Sewer customers who do not receive water service from the Company/SFE $ 30.55

FLAT RATE SERVICE: Per Dwelling Unit [4] $ 30.55

COLLECTION SERVICE ONLY [5]: (When sewage is collected by utility and transferred to another entity for treatment)

A. Single Family Residence $ 11.00

B. Commercial/SFE $ 11.00

CONNECTION CHARGE [1]:

A. 5/8" meter

Subdivision	CC	PMF
Bainbridge	$ 100.00	$1,000.00
Bainbridge Phase II	$ 0.00	$ 0.00
Bainbridge Phase III	$ 100.00	$1,000.00
Bear Paw	$ 100.00	$1,000.00
Belvedere Utility Company	$ 100.00	$1,000.00
Brandywine Bay	$ 100.00	$1,456.00
Cambridge	$ 841.00	$ 0.00

Subdivision	CC	PMF
Cabarrus Wood	$ 100.00	$1,000.00
College Park	$ 100.00	$1,000.00
Corolla Light	$ 700.00	$ 0.00
Danby	$ 100.00	$1,000.00
Farmwood 20	$ 100.00	$1,000.00
Farmwood 21	$ 100.00	$1,000.00
Habersham	$ 100.00	$1,000.00
Hound Ears	$ 300.00	$ 0.00
Independent/Hemby Acres Griffin)	$ 0.00	$ 0.00
Independent/Hemby Acres	$ 100.00	$1,000.00
Interlaken	$ 100.00	$1,000.00
Lamplighter Village South	$ 100.00	$1,000.00
Lamplighter Village East	$ 100.00	$1,000.00
Monteray Shores	$ 700.00	$ 0.00
Mossy Creek	$ 100.00	$1,000.00
Mt. Carmel	$ 100.00	$1,000.00
Mt. Carmel/Section 5A	$ 500.00	$ 0.00
Olde Pointe	$ 100.00	$1,000.00
Riverbend	$ 100.00	$1,000.00
Riverbend (Norbury Park)	$ 100.00	$1,000.00
Riverbend (Lakemere)	$1,250.00	$ 0.00
Riverbend (Pier Pointe)	$1,250.00	$ 0.00
Riverbend (Lochbridge)	$1,250.00	$ 0.00
Riverbend (Plantation Landing)	$ 100.00	$1,000.00
Riverbend (Canebrake)	$1,250.00	$ 0.00
Riverpointe Utility Corporation	$ 300.00	$ 0.00
Riverpointe (Simonini)	$ 0.00	$ 0.00
Saddlewood/Oak Hollow	$ 100.00	$1,000.00
Spooners Creek	$ 100.00	$1,000.00
Steeplechase	$ 100.00	$1,000.00

Subdivision	CC	PMF
Steeplechase (Spartabrook)	$ 0.00	$ 0.00
Stonehedge - Bradford Park	$ 971.00	$ 0.00
Sugar Mountain	$ 100.00	$1,000.00
Trevor Downs	$ 100.00	$1,000.00
Victoria Park	$ 756.00	$ 0.00
Windsor Chase	$ 100.00	$1,000.00
Winghurst	$ 100.00	$1,000.00
Wood Hollow - Forest Ridge	$ 100.00	$1,000.00
B. Meters Larger than 5/8"	Actual Cost	N/A
C. Commercial and Other/SFE (Payable by Developer or Builder)	N/A	$1,000.00

NEW SEWER CUSTOMERS CHARGES [6/]: $22.00

RECONNECTION CHARGES [7/]:

If sewer service is cut off by utility for good cause: Actual Cost

MISCELLANEOUS UTILITY MATTERS

BILLS DUE: On billing date

BILLS PAST DUE: 21 days after billing date

BILLING FREQUENCY: Bills shall be rendered bi-monthly in all service areas except for availability charges in Carolina Forest and Woodrun Subdivisions which will be billed semi-annually.

CHARGES FOR PROCESSING NSF CHECKS: $10.00

FINANCE CHARGE FOR LATE PAYMENT: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1/ These fees are subject to the Gross Up Multiplier provisions for Contributions in Aid of Construction of the North Carolina Commission, Docket No. M-100, Sub 113. Also, these fees are only applicable one time, when the unit is initially connected to the system.

2/ If a customer requests a test of a water meter more frequently than once in a 24-month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24-month period without charge.

3/ Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.

4/ Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor building the unit.

5/ The utility shall charge for sewage treatment service provided by the other entity; the rate charged by the other entity will be billed to CWS' affected customers on a pro rata basis, without markup.

6/ These charges shall be waived if sewer customer is also a water customer within the same service area.

7/ The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. This charge will be waived if customer also receives water service from Carolina Water Service within the same service area.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-354, Sub 128, on this the 10th day of June 1994.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-354, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in All of its Service Areas in North Carolina	))))))	NOTICE TO CUSTOMERS

NOTICE IS GIVEN that the North Carolina Utilities Commission has issued an Order authorizing Carolina Water Service (CWS) to charge new rates for water and sewer utility service in all its service areas in North Carolina. A copy of the new Schedule of Rates is attached.

The new rates reflect an overall increase of 2.4% for water operations and a increase of 4.1% for sewer operations. The Company had requested an increase of 10.23% for water operations and 9.45% for sewer operations.

The Commission reached its decision after considering evidence presented at Public Hearings in Fayetteville, Carthage, Raleigh, Kitty Hawk, Morehead City, New Bern, Wilmington, Murphy, Brevard, Asheville, Boone, Charlotte, and Winston-Salem.

The Commission has also allowed CWS to recover, through a pass-through to its customers, the expense for the new Department of Environment, Health and Natural Resources, Division of Environmental Health (DEH) permit fee, and the expense for testing for the following contaminants as required by the EPA: lead and copper (Pb/Cu), total trihalomethane (TTHM), nitrate, nitrite, inorganic chemical, pesticide, synthetic organic chemical (SOC), volatile organic chemical (VOC).

These expenses are sufficiently definite and predictable to come within the Commission's pass-through procedures adopted in the generic docket (M-100, Sub 120) in the May 1990 and August 1993 Orders. Because some of the tests have a high first year cost and because the starting dates of the tests vary in accordance with the population of the subdivisions, the annual expense varies from year to year, as shown below:

Test	Test Cost	Annual # of Tests	1st Year Annual Expense	Ongoing Annual Expense	1st Year Extra Expense
Pb/Cu(≤100)	$ 37.50	120	$ 4,500	$ 2,250	$ 2,250
Pb/Cu	$ 37.50	940	$ 35,250	$ 8,813	$ 26,437
Pb/Cu(>500)	$ 37.50	960	$ 36,000	$ 9,000	$ 27,000
VOC	$ 200.00	696	$139,200	$38,400	$100,000
SOC	$1,200.00	696	$835,200	$ 0	$835,200
				TOTAL	$991,687

Test	Test Cost	Annual # of Tests	2nd Year Annual Expense	Ongoing Annual Expense	2nd Year Extra Expense
VOC	$ 200	246	$49,200	$38,400	$10,800
SOC	$1,200	72	$86,400	$ 0	$86,400
				TOTAL	$97,200

Service Area	Annual Extra Expense	Customers	Monthly Surcharge
CWSNC (First year)	$991,687	17,606	$4.89
CWSNC (Second year)	$ 97,200	17,606	$0.48

The number of customers has been weighted by meter size. The actual surcharge would be weighted by the same factor that is applied to a base charge as follows:

Meter Size	Factor	1st Year Surcharge	2nd Year Surcharge
Standard 5/8" meter	1	$ 4.89	$ 0.48
1"	2.5	$ 12.23	$ 1.20
1-1/2"	5	$ 24.45	$ 2.40
2"	8	$ 39.12	$ 3.84
3"	15	$ 73.35	$ 7.20
4"	25	$122.25	$12.00
6"	50	$244.50	$24.00

ISSUED BY ORDER OF THE COMMISSION.
This is the 10th day of June 1994.

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

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to the Public and Schedule of Rates issued by Order of the North Carolina Utilities Commission in Docket No. W-354, Sub 128, and this Notice and Schedule of Rates were mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1994.

By: _____
Signature

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice and Schedule were mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-354, Sub 128.

Witness my hand and notarial seal, this the ____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

COMMISSIONER DUNCAN, DISSENTING:

I respectfully dissent from that portion of the Commission's order determining the used and useful capacity of elevated storage tanks. I do not believe the decision accurately characterizes the Company's position, and feel that it is both shortsighted and not in the best interest of even current customers.

The Commission has wrestled with the issue of the appropriate amount of capacity to be included in rate base for elevated storage tanks through several Carolina Water Service cases. The majority here states that the Company argues that 400 gallons per connection is the appropriate amount, but concludes that only 200 gallons per connection should be allowed in rate base.

As I read the proposed orders, however, what the Company is arguing is simply that "a generic standard against which all determinations of excess capacity for elevated storage tanks should be measured" (Carolina Water Service Proposed Order page 60) is inappropriate. The Company seeks to reserve the right to make a determination of appropriate capacity on the basis of the characteristics of a particular system, recognizing that such characteristics vary. This seems to me quite reasonable.

Nor do any of the factors relied upon by the majority refute the legitimacy of such a position. The majority relies on such statements as "It is apparent that CWS itself does not adhere to the 400 gpd standard," which are in fact not inconsistent with the Company's position as I read it, but which, instead, miss the point. 400 gpd might not be necessary in all cases; conversely, it follows that it might be necessary in some.

The Commission considered the testimony of a DEH witness in the panel decision in Docket Number W@-354, Sub 111 with respect to minimum state design standards. The Commission has taken judicial notice of that decision in this docket. The witness testified that 200 gpd was the minimum state design standard, although he went on to state that minimum standards are merely that, and that it would be wring to use those as a basis for determining useful capacity. The witness testified that minimum standards are not necessarily indicative of the amount of storage capacity needed for all situations, and recommended more. The full Commission reversed the panel in adopting a 200 gpd standard, and the Supreme Court later found that there was ample evidence to support a finding that 200 gpd is, in fact, the minimum.

Of course I do not disagree that 200 gpd is the appropriate design minimum. But I don't believe that given such system specific characteristics as consumption patterns, fire protection requirements, peak demand and the need to protect against such exigencies as equipment outages and drought, that it is necessarily optimal. And I would not adopt a rigid standard that forecloses the company from determining that greater capacity is necessary to serve current customers.

Allyson K. Duncan

COMMISSIONER COBB, DISSENTING.

I dissent from that portion of the Order finding the cost of common equity capital to be 12%. I would have supported the Public Staff's recommendation of 11%.

Laurence A. Cobb, Commissioner

DOCKET NO. W-354, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina	ORDER ON RECONSIDERATION

BY THE COMMISSION: On June 10, 1994, the Commission issued an Order in this docket granting Carolina Water Service, Inc. of North Carolina (CWS or Company) partial rate increases for water and sewer utility services in its service areas.

On July 11, 1994, CWS filed a Motion for Reconsideration whereby the Commission was requested to reconsider certain decisions set forth in its Order of June 10, 1994 (Order).

On July 28, 1994, the Public Staff filed its Response to CWS's Motion for Reconsideration.

Upon consideration of the motion filed by the Company and the response filed by the Public Staff, the Commission finds and concludes that good cause exists for the Commission to reconsider its Order, with respect to its finding concerning the appropriate ratemaking treatment to be accorded the revenues lost by the Company as a result of the Town of Atlantic Beach having paralleled certain of its facilities at Pine Knoll Shores.

In its Order, under Finding of Fact No. 4, the Commission did not accept CWS's position that 730 customers or customer equivalents should be removed from the test-year level of operations in consideration of the fact that the Town of Atlantic Beach had paralleled a portion of the Company's system in Pine Knoll Shores subdivision. Many of the residents in that area have connected to the Town of Atlantic Beach's water system. In lieu of adopting the Company's position in this regard, the Commission, in its Order, adopted the position advocated by the Public Staff. The Public Staff argued, and for that matter continues to argue, that the position which it takes results in a better matching of revenues and costs from the standpoint of the appropriate test-year level of operations than does the position of the Company.

As previously indicated, the Company, in its Motion for Reconsideration, objected to the Commission's unwillingness to exclude the aforesaid revenues in developing CWS's pro forma test-year level of operations for purposes of this proceeding. In support of its position, CWS made the following arguments:

CWS stated that "... G.S. 62-133(c) requires the Commission to consider evidence offered to show actual changes in test year costs, revenues and rate base...." CWS noted that the evidence showed that 730 customers or customer equivalents disconnected from the Company's water system and connected to the parallel system installed by the Town of Atlantic Beach prior to the close of the hearing. According to the Company, these customers were not receiving water service from CWS at the time of the hearing. CWS asserted that, as a result of the Commission having included revenues from these customers in the pro forma test-year level of operations adopted for use for purposes of this proceeding, CWS cannot achieve the level of earnings authorized in the Order.

CWS contended in its motion that the test-year level of operations presented in the Company's filings properly reflected an appropriate matching of revenues and costs. The Company stated that, in adjusting expenses downward to reflect the impact of customers lost to the Town of Atlantic Beach, it made pro forma adjustments to reflect all attendant changes in cost in the same manner and for the same reasons as the Commission makes corollary adjustments in matching revenues and costs associated with customer growth.

The Company stated that the Commission has erroneously assumed that revenues, rate base, and expenses changed in all of CWS's other systems in the same proportions so as to exactly offset the impact of the lost Atlantic Beach customers. CWS further contended that, in contrast to evidence presented by the Company showing a proper matching of appropriate rate base, revenue, and expense adjustments for the loss of the subject customers or customer equivalents, there was no corroborating evidence to show a proper matching of those components of the cost of service equation with respect to the customers added elsewhere throughout the state.

CWS reminded the Commission that on two occasions in 1993, the Company attempted to lower its rates in Atlantic Beach to meet the competition of the parallel system but was not allowed by the Commission to take any action to prevent the loss of customers. The Company maintained that it is inequitable for the Commission to now invoke a substantial penalty on CWS, when the Company was precluded from taking any action in the matter to avoid the loss.

The Company argued that the disconnection of the subject Atlantic Beach customers or customer equivalents occurred over a very short period of time, making it analogous to the sale of a system. CWS further argued that in the past when the Company sold a system subsequent to the end of a test year the Commission removed the impact of the lost customers from the ratemaking equation and that the Commission did not then inject revenues and expenses for other scattered customers added to CWS's other systems.

The Public Staff, in its comments filed in response to the Company's Motion for Reconsideration on the subject issue, contended that the Company has not offered anything different from what it presented at the hearing. The Public

Staff further contended that the Company "...simply wants the Commission to change its mind."

The Commission has carefully reviewed and analyzed (1) the arguments presented by the Company in its Motion for Reconsideration and the Public Staff's response to said motion, (2) the Commission's Order here under review, and (3) the entire evidence of record of this proceeding. It is an uncontroverted fact that utility services are no longer being provided by the Company to the 730 customers or customer equivalents here at issue. Consequently, the Company is no longer recovering revenues from said customers. Further, it is an uncontroverted fact that the loss of the aforesaid customers and the attendant revenue stream was a relevant, material fact and/or circumstance which existed prior to the time the hearing in this docket was closed. Thus, the issue remaining to be resolved in this regard at this juncture stated in question form is: should the pro forma test-year level of operations adopted for use by the Commission for purposes of this proceeding be adjusted to reflect the loss of the aforesaid revenue stream?

The purpose of the pro forma test-year concept in setting public utility rates is to allow the Commission to arrive at annual levels of revenues and costs that are reasonable and representative of the levels of revenues and costs that a company can reasonably be expected to realize or incur, respectively, in providing utility service(s) rendered to the public within the State in the near future. Stated alternatively, as indicated by the North Carolina Supreme Court, the basic, underlying theory of using a company's operating experience in a "test period", recently ended, in fixing rates to be charged by it for its service in the near future is that rates for service, in effect throughout the test period, will, in the near future, produce the same rate of return on the company's property, used in rendering such service, as was produced by it on such property in the test period, adjusted for known changes in conditions. State ex rel. Utils. Comm'n v. Morgan, 278 N.C. 235, 179 S.E.2d 419 (1971); State ex rel. Utils. Comm'n v. Duke Power Co., 305 N.C. 1, 287 S.E.2d 786 (1982). Specifically, regarding pro forma adjustments to the test-year level of operations, the North Carolina Supreme Court has made it exceedingly clear that, if a test period is to produce a reasonably accurate estimate of what may be anticipated in the near future, pro forma adjustments are necessary and appropriate in recognition of and for abnormalities which existed in the test period and for changes in conditions occurring during the test period.

In resolving the foregoing question on reconsideration, as indicated above, the Commission must, essentially, reach a determination as to whether it is necessary and appropriate to reflect in CWS's pro forma test-year experience a reduction in revenues in recognition of the subject revenue loss in order to allow the Company a reasonable opportunity to earn a fair return on its investment used and useful in providing public utility services and no more. The Commission in its initial Decision stated as follows:

> "The Commission agrees with the Public Staff that the appropriate level of customer numbers is the customers on line at the end of the test year so that the revenues, rate base, and expenses are matched to customers actually using the utility service. To do otherwise would distort the matching concept and result in rate base and expenses associated with the Pine Knoll Shores and Farmwood customers being

assigned to customers in other service areas. The Commission further notes that the Company did not include the customers added in other systems subsequent to the test year. The Public Staff showed that the Company's meter and tap summaries for December 31, 1992, and December 31, 1993, showed only a net loss of 24 customers over the entire Company system. The Commission concludes it is not appropriate for CWS to update an aspect of the case that benefits the Company (i.e., customer losses) without updating any other aspects (i.e., customer growth)."

After careful consideration of the entire record in this proceeding, the Commission finds and concludes that it should modify its Order, with respect to its finding concerning the appropriate ratemaking treatment to be accorded the customers and consequently the revenues lost by the Company as a result of the Town of Atlantic Beach having paralleled certain of the Company's facilities at Pine Knoll Shores. Upon reconsideration, the Commission now finds and concludes that the 730 customers or customer equivalents, as discussed hereinabove, should be excluded by the Commission in determining (1) the number of customers served and (2) the end-of-period pro forma level(s) of revenues appropriate for use for purposes of this proceeding. Accordingly, the Commission further finds and concludes that Finding of Fact No. 4 should be revised as follows:

4. The Applicant provides water utility service to 16,876 customers or customer equivalents and sewer service to 8,274 customers or customer equivalents in over 100 service areas in 25 counties in North Carolina.

The Commission has reached the foregoing conclusion as a result of it now having concluded, after reconsideration, that the weight of the evidence of record does not support the Public Staff's position. The propriety of the Public Staff's position relies to a vast extent, if not exclusively, on the Public Staff's assertion that under the position it advocates revenues, rate base and expenses are matched to customers actually using the utility service on line at the end of the test year. The Public Staff attempts to support that assertion by contending that the Company acted inappropriately as a result of its having updating the test year for customers or customer equivalents lost at Pine Knoll Shores without having included in the test year the impact of customers gained statewide throughout CWS's system(s). The Public Staff did not, however, offer any evidence as to the net impact that such updating adjustments might have had with respect to the test-year level of operations. If the Company had in fact adjusted the test year for the full impact of all customers added and/or lost throughout its system(s) subsequent to the close of the test year but prior to the close of hearing in addition to the adjustments that it did make, as suggested by the Public Staff, assuming that on average the cost to serve such customers was approximately the same as the average cost of service determined before inclusion of the impact of said customer additions, the resultant effect on the level of rates and charges ultimately approved by the Commission would have been nil. The foregoing assumption, in the absence of evidence to the contrary, is entirely consistent with the regulatory and ratemaking process.

The sum and substance of the evidence presented in this regard is that, with respect to the test-year level of operations, the Company has clearly shown that an abnormality existed, prior to the close of hearing in this docket, which would

have a material impact on the test-year level of operations. With respect to that abnormality, the evidence also clearly shows that the Company has appropriately adjusted the test year. The Public Staff has made no evidentiary showing that any abnormality, circumstance(s), or event(s) existed or has occurred that would tend to compensate for the loss of customers or customer equivalents at Pine Knoll Shores that would in any way justify the Commission's adoption of the position which the Public Staff has taken in this regard. It is for the foregoing reasons that the Commission now finds and concludes that its initial Order should be modified in the manner as indicated hereinabove.

The Commission further finds and concludes that reconsideration of the remaining issues as requested by CWS should be denied. Finally, the Commission finds and concludes that the findings and conclusions as set forth in its Order, except to the extent modified herein, should be reaffirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That Finding of Fact No. 4 set forth in the Order previously entered in this docket on June 10, 1994, shall be, and hereby is, revised to read as follows:

> 4. The Applicant provides water utility service to 16,876 customers or customer equivalents and sewer service to 8,274 customers or customer equivalents in over 100 service areas in 25 counties in North Carolina.

2. That CWS shall revise Schedules I, II, and III which appear on pages 82, 83, and 84 of the Order previously entered in this docket on June 10, 1994, and its schedules of rates and charges so as to reflect the impact of the Commission's instant decision and file same with the Commission within seven days from the date of this Order. The revised rate schedules to be filed pursuant to the provisions of this Order shall be effective for service rendered on and after the date of this Order. Five copies of all workpapers developed in this regard shall be filed concurrent with the filing of the aforesaid data. Further, concurrent with its filing of the foregoing data, CWS shall file a proposed customer notice reflecting the impact of the instant decision for consideration by the Commission. The Public Staff shall be, and hereby is, allowed a period of seven days, from the date of filing by the Company in this regard, to file reply comments.

3. That, except as granted herein, the Motion for Reconsideration filed in this docket by CWS shall be, and hereby is, denied.

4. That, except as modified herein, the Commission's Order heretofore entered in this docket on June 10, 1994, shall remain in full force and effect.

5. That the Commission will enter a further Order in this docket upon completion of its review of the information and data required hereinabove.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Chairman Hugh A. Wells did not participate in this decision.

Commissioner Laurence A. Cobb dissents in part. Commissioner Cobb voted to affirm the Commission Order entered on this docket on June 10, 1994.

Commissioner Allyson K. Duncan concurs in part and dissents in part by separate opinion.

Commissioner Ralph A. Hunt joins in Commissioner Duncan's concurring and dissenting opinion.

COMMISSIONER DUNCAN, CONCURRING IN PART, DISSENTING IN PART:

I concur in the majority opinion insofar as it relates to the ratemaking treatment to be accorded revenues lost by the Company as a result of the Town of Atlantic Beach having paralleled certain facilities at Pine Knoll Shores.

I reluctantly concur in the majority's decision not to revisit the issue of the Company's attorney's fees, but only because of my understanding that the decision is based solely on the Company's failure to adequately document the fees in question. I cannot accept the principle that, absent glaring abuse, the Public Staff can, or the Commission could, control or limit the Company's choice of counsel on the amount of time counsel devotes to a particular case. No such limits are imposed on the Public Staff's resources, how many attorneys it deploys or how much time it expends. Yet the Company's legal costs are driven in large measure by how litigious the Public Staff chooses to be. Also, the Commission has given no prior guidance on the parameters of acceptable legal fees.

I dissent from that part of the Commission's Order declining to reconsider the appropriate standard for elevated storage tanks. I believe the imposition of a mandatory, across-the-board 200 gpd standard regardless of the needs and circumstances of a particular subdivision to be arbitrary, shortsighted, and not in the best interests of ratepayers or the company.

I am authorized to say that Commissioner Ralph Hunt joins me in this opinion.

Commissioner Allyson K. Duncan

DOCKET NO. W-354, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina	)	ORDER REGARDING METER FEES, MANAGEMENT FEES, AND OVERSIZE FEES

BY THE COMMISSION: On June 10, 1994, the Commission issued its Order Granting Partial Rate Increase (Order) for water and sewer utility service provided by Carolina Water Service, Inc. of North Carolina (CWS or Company) in all its service areas in North Carolina. Ordering paragraph 16 of the Order states that all meter fees, management fees, or oversize fees collected under contracts dated after February 3, 1987, shall be treated as Contributions in Aid of Construction (CIAC), subject to gross-up unless specified differently on contracts filed with and approved by this Commission.

On June 24, 1994, the Company filed a letter requesting that the tariff be revised to require the gross-up provision for these fees that are collected under contracts dated after June 10, 1994. CWS stated that prior to the current rate case the Public Staff and the Commission treated these fees as revenues. The Company further stated that all meter fees, management fees, and oversize fees are collected from developers pursuant to contract, negotiated under the premise that the fees would be accounted for as revenues as was then the Commission approved practice. As such, according to CWS, it was, the Company's understanding that these fees would be included in both book and taxable income, and therefore, implicitly included a provision for taxes. CWS stated that it does not have the ability to unilaterally increase these fees for the gross-up provision simply because the accounting treatment has now been changed by the Commission.

On June 29, 1994, the Public Staff filed its response to the Company's letter dated June 24, 1994. The Public Staff disagreed with the Company's request regarding the meter fees, management fees, and oversize fees. The Public Staff pointed out that the question of how to deal with those fees was a point of contention in the current rate case. According to the Public Staff, CWS took the position that those fees should not be considered revenues in calculating rates, but they also should not be considered CIAC subject to the gross-up requirement. The Public Staff maintained that these positions were inconsistent and that the fees should be considered either CIAC or revenues for all purposes. The Public Staff further argued that the Commission ordered the fees to be considered CIAC and as such, they are subject to gross-up. The Public Staff indicated that if the Company did not want the fees treated as CIAC, it should have asked that they be treated as revenues for all aspects of the rate case.

Based on the discussion above, the Commission is of the opinion that all meter fees, management fees, and oversize fees collected under contracts dated on or after June 11, 1994, should be grossed-up. For those fees collected under

contracts dated prior to June 11, 1994, such fees should be considered CIAC without gross-up, unless gross-up is allowed in the contracts. Tax consequences, if any, will be deferred until the Company's next general rate case.

IT IS, THEREFORE, ORDERED as follows:

1. That all meter fees, management fees, and oversize fees collected under contracts dated on or after June 11, 1994, shall be grossed-up.

2. That all meter fees, management fees, and oversize fees collected under contracts dated prior to June 11, 1994, shall be considered CIAC without gross-up, unless gross-up is allowed in the contracts.

3. That tax consequences, if any, shall be deferred until the Company's next general rate case.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of November 1994.

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

DOCKET NO. W-354, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina	ORDER RULING ON PUBLIC STAFF'S MOTIONS FOR CLARIFICATION AND RECONSIDERATION

BY THE COMMISSION: On September 21, 1994, the Commission issued an Order on Reconsideration in this docket granting Carolina Water Service, Inc. of North Carolina (CWS or Company) partial rate increases for water and sewer utility services in its service areas.

On October 27, 1994, the Public Staff filed its Motions for Clarification and Reconsideration whereby the Commission was requested to clarify and reconsider its Order of September 21, 1994 (Order). The Public Staff asserted in its motions that the Order is in conflict with prior rulings and therefore leave all parties unclear as to how to make heretofore standard adjustments (e.g., for customer growth). The Public Staff also requested that the Commission reconsider its decision based on prior Commission rulings.

On November 14, 1994, CWS filed its Response to the Public Staff's Motions for Clarification and Reconsideration.

Upon consideration of the motions filed by the Public Staff and the response filed by the Company, the Commission finds and concludes that good cause exists for the Commission to reaffirm its Order, issued on September 21, 1994, with respect to its finding on reconsideration concerning the appropriate ratemaking treatment to be accorded the revenues lost by the Company as a result of the Town of Atlantic Beach having paralleled certain of its facilities at Pine Knoll Shores.

In support of its motions the Public Staff stated that the difference between the original ruling, issued on June 10, 1994, and the September 21, 1994, ruling was in the area of customer numbers, particularly those related to Pine Knoll Shores. According to the Public Staff, the reasons for the Commission's decision included the Public Staff's failure to produce evidence showing the net impact of Company-wide customer number changes, and the Commission's assumption that on average, the cost to service additional customers was approximately the same as the average cost of service determined prior to the inclusion of additional customers.

The Public Staff asserted that the Order has placed the burden of proof to show the impact of post test year customer losses and gains on a statewide basis on the Public Staff rather than the Company. The Public Staff further stated that the Order requires the Public Staff to produce information that only the Company has.

The Company disagreed in its response with the Public Staff's assertion that the Commission has shifted the burden of proof to the Public Staff with respect to the exclusion of the Pine Knoll Shores customers. The Company stated that it disagreed with the Public Staff's interpretation of the Order. CWS argued that the Commission relied on competent and substantial evidence in reaching its decision to adjust the 1992 test year for the lost Atlantic Beach customers. CWS maintained that the Order simply states that the Public Staff's position is unsupported by evidence.

The Commission agrees with CWS that the burden of proof regarding this issue has not been impermissably shifted to the Public Staff. As stated in the Company's response, from the outset of the case CWS advocated a post test year adjustment to recognize loss of revenues, costs and expenses from the disconnection of many customers in Atlantic Beach. The Commission, on reconsideration, found the Company's evidence to be credible and sufficient to justify a change in the initial decision. Furthermore, the Commission agrees with the Company that the Order on Reconsideration simply affirms the proposition that each party is responsible for supporting its position with evidence that can be utilized by the Commission in its decision-making process.

The Public Staff contended that the Commission erred in its assumption that the impact on revenues would be nil, regardless of customer additions, by assuming that there is a direct, one-for-one relationship between revenues and costs for each additional customer. The Public Staff stated that in applying its assumption, the Commission has overlooked the difference between fixed and variable costs. As a result, the Public Staff concludes that the Commission's treatment of this issue has changed the methodology that the Commission and all other parties have utilized in the calculation of the impact of customer growth in all other rate cases.

CWS argued in its response that the Public Staff has confused two different ratemaking concepts in its motion. The Company further argued that the adjustment adopted by the Commission of removing revenues, costs and expenses attributable to the loss of Atlantic Beach customers after the end of the test year, yet prior to the close of the hearing, has been incorrectly labeled by the Public Staff as a customer growth adjustment. The Company maintained that growth adjustments are used to adjust test year experience by bringing such experience to an end of period level so that the test year will more accurately reflect conditions that will exist in the future when the approved rates will be in effect.

CWS contended in its response that G.S. 62-133 authorizes post test year adjustments. The Company stated that post test year adjustments capture changes in the cost of service outside the test year that, if ignored, will prevent the test year experience from accurately reflecting what the cost of service will be while rates are in effect.

The Company asserted that the adjustment adopted by the Commission in its Order is a post test period adjustment. The Commission agrees with the Company's statement that there is nothing in the Order that purports to make any fundamental long-term policy change in the way the customary customer growth adjustment is made for utilities.

In its response, CWS reminded the Commission that the adjustment that is the subject of the Commission's Order was the subject of much testimony and debate throughout the public hearing in this case. The Company recalled that the adjustment was discussed extensively in the parties' proposed orders and in CWS's Motion for Reconsideration and the Public Staff's response. CWS recalled that in none of this argumentation did the Public Staff treat the issue as a customer growth adjustment issue.

The Company asserted in its response that there was no suggestion in the Order that the Commission is seeking to make a policy change or statement for any future case with respect to customer growth. CWS further stated that the proper method for calculating growth adjustments has been debated in the past and that the Commission has done nothing in this case that will prevent debate on this issue in the future.

CWS stated "that the Commission said that its Order is based on the principle that if CWS had adjusted the test year for the full impact of all customers added or lost subsequent to the test year the result would be nil on the assumption that the average cost to serve such customers was the same as the average cost per customer before recognizing the change." The Company correctly quoted the Order in that "the foregoing assumption, in the absence of evidence to the contrary, is entirely consistent with the regulatory and ratemaking process." The Commission reiterates that this assumption was made in the absence of credible and compelling evidence to the contrary. The Commission still maintains that this assumption is indeed reasonable.

The Company disagreed with the Public Staff's assertion that the Commission has overlooked the difference between fixed and variable costs. CWS argued that the issue of the lost Atlantic Beach customers is a singular and extraordinary

event and that the impact of the paralleling of the Company's water system by the Town of Atlantic Beach was unlike the normal ebb and flow of changes in the cost of service from ordinary customer growth. The Commission agrees with the Company's statement that ordinary growth that occurs beyond the end of the test year is not normally factored into the ratemaking equation. To do so would be a violation of the test year concept. The Commission is of the opinion that the test-year level of operations was materially affected by the loss of the Atlantic Beach customers.

With respect to the Public Staff's argument that contributions in aid of construction (CIAC) received by CWS have helped to compensate for the lost Atlantic Beach customers, the Commission concludes that while the Company may have collected tap-on fees from customers connecting after the test year in other service areas, CWS has also made investments in plant and facilities to serve new connections. Even so, these issues are unrelated to the extraordinary event that occurred in Atlantic Beach. However, absent credible evidence to the contrary, the assumption that the average cost of service determined in a rate case is approximately the cost of service applicable to customer growth is still reasonable.

The Public Staff also requested that the Commission reconsider its statement "that utility services are no longer being provided by the Company to the 730 customers or customer equivalents" in Pine Knoll Shores. According to the Public Staff the Commission labeled this statement as "as uncontroverted fact."

In its response the Company explained that the number 584 referenced by the Public Staff represents the number of actual test year billing units related to the disconnected Atlantic Beach customers, whereas the 730 number represents customer equivalents related to the disconnected Atlantic Beach customers. The Company has properly calculated the revenue impact of the lost Atlantic Beach customers as indicated in the workpapers filed with the Commission and audited by the Public Staff.

After careful consideration of the filings of the parties to this proceeding, the Commission finds and concludes that its decision with respect to the adjustment to exclude the Atlantic Beach customers is appropriate for ratemaking purposes. The adjustment of exclude such customers is not a customer growth adjustment. It is an adjustment to reflect the loss of customers; a post-test year adjustment that occurred subsequent to the test year, but prior to the close of the hearing. It is an extraordinary event. The Commission wishes to make it perfectly clear that this adjustment has nothing to do with annualizing revenue related to customer growth.

To the extent that the Public Staff is concern that the Commission is changing its policy with respect to customer growth, the treatment of an extraordinary event such as this one does not lead to a change in the way adjustments are calculated to recognize ordinary customer growth in other rate cases. End of period customers have been used for purposes of determining cost of service and rates. This is no exception to customer growth adjustment policy and will not preclude the Public Staff from arguing customer growth adjustment in other cases.

Therefore, based on the foregoing discussion, the Commission reaffirms its Order on Reconsideration, issued on September 21, 1994, as herein clarified.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions for Clarification and Reconsideration filed in this docket by the Public Staff shall be, and hereby is, decided as set forth above.

2. That the Commission's Order on Reconsideration heretofore entered in this docket on September 21, 1994, shall remain in full force and effect and is hereby reaffirmed as herein clarified.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Chairman Hugh A. Wells and Commissioner Laurence A. Cobb did not participate in this decision.

DOCKET NO. W-754, SUB 12
DOCKET NO. W-754, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by North Topsail Water and Sewer, Inc., 1798 New River Inlet Road, Sneads Ferry, North Carolina, 28460, for Authority to Increase Rates for Sewer Utility Service for All of its Service Areas in Onslow County, North Carolina	)	ORDER ALLOWING PARTIAL RATE INCREASE

HEARD IN: Surf City, Town Hall, Community Room, 214 New River Drive, Surf City, North Carolina, October 4, 1993, at 7:00 p.m., and October 5, 1993, at 9:30 p.m.

BEFORE: Chairman John E. Thomas, Presiding; Commissioners Allyson K. Duncan and Charles H. Hughes

APPEARANCES:

For North Topsail Water and Sewer, Inc.:

No Attorney

For the Public Staff:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Margaret A. Force, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: In this proceeding, the Commission examines the request by North Topsail Water and Sewer, Inc. (NTWS, Company, or North Topsail) for a rate increase filed in Docket No. W-754, Sub 17, and also addresses other issues which arose in earlier proceedings involving this Company in Docket No. W-754, Sub 12.

The last general rate case for North Topsail (Docket No. W-754, Sub 12) was settled by a stipulation entered by the Public Staff and the Company on October 14, 1991, and adopted in the Commission's Order issued on December 31, 1991. The Commission's Order required the Company to refund $241,150 plus interest to customers for the overcollection of the gross-up for income taxes on contributions-in-aid of construction (CIAC), by filing a refund plan and beginning repayment in July 1992.

On August 20, 1992, in response to a motion of the Public Staff, the Commission found in Docket No. W-754, Sub 12 that the Company had failed to file a plan and make refunds as ordered. Therefore, the Commission ordered the Company to appear on September 23, 1992, and show cause why it should not be held in contempt for failure to comply with the December 31, 1991 Order. (Hereinafter the September 23, 1992, proceeding is referred to as the "Sub 12 Show Cause" proceeding.)

At the "Sub 12 Show Cause" hearing held on September 23, 1992, the Company submitted financial information prepared by its accountant and testified about the financial problems it was experiencing. A number of problems were discussed in the course of testimony from Company witnesses. The parties were directed to submit briefs or proposed orders in the matter on December 7, 1992. On December 8, 1992, the Company filed a request to extend the filing deadline by 45 days because of ongoing negotiations with the Public Staff. The Commission granted an extension of time. No briefs or proposed orders were filed and the Commission did not issue an Order resolving the "Sub 12 Show Cause" matter.

On April 7, 1993, the Public Staff filed a motion in Docket No. W-754, Sub 12 which asked the Commission to issue an immediate interim order requiring North Topsail to place in escrow all tap fees received from customers from the date of the order, to be used for refunds to customers of the overcollections of the gross-up for income taxes on CIAC as ordered in the Commission's December 31, 1991, Order in the Docket No. W-754, Sub 12 general rate case proceeding. On April 23, 1993, the Commission issued an Order granting the motion, and setting

a hearing for May 11, 1993 (the "Sub 12 Tap Fee" proceeding). The Attorney General intervened under its discretionary authority in G.S. 62-20 for the using and consuming public. The Department of Environment, Health and Natural Resources Division of Environmental Management (DEM) and the Coastal Resources Commission (CRC) also intervened, represented by separate counsel from the North Carolina Department of Justice.

The hearing was held as scheduled. On May 10, 1993, one day before the hearing, North Topsail filed a motion for relief from the April 23, 1993, Interim Order. North Topsail wanted to use escrowed tap fees prepaid by Nations Bank and Branch Bank and Trust to bring the sewer line relocated along State Road (SR) 1568 into compliance with environmental regulations. The Company's motion was taken up at the May 11, 1993, hearing in the "Sub 12 Tap Fee" proceeding along with the issue of the need for continuation of the escrow account for tap fees. At the conclusion of the hearing, the parties were asked to file recommendations on an expedited basis, and all recommendations were filed soon after the transcripts became available. The Commission addressed the issues and recommendations in part in its July 13, 1993, Interlocutory Order, but did not issue a final order in the "Sub 12 Tap Fee" proceeding.

Meanwhile, on May 11, 1993, the same date as the "Sub 12 Tap Fee" hearing, North Topsail filed an application with this Commission in Docket No. W-754, Sub 17, for authority to increase its rates for sewer utility service in all of its service areas in Onslow County, North Carolina. The Company requested an interim rate increase on May 26, 1993. On June 9, 1993, the Commission issued an Order declaring the application to be a general rate case pursuant to G.S. 62-137, and suspended the proposed rates pending investigation. Thereafter, a number of motions and Orders were filed as follows:

1. On July 13, 1993, the Commission issued an Interlocutory Order granting a partial interim rate increase, scheduling a hearing for October 5, 1993, and requiring public notice. In this Interlocutory Order, the Commission also authorized the use of tap fee monies for two purposes: to bring the sewer line along relocated SR 1568 into compliance with environmental permitting requirements, and to pay for certain costs associated with sewer line damages which occurred in a March 1993 storm. The Commission further approved of a payment plan for the Company's outstanding $40,000 electric bill which had been arranged by the Public Staff.

2. On July 16, 1993, the Commission issued an Errata Order correcting the Interim Schedule of Rates.

3. On July 22, 1993, the Public Staff filed a motion to reconsider the reasoning behind the granting of interim rates by the Commission.

4. On July 28, 1993, the Attorney General filed a motion to reconsider interim rates and requesting expansion of the scope of the rate case to address unresolved issues raised in the September 23, 1992 "Sub 12 Show Cause" proceeding and the May 11, 1993 "Sub 12 Tap Fee" proceeding, the financial condition of the Company and the need to address management problems.

5. On August 27, 1993, the Commission issued an Order setting the dates for prefiled testimonies.

6. On August 30, 1993, the Commission issued an Order rescheduling the public hearings to October 4, 1993, at 7:00 p.m. and October 5, 1993, at 9:30 a.m.

7. On September 2, 1993, the Commission issued an Order which denied the Public Staff's and the Attorney General's motions to reconsider its prior Order granting interim rates, and expanded the scope of the rate case hearing to include outstanding issues in the "Sub 12 Show Cause and Tap Fee" proceedings.

8. On September 3, 1993, the Public Staff filed a motion responding to the increased scope of the hearing, raising concerns about time constraints it would face in incorporating expanded issues under the filing deadlines in place for the rate case.

9. On September 9, 1993, the Public Staff filed four subpoenas duces tecum for the appearance of several witnesses associated with the Company and for certain records.

10. On September 14, 1993, the Attorney General filed a motion in response to the Public Staff's September 3, 1993 motion voicing concerns about time constraints and asking the Commission to admit evidence on expanded issues and to allow the parties to comment on these issues in proposed orders and briefs.

11. On September 24, 1993, the attorney for the Company filed a motion requesting permission to withdraw as counsel due to a conflict of interest.

12. On September 27, 1993, the Company filed a motion for continuance of the October hearings scheduled to be held in this docket.

13. On September 27, 1993, the Public Staff filed the testimony of Mary Elise Cox, Assistant Director of the Accounting Division; Gina Casselberry, Staff Engineer, Water Division; the affidavit of George Sessoms, Director of the Economic Research Division and a motion to oppose continuance of the October hearings.

14. On September 28, 1993, the Attorney General filed a motion to oppose continuance of the October hearings.

15. On September 29, 1993, the Commission issued an Order allowing counsel to withdraw and denying the Company's motion to continue hearings.

16. On October 5, 1993, a Joint Stipulation between the Company and the Public Staff was filed in which the Company agreed with the testimony and recommended rates filed by the Public Staff.

17. Also on October 5, 1993, the Public Staff filed a motion to sequester certain witnesses and declare those witnesses hostile; the Commission allowed the motion in open hearing.

Subsequent to the hearings, the Commission issued several Orders. On October 8, 1993, the Commission issued an Interlocutory Order reducing interim rates effective November 1, 1993, and allowed the Company to begin charging the rates stipulated to by NTWS and the Public Staff. On November 10, 1993, the Commission

issued an Order authorizing the transfer of Marlow F. Bostic, Sr.'s stock in the Company to Wilmington attorney Thomas J. Morgan, who will act as a trustee or escrow agent for the stock until such time as the stock is transferred to a third party or back to Mr. Bostic, Sr., subject to approval by the Commission. Further, in this Order, the Commission also required Mr. Bostic, Sr. to cease having any part in the management, operation and maintenance of NTWS and the Commission named Bennie Tripp as the sole manager and operator of NTWS. On that same day, the Commission issued an Order allowing expenditures of escrow funds for specified purposes relating to the fall seeding of the spray fields, and the purchase of pumps and other equipment.

The matter came on for hearing as scheduled.

The Company accepted the level of revenue requirements recommended by the Public Staff witnesses.

The following customers testified: Dan Tuman, Edward Warsaw, Harold E. Maumann, Helen Roudabush, David T. Latham, Peter Hillyer, Morissa Souza, Phillip B. Lane, William F. Salle and Virginia Hahn. The primary objection voiced by the customers was the management of the Company by Marlow F. Bostic, Sr.

The Public Staff called as witnesses Bennie J. Tripp, Vice-President and General Manager of the Company, William E. Brock, Company Accountant, Marlow F. Bostic, Jr., President and owner of Atlantic Enterprises, Inc. (Atlantic Enterprises), Frank Roger Page, 50% stockholder of NTWS, and Marlow F. Bostic, Sr., President and 50% stockholder of NTWS. Mr. Page, Mr. Bostic, Jr., and Mr. Bostic, Sr., were sequestered and were called to testify in that order after Mr. Tripp and Mr. Brock had testified.

The Attorney General called as its witness, Dave Atkins, Regional Water Quality Supervisor for the Division of Environmental Management in Wilmington, North Carolina.

The Public Staff offered the affidavit of George Sessoms, and the testimony of Elise Cox, Gina Casselberry and Andy Lee.

Upon consideration of the application, the testimony of the public witnesses, the testimony and exhibits of all the Public Staff witnesses, the testimony and exhibits of all personnel associated with NTWS, the testimony of the Attorney General's witness, the entire record of this proceeding and prior dockets of this Company, the Commission now makes the following

FINDINGS OF FACT

1. North Topsail Water and Sewer, Inc., is a public utility as defined by G.S. 62-3(23) and is subject to the jurisdiction of this Commission for a determination of the justness and reasonableness of its request.

2. North Topsail Water and Sewer, Inc., provides sewer utility service in Onslow County, North Carolina. At the end of the test year, NTWS had 1,464 residential customers and 42 commercial customers receiving sewer service. The Applicant's present and proposed rates, and the Public Staff's proposed rates, which are the same as the interim rates now in effect, are as follows:

	Company's Present	Company's Proposed	Public Staff's Proposed
SEWER UTILITY SERVICE:			
Residential (Flat Rate)	$25.00	$45.00	$27.30
Residential (Flat Rate)- customer pays electric expense for pumping	$23.00	$45.00	$25.13
Non-residential:			
Base charge, zero usage	$12.00	$21.60	$13.10
Usage charge/1,000 gallons	$ 3.88	$ 6.98	$ 4.24

The Applicant has stipulated to the Public Staff's proposed rates.

3. The test period established for use in this proceeding is the 12 months ending December 31, 1992.

4. The rate base methodology is the proper method of determining rates for the Applicant in this proceeding.

5. The annualized level of operating revenues under the Applicant's present rates is $481,224; and under the Commission approved rates it is $525,465.

6. The Company overcollected $35,251 as a result of interim rates which were granted by the Commission in its Order of July 13, 1993. Earlier in the year (March 1993), the Company sustained storm damage costs of $58,794. It is appropriate to net the overcollection arising through interim rates against these storm damage costs.

7. The net amount of the March 1993 storm damage costs less the overcollection under interim rates is $23,543. It is appropriate to amortize this amount over five years.

8. The annualized level of reasonable and appropriate operating revenue deductions under the Applicant's present rates is $466,060; and under the Commission approved rates it is $477,589.

9. The Applicant's original cost rate base which is appropriate for use in this proceeding is $544,043.

10. The Applicant in this proceeding has stipulated to all the Public Staff's accounting and engineering adjustments and has agreed to the Public Staff's recommended revenues, rates, and overall of rate of return on its rate base, including the Evidence and Conclusions for Finding of Fact 14. The Attorney General does not oppose the Joint Stipulation between NTWS and the Public Staff.

11. The Public Staff's proposed sewer rates are supported by the record and agreed to by the Company and are appropriate for use in this proceeding.

12. The rates approved herein produce an overall rate of return on the Company's original cost rate base of 8.80% which is not excessive.

13. The rates proposed by the Public Staff and stipulated to by the Applicant, and approved herein, will result in an increase in annual revenues of $44,241.

14. Marlow F. Bostic, Sr., has agreed not to participate further in the operation of this utility, including the writing of Company checks.

15. North Topsail's wastewater treatment facilities are located on approximately 340 acres of land north of N.C. Highway 210 near the intersection of 210 and N.C. Highway 172. They include three stabilization lagoons, a chlorine contact tank, an irrigation pump station, and 175 acres of spray fields. The spray field tract is being leased by the utility under an agreement entered into on January 1, 1988, between the Company and its shareholders (Mr. Bostic, Sr. and Mr. Page) without approval of the Commission as required under G.S. 62-153.

16. North Topsail has accumulated numerous judgments of record. The continued nonpayment of judgments, liens, and outstanding debts places the Company at risk that the utility operations will be interrupted because of execution or other action taken to satisfy the amounts owed. There is a need for the Commission to know all the Company's outstanding debts, judgments and liens.

17. The Company in the past has paid nonutility expenses. The Company should refrain from using utility revenues to pay for nonutility costs.

18. The escrow account for tap fees received by the utility should continue to be maintained and specific Commission approval is required before spending any of those funds.

19. There is a need to determine the feasibility of metered sewer rates.

20. The Company receives electric service from Jones-Onslow EMC and currently has an unpaid balance for its account. The Company is required to pay at least $1,000 per month on this past due balance.

21. The Company has had a close and less than an arms-length business relationship with Atlantic Enterprises, Inc. The Company must consult with the Public Staff in each and every instance before transacting any further business with Atlantic Enterprises, Inc.

22. No utility assets should be pledged without obtaining prior approval from the Commission. G.S. 62-160. No fees, commissions or compensation whatsoever should be paid to any affiliated entity for service rendered or to be rendered without first filing copies of all proposed agreements with the Commission and obtaining approval of such arrangements. G.S. 62-153.

23. The Company's tap fee tariff language needs to be reviewed to determine if and how it can be improved upon.

24. The reasonableness and prudency of costs incurred by NTWS with regard to the repair of the relocated SR 1568 sewer line are not appropriate for consideration in these proceedings.

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

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, and the testimony of witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontroverted. The Company and the Public Staff entered a Joint Stipulation on October 4, 1993, in which the Company agreed with the recommended rates filed by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the Company's verified application and the testimony of Public Staff witness Cox. Witness Cox stated that she used the rate base method to determine rates since the revenue requirement for the Company using the rates base methodology is higher than the amount that would be produced using the operating ratio methodology. The Commission agrees that the rate base methodology is the appropriate method for determining rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-13

The evidence supporting these findings of fact is contained in the verified application of the Company, the testimony of Public Staff witnesses Cox and Casselberry, the affidavit of George Sessoms, and the October 4, 1993, Joint Stipulation between the Company and the Public Staff. Additionally, the Attorney General does not oppose the Joint Stipulation between NTWS and the Public Staff.

The Commission concludes that the Joint Stipulation and recommended rates are reasonable, are based on the Public Staff's audit of this Company's books and records, are in the public interest, and are not excessive. By adopting the Joint Stipulation, the Commission recognizes that the approved rates as stipulated by the parties are calculated by treating the overcollection of the gross-up for income taxes on CIAC which should have been being refunded to contributors over a three-year period beginning July 1, 1992, as cost-free capital and therefore, the amount of the overcollections and accrued interest are deducted from rate base. Further, the Commission finds that if the Company is transferred or sold then these monies should be refunded to the CIAC contributor as originally stipulated by the Company and as ordered by the Commission. However, the interest accrual on the overcollection should cease with the effective date of this Order in this rate case since these funds have been deducted from rate base.

The Commission finds that the stipulated rates are appropriate for use in this proceeding. The Commission also concludes that it is reasonable and in the public interest to offset the Company's overcollection of interim rates which were approved by the Commission in its Order of July 13, 1993, against the Company's March 1993 storm damage costs and to amortize the balance over five years. The Company's March 1993 storm damage costs totalled $58,794, and the

overcollection resulting from interim rates was $35,251. Thus, the storm damage costs exceed the overcollection by $23,543 and it is this balance that is amortized in NTWS's cost of service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding is contained in the record, and in the Commission Order in Docket No. W-354, Subs 12 and 17 issued on November 10, 1993. In that Order, the Commission ordered the following:

1. Marlow F. Bostic, Sr., is authorized to transfer his stock in North Topsail Water and Sewer, Inc., to Wilmington attorney Thomas J. Morgan, Post Office Box 1388, Wilmington, North Carolina 28402, who will act as a trustee or escrow agent for the stock until such time as the stock is transferred to a third party or back to Mr. Bostic. Mr. Morgan is hereby put on notice that any transfer or release of the stock by him must be approved in advance by the Utilities Commission in accordance with N.C.G.S. 62-111. The Clerk of the Commission is directed to mail a copy of this Order to Mr. Morgan. Five business days prior to Mr. Bostic transferring his stock to Mr. Morgan, Mr. Bostic must file a copy of the trust or escrow agreement with the Commission, the Public Staff, and the Attorney General.

2. Marlow F. Bostic, Sr., is to cease having any part in the operation and maintenance of NTWS, as he has volunteered to do.

3. Bennie Tripp is hereby named sole manager and operator of NTWS. Only Mr. Tripp may write checks for NTWS. Mr. Tripp's management contract fee is ordered increased by $10,000.

4. Marlow F. Bostic, Sr., is ordered not to interfere in any way with Mr. Tripp's management of NTWS, is not to direct Mr. Tripp in any way regarding the operation of NTWS, and is not to write any checks on any funds of NTWS. He is further directed not to receive any funds or anything of value from any third party that are due NTWS.

5. Bennie Tripp will furnish such reports as the Commission or Public Staff may request of NTWS and will fully cooperate with the Public Staff on an ongoing basis.

6. The Company is required to continue depositing all tap-on fees into the escrow account and to receive specific Commission approval before any expenditures of those funds.

That Order is incorporated herein by reference and shall remain in effect until specifically changed by further Order of the Commission. The record is replete with justification for such a result.

As stated in that Order, the Commission ordered that Mr. Tripp's management contract fee be increased by $10,000. The Commission now finds good cause in this rate case proceeding to follow the Public Staff's recommendation to reduce Mr. Bostic's salary by $10,000 per year and to increase Mr. Tripp's management

contract fee by $10,000 per year, such that the cost of service determined in this proceeding reflects no salary expense for Mr. Bostic. This change in the stipulation was agreed to by all parties to the stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact is contained in the testimony of Marlow Bostic, Sr. and Public Staff witness Casselberry and other records in these dockets.

Public Staff witness Casselberry described the wastewater treatment facilities in her testimony. She testified that the spray fields were initially deeded to the Company in 1983 together with the land on which the lagoons are located, but in 1988, without approval from the Commission under G.S. 62-111, the spray fields were transferred to North Topsail's shareholders and a lease was entered into on January 1, 1988, between the Company and its shareholders without approval required under G.S. 62-153.

At the conclusion of NTWS's last rate case in Docket No. W-754, Sub 12, the Public Staff and the Company agreed that the shareholders would reconvey the spray field tract to the Company. The Recommended Order in the last rate case was issued on December 31, 1991, and became final January 16, 1992.

Several months later, on April 10, 1992, the shareholders reconveyed the spray field tract, as well as a number of other properties, to the utility. On April 10, 1992, in the consolidated cases Robert T. DeSmedt and Dale S. DeSmedt v. Marlowe F. Bostic and F. Roger Page, 91-72-CIV-7-DE and Jeffrey M. Winant and Doree Gerold v. Marlowe F. Bostic and F. Roger Page, 91-53-CIV-7-DE, and on May 22, 1992, in the consolidated cases James N. Stanard and Janet G. Stanard v. Marlowe F. Bostic and F. Roger Page, 91-34-CIV-7-DE, and John S. Donnell v. Marlowe F. Bostic and F. Roger Page, 91-35-CIV-7-DE, sizeable judgments were entered against Mr. Bostic, Sr. and Mr. Page jointly and severally for fraud and unfair and deceptive trade practices. On May 21, 1992, a U.S. Magistrate Judge conducted a hearing during which Mr. Bostic promised in open court to reconvey property that was transferred in an attempt to hide assets from the plaintiffs. A written Order to that effect was entered. In that Order and in open court, the Judge directed Mr. Bostic not to make any further conveyances of any property without full and valid consideration so long as the judgments in this case remained unsatisfied. According to Mr. Bostic, Sr.'s testimony, the spray field tract and other properties were reconveyed from the Company back to the shareholders. As a result, the spray field tract is now subject to liabilities of the utility's shareholders and is being used by NTWS under the lease agreement entered on January 1, 1988, without approval required under G.S. 62-153.

In this proceeding, the Company expensed $40,000 for the rental of these particular spray fields for the sewage treatment operation. The Public Staff was opposed to this expense level. In the testimony of witness Casselberry it was her opinion that the rental fee on the spray fields should be set at an amount equal to the return NTWS would have been allowed if it still owned the land and the initial cost was included in plant. Further, witness Casselberry testified that the cost for clearing the land and construction of the spray fields has been included in plant. It was stipulated in the last rate case in Docket No. W-754, Sub 12, that the original cost of the land had a book value of $181,746, based

on the per acre value booked for the 135.4 acres owned by NTWS on which the treatment lagoons are located. Therefore, witness Casselberry recommended that NTWS be allowed $15,994 per year ($181,746 x 8.8%) as a reasonable lease amount for the spray field land based on the 8.8% rate of return being recommended by the Public Staff in this proceeding. This treatment is reflected in the Public Staff's proposed rates which have been agreed to by the Company in this proceeding. Additionally, in the Company's preceding rate case, the Public Staff calculated the lease payment in the same manner, i.e. rent was allowed (although not requested by the Company) based on the then-recommended rate of return for the Company (10.7%) applied to the original cost of the land, $181,746; and in that proceeding the Company stipulated to the Public Staff's recommendations. Based upon the foregoing, the Commission finds that the rental fee as calculated by Public Staff witness Casselberry is appropriate for use in this proceeding.

In its proposed order, the Attorney General states that he does not believe that the provisions of the lease agreement provide adequate control to the Company for continued operation of its sewer utility service. Further, the Attorney General noted that the rent required under the lease is unreasonable and has never been allowed as a utility expense in rates. It is the Attorney General's opinion that the Company should be ordered to reacquire the spray field tract used in the sewer operations and if necessary it should be reacquired by eminent domain.

Based upon the foregoing and the entire record in these dockets, the Commission finds that it is inappropriate at this time to specifically order North Topsail to reacquire the spray field tract by eminent domain or other means, due to the unusual circumstances surrounding such ownership and particularly because the federal court will not, at this time, allow the reconveyance of the spray field property from the shareholders back to the utility without full and valid consideration so long as the judgments in the cases of Stanard v. Bostic, et al remain unsatisfied. Additionally, the Commission is also aware that negotiations are ongoing for the attraction of additional capital investors or for the sale of North Topsail.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is contained in the testimony of Marlow Bostic, Sr., Marlow Bostic, Jr. and Bennie Tripp and other records in these dockets. In its proposed order, the Attorney General discussed the seriousness and extent of NTWS's outstanding judgments, debts and liens and suggested that the Commission should order the Company to either pay or arrange for a payment plan on such obligations within 90 days from the date of this Order.

Based upon a review of the record, the Commission finds there is considerable evidence of outstanding debts and judgments against the Company. Examples of such outstanding debts and judgments are as follows: (1) state environmental penalties from DEM and CRC reduced to judgment ($75,000+); (2) bills from New River Marina for diesel fuel ($8,389); (3) McKim and Creed Engineers ($20,000+); (4) Jones-Onslow Electric Membership Cooperative (EMC) - power bill in arrears ($40,000+); (5) Atlantic Enterprises loan ($19,848); (6) Centura Bank loan ($23,000); and (7) debt to County (amount unknown). The Commission recognizes that some of the Company's outstanding debts, judgments and

liens may not be valid utility debts. Further, penalties to the Company assessed by environmental agencies indicate the Company has not properly carried out its duty to adequately treat sewage for its customers. The Commission finds that the penalties assessed against the Company may not be recovered from its customers through rates, assessments, or tap fees and must be paid by the Company from funds such that utility operations are not threatened by a drain of adequate capital reserve.

The Commission requires a complete detailed listing of all the Company's outstanding judgments, debts, liens and penalties in excess of $5,000, together with a statement on the progress toward satisfaction/disposition of each outstanding amount. Such listing should be provided to the Commission by confidential filing, such that members, with a need to know, on the Commission Staff, the Public Staff and in the Attorney General's offices will be able to review the Company's confidential information by entering a protective agreement with the Company. This listing should be clearly marked "Confidential" and should be filed with the Commission within 60 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is contained in the testimony of Public Staff witnesses Cox, Casselberry, and Lee, and Mr. Tripp. The Public Staff stated that some of the disbursements made during the period interim rates were in effect were for nonutility purposes. Further, witness Cox testified that during the test year the Company paid for pipe installed on the Yopp property, a potential site for a future spray field which is now owned by Atlantic Enterprises and for which no written option to purchase or other agreement exists. Mr. Tripp testified on cross-examination that the Company paid for soy beans planted on property not used by the Company for sewer operations, and that it paid for pipe and engineering bills used on land owned by its shareholders or Atlantic Enterprises.

Based upon the foregoing and other evidence of record, the Commission finds that the Company in the past has inappropriately paid nonutility expenses with utility revenues. The Company should refrain from the use of utility funds for nonutility costs. Further, the Commission finds that the Company shall consult with the Public Staff when appropriate to insure that nonutility expenses are not being paid from the utility operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding of fact is contained in the Commission's files and records regarding these proceedings, and in the testimony of Public Staff witnesses Cox, Casselberry, and Lee, and the Commission Order issued on November 10, 1993 in these dockets. The Commission finds good cause to continue requiring the Company to place all tap fees into the prior required escrow account, and to continue requiring the Company to receive specific Commission approval before spending any of those funds.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this fact of finding is contained in the testimony of Public Staff witnesses Cox, Casselberry, and Lee.

NTWS does not provide water utility service. Instead, Onslow County provides water utility service for all of NTWS's customers. Onslow County bills these water customers on a metered basis. If Onslow County could bill NTWS's sewer customers directly for sewage treatment, this should reduce administration expenses for the Company and a metered sewer rate based on customer water usage would be just and reasonable for all customers. Therefore, the Commission concludes that the Company should conduct a feasibility study for metered sewer rates and administration costs if Onslow County will bill NTWS's sewer customers directly. NTWS should report its finding to the Commission within 90 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence for this finding of fact is contained in the Commission Order dated July 13, 1993, in Docket No. W-354, Subs 12 and 17. Specifically, by that Order, the Company was required to pay to Jones-Onslow EMC its current electric bills when due, and to pay at least $1,000 per month on the Company's past due balance with the EMC. The Commission finds that the Company shall continue to comply with that Order, which is incorporated by reference.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this fact of finding is contained in the testimony of Public Staff witnesses Cox, Casselberry, and Lee, and Mr. Tripp, Mr. Brock, Mr. Bostic, Sr., and Mr. Bostic, Jr. and other records in these dockets.

At the hearing on October 5, 1993, Mr. Tripp testified that Atlantic Enterprises, which is owned by Marlow Bostic, Jr., owns most of the equipment that the utility uses, including the bulldozers used to clear and build the plant. Additionally, Mr. Tripp testified that some equipment has been owned by Mr. Page or Mr. Bostic, Sr. too. He testified that the Drott 50 backhoe now owned by Atlantic Enterprises was booked at one time as a contribution-in-aid of construction by Mr. Bostic, Sr. and Mr. Page. He stated that the tractor and bailing equipment used during the test year were owned by Atlantic Enterprises.

According to the testimony of witness Casselberry based on information supplied by the Company for the test year, the Company leased all of its equipment from Atlantic Enterprises. She further testified that a Case 580 backhoe purchased by the Company in 1990 was included in the rate base for the Company's last rate case proceeding and transferred to Atlantic Enterprises in 1991. In this rate case proceeding witness Casselberry included the Case 580 backhoe in rate base since in her opinion this equipment should be owned by NTWS.

Additionally, witness Casselberry questioned the prudency of management's decision to spend $20,699 on equipment rental and $59,035 on equipment repairs. It was her opinion that NTWS could have rented new equipment still under the manufacturer's warranty from nonaffiliated companies and eliminated equipment repairs other than routine maintenance. The Company did not provide the documentation necessary to support its proposed equipment repair costs, therefore, witness Casselberry made her own determination as to what was

appropriate to include for equipment repairs. Witness Casselberry recommended an annual level of $1,074 for equipment repairs to reflect her calculation of what would be reasonable for repair expenditures on the Case 580 backhoe and the Drott 50 backhoe; this level was reflected in the Public Staff's proposed rates which were agreed to by the Company.

Public Staff Exhibits No 3 and No 7 were presented as cross-examination exhibits for Mr. Bostic, Sr. and Mr. Bostic, Jr.; these exhibits identified equipment of Atlantic Enterprises and reflected items which were transferred from Marlow Bostic Sr. to his son Marty Bostic (Marlow Bostic, Jr.) or to Atlantic Enterprises. Marty Bostic testified that Atlantic Enterprises purchased some of the equipment. For other equipment, including the Case 2670 farm tractor and the Massey Ferguson 1800 farm tractor, he testified to paying his father by "working off" the money, some of the work being performed within the sewer plant.

Mr. Bostic, Sr. testified that he is the secretary/treasurer of Atlantic Enterprises, but has no direct involvement in its day to day operations. Mr. Bostic, Sr. testified at the October 5, 1993 hearing that North Topsail only owned two or three pieces of equipment in the life of the Company. On cross-examination about the Yopp property which is owned by Atlantic Enterprises, Mr. Bostic, Sr. testified that NTWS had spent money on the Yopp property to get it ready for a spray field. Mr. Bostic, Sr. testified that the Yopp property had been cleaned up, disked and planed and it was ready for the pipes to be put into the ground.

Based upon the foregoing, the Commission is convinced that there is a very close and less than arms-length business relationship between NTWS and Atlantic Enterprises. Thus, the Commission finds that in the future the Company must consult with the Public Staff in each and every instance before transacting any further business with Atlantic Enterprises, Inc.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is found in the testimony of Mr. Bostic Sr. and other evidence of record. Mr. Bostic Sr. stated that assets were pledged to Centura Bank without Commission approval for loans amounting to $120,000-130,000. Mr. Bostic, Sr. also told the Commission he pledged tap fees to Jones-Onslow EMC in an attempt to arrange a payment plan for the Company's outstanding power bill. By statute the Company is required to obtain prior approval when it pledges assets under G.S. 62-160.

Additionally, the Commission reminds the Company that it is required to file contracts it enters with affiliates and the Commission may disapprove any such contract found unreasonable or unjust and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. G.S. 62-153(a). Further, the Commission also reminds the Company that no fees or commissions or compensation whatsoever should be paid to any affiliated entity for service rendered or to be rendered without first filing copies of all proposed agreements with the Commission and obtaining its approval. G.S. 62-153(b).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence for this finding of fact is contained in the tariff, attached as Appendix A to the December 31, 1991, Order in the last rate case, in an agreement entered by the Company and Branch Bank and Trust and NationsBank, and the testimony of Mr. Tripp. The Attorney General in his proposed order has suggested that the language in the Company's tap fee tariff should be rewritten. Under the Company's tariff, tap fees are normally collectible only in connection with specific project developments at the time sewer plant capacity is allocated to the project under the utility's DEM permit, or when sewer mains are constructed to serve the property of a bona fide customer.

There is an exception to this policy which reads,

> The above tap fees and main extension policies do not apply to future connections for which prepaid tap fees have been received or where contracts exist requiring other contribution-in-aid of construction in return for tap fee credits.

It is the Attorney General's opinion that this exception may have given the Company the impression that it is authorized to accept prepaid taps in trade for certificates promising future service, without any triggering event. In support of his position, the Attorney General noted that Mr. Tripp stated he knew of no circumstance in which the Company would turn down a tap fee, if offered. Further, the Attorney General noted that the terms of the agreement entered by the Company and Branch Bank and Trust and NationsBank traded 30 residential taps for $60,000 without any discussion of tap fees owed by the banks or properties to which the certificates would apply.

The Attorney General is concerned about the use of tap fee certificates as items of value for trade, and believes that the tariff language should be interpreted more narrowly. Therefore, the Attorney General suggested the following language as a replacement for the language quoted above:

> Tap fees are charged only once in connection with a particular tap, except where a modification occurs as discussed herein. Any departure from this uniform policy (such as a contract for other contribution-in-aid of construction arrangements in return for tap fee credits or other prepayment) must be approved in advance by the Commission.

The Commission would like the Company and the Public Staff to file comments on the Attorney General's proposal in this regard within 30 days from the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence for this finding of fact is contained in the testimony of Marlow Bostic, Sr., Bennie Tripp and Dave Atkins and other records in these dockets. The Attorney General's proposed order raises the issue that in this

proceeding the Commission should find that the costs ($60,000) associated with the renovation of the sewer line along relocated SR 1568 were not prudently or reasonably incurred costs and should not be recoverable from customers. Additionally, the Attorney General stated that since tap fees are being used to pay these costs which should not be recoverable from customers, the expenditure creates a liability which must be repaid with interest to the tap fee escrow or to customers when funds are available or on the sale or transfer of the utility. The Public Staff did not address this matter in its proposed order.

On July 13, 1993, the Commission issued an Order to modify its Escrow Order of April 23, 1993, such that the $60,000 advance from an agreement entered between NTWS and Branch Bank and Trust and NationsBank on March 31, 1993, could be released from the tap fee escrow to allow the Company to proceed with its upgrade of its sewer line along SR 1568. The Commission found that the public interest, as well as the Company's obligation to provide adequate service throughout its service area, mandated that the subject line be upgraded as quickly as possible. Additionally, in that Order, the Commission requested the Public Staff to review and audit the Company's expenditures of funds in this regard.

Company witness Tripp testified, at the time of the hearing (October 1993), that when the repairs for the renovation of the SR 1568 sewer line relocation were pressure tested the line revealed a leak which will have to be repaired. Further, Mr. Tripp testified that later, when the line is completed, it will be necessary for an engineer to certify that the line has been installed in accordance with the plans and it then will be necessary for DEM to accept and approve the certification. Mr. Bostic, Sr. testified that the banks are still holding approximately $28,000 from the $60,000 they agreed to pay to the Company if they completed the sewer line repairs. According to Mr. Bostic, NTWS will be given the remaining $28,000 upon approval of the sewer line renovations by the State. Attorney General witness Atkins testified that the sewer line repairs were nearing completion. Witness Atkins testified that NTWS had not yet abandoned the old sewer line because there is a leak in the renovated-relocated sewer line.

In the current rate case proceeding, the costs for the renovation of the SR 1568 sewer line relocation are not included in the cost of service. These costs were being incurred at the time of the hearings and the project had not been completed by the close of the hearings. Additionally, it is still necessary for an engineer to certify that the line has been installed in accordance with the plans and it then will be necessary for DEM to accept and approve the certification. Based upon the foregoing, the Commission finds that in this proceeding it would be premature to consider the reasonableness and prudency of costs incurred by NTWS with regard to the repair of the relocated SR 1568 sewer line, since this project was not completed and certified, nor were such costs proposed for inclusion in the Company's cost of service in this proceeding. Further, the Commission finds that the expenditures incurred by NTWS for the renovation of SR 1568 sewer line relocation may be challenged by any party in NTWS's next general rate case proceeding or other proceeding. Also, the Commission finds that the proposed treatment by the Attorney General, that this

expenditure creates a liability which must be repaid with interest to the tap fee escrow or to customers when funds are available or on the sale or transfer of the utility, should be considered in NTWS's next general rate case proceeding or other proceeding.

IT IS THEREFORE, ORDERED as follows:

1. That the Joint Stipulation entered into by the Public Staff and the Company on October 4, 1993, is approved except as amended below with the consent of the parties, and the Schedule of Rates, attached hereto as Appendix A, be, and hereby is, approved and deemed to be filed with the Commission pursuant to G.S. 62-138. Said Schedule of Rates was previously authorized to become effective for service rendered on and after November 1, 1993. These approved rates are the same rates as stipulated by the Company and the Public Staff.

2. That a copy of the Notice to Customers, attached hereto as Appendix B, be mailed or hand delivered to all customers in conjunction with the next scheduled billing process.

3. That Marlow F. Bostic, Sr., shall continue to cease having any role in the operation and maintenance of NTWS.

4. That Bennie Tripp shall continue as sole manager and operator of NTWS. Only Mr. Tripp may write checks for NTWS. Mr. Tripp's management contract fee is ordered increased by $10,000, and Mr. Bostic's salary is reduced by $10,000, such that the cost of service determined in this proceeding reflects no salary expense for Mr. Bostic. This change in the stipulation has been agreed to by all parties to the stipulation.

5. That Marlow F. Bostic, Sr., is ordered not to interfere in any way with Mr. Tripp's management of NTWS, is not to direct Mr. Tripp in any way regarding the operation of NTWS, and is not to write any checks on any funds of NTWS. Mr. Bostic, Sr. is further directed not to receive any funds or anything of value from any third party that are due NTWS.

6. That NTWS shall modify its accounting so as to maintain accounts for utility operations, excluding personal and nonutility expenses.

7. That NTWS shall file with the Public Staff, on a monthly basis, copies of the Company's cash receipts and cash disbursements journals.

8. That NTWS shall continue the escrow account for the tap fees received by the utility and file a monthly report detailing deposits and disbursements made from the account. Disbursements from the tap fee escrow account shall be made only with prior Commission approval.

9. That NTWS shall evaluate the feasibility of metered rates and the feasibility of Onslow County billing NTWS's customers directly. NTWS shall file its findings with the Commission and all parties within 90 days of the date of this Order.

10. That NTWS shall continue to pay Jones-Onslow EMC in accordance with the Commission Order dated July 13, 1993, in this docket.

11. That NTWS shall consult with the Public Staff in each instance before entering into any business transaction with Atlantic Enterprises, Inc. or any other affiliated company.

12. That NTWS shall file a complete detailed listing of all the Company's outstanding judgments, debts, liens and penalties in excess of $5,000, together with a statement on the progress toward satisfaction/disposition of each outstanding amount. Such filing shall be clearly marked "Confidential" for the purpose of restricting its circulation subject to a protective agreement. This confidential filing shall be filed with the Commission within 60 days from the date of this Order.

13. That the overcollection of the gross-up for income taxes on CIAC which should have been being refunded to customers over a three-year period beginning July 1, 1992, as cost-free capital and the accrued interest shall be deducted from rate base in this proceeding, but if the Company is transferred or sold then these monies should be refunded to the CIAC contributors as originally stipulated by the Company and as ordered by the Commission in its Order issued December 31, 1991, in Docket No. W-754, Sub 12.

14. That NTWS shall not pledge utility assets without first obtaining approval from the Commission. No fees, commissions or compensation whatsoever shall be paid to any affiliated entity for service rendered or to be rendered without first filing copies of all proposed agreements with the Commission and obtaining approval of such arrangements.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January 1994.

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

APPENDIX A

SCHEDULE OF RATES
for
NORTH TOPSAIL WATER AND SEWER, INC.
for providing sewer utility service in
ITS SERVICE AREAS
Onslow County, North Carolina

Flat Rate: (residential service)

Customers with individual pump stations where customer pays electricity expenses for pumping	$25.13
All other residential customers	$27.30

Metered Rates: (non-residential service)

Base charge, zero usage	$13.10
Usage charge	$ 4.24/1,000 gallons

Reconnection Charge:

If sewer service cut off by utility for good cause:

Actual cost - Itemized billing of actual charges to be submitted to customers and the North Carolina Utilities Commission five working days prior to disconnection.

Tap-on Fee:

Residential: $2,000 per unit where developer installs gravity mains.

$3,000 per unit where NTWS installs gravity mains or individual pump stations.

Commercial: $1,000 per 125 gallons per day of sewage design flow rate[1] with a minimum of $2,000 per commercial unit[2]. If NTWS installs a gravity collection system to serve the customer an additional $1,000 per unit will be charged.

Policy for Installation of Force Mains and Pump Stations

NTWS will install all force mains and required pumping stations within its service areas at its costs.

Policy for Installation of Gravity Mains to Serve Individuals

(a) NTWS will install gravity collection mains to serve new bona fide customers within its service area as required in rule R10-12(b). Bona fide customer is defined in Rule R10-12(a). The customer will be required to pay the $3,000 tap fee per residential unit and/or the applicable commercial tap fee. The customer may be required to advance funds for installing the gravity mains as allowed in Rule R10-12(b). Funds to be advanced will be reduced by $1,000 for each unit the customer is paying tap fees to connect to the gravity system.

(b) NTWS has the option of providing service to a customer by connecting the customer to a force main by using a small grinder pump station in lieu of installing a gravity main if at the time service is requested it is not economically feasible to install a gravity main. NTWS will be allowed to charge the $3,000 tap-on fee. NTWS will maintain the pump station at its expense. Upon future installation of a gravity main, NTWS will connect the customer to the gravity main at no additional cost to the customer.

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[1] Design flow rates for commercial customers will be based on design criteria established for the Division of Environmental Management as set forth in Administrative Code Section: 15A NCAC 2H.0200.

[2] Construction of additional buildings receiving sewer service not covered in the initial tap fee will be subject to an additional tap fee of at least but not limited to the $2,000 minimum. Expansion of the commercial building receiving sewer service may be subject to additional tap-fee.

Policy for Installation of Gravity Mains to Serve Subdivisions, Tracts, Housing Projects, Commercial or Residential Developments

(a) An applicant requesting sewer service for a new subdivision, tract, housing project, commercial or residential development shall install any gravity mains required within the new development. Such mains installed within dedicated public property (streets, right-of-way, etc.) shall become the sole property of NTWS. NTWS will not accept ownership or maintenance responsibility of gravity mains installed on private property (condominium projects, private streets, etc.).

(b) NTWS will install, within its service area, the force main collection system including pump stations required to serve the gravity collection system. The Applicant shall, at its expense, provide adequate easement or right-of-way necessary for the installation of NTWS's force main and pumping station required to serve the Applicant's project.

(c) Payment of the $2,000 per unit residential tap fee and/or the $1,000 per 125 gallons per day of design flow or the minimum $2,000 per unit commercial tap fee is required from the developer at the time NTWS allocates existing treatment plant capacity to serve the developer's project.

The above tap fees and main extension policies do not apply to future connections for which prepaid tap fees have been received or where contracts exist requiring other contributions-in-aid of construction in return for tap fee credits.

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in advance (flat rate)
Shall be monthly for service in arrears (metered rates)

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-754, Sub 17, on this the 27th day of January 1994.

APPENDIX B

DOCKET NO. W-754, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by North Topsail Water and Sewer, Inc., 1798 New River Inlet Road, Sneads Ferry, North Carolina, 28460, for Authority to Increase Rates for Sewer Utility Service for All of Its Service Areas in Onslow County, North Carolina	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted a partial rate increase to North Topsail Water and Sewer, Inc., for sewer utility service it provides in its service areas in Onslow County. This decision was based on evidence presented at the public hearings held on October 4 and 5, 1993, at Surf City. The rates resulting from this approved rate increase are the same as the interim rates which the Company has been charging since November 1, 1993. The approved rates are as follows:

Flat Rate: (residential service)

Customers with individual pump stations where customer pays electricity expenses for pumping	$25.13
All other residential customers	$27.30

Metered Rates: (non-residential service)

Base charge, zero usage	$13.10
Usage charge	$ 4.24/1,000 gallons

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	)	ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES

HEARD IN: Tri-Community Fire Department Fire House, 585 Broad Creek Road, New Bern, North Carolina, on October 25, 1993, at 7 p.m.

Conference Center, Fairfield Sapphire Valley Subdivision, Sapphire, North Carolina, on October 27, 1993, at 9:30 a.m.

Colony Lake Lure Golf Resort, 201 Boulevard of the Mountains, Lake Lure, North Carolina, on October 28, 1993, at 9:30 a.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 5, 1994, at 9:30 a.m.

BEFORE: Commissioner Charles H. Hughes, Presiding, and Commissioners Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For CWS Systems, Inc.:

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

For Fairfield Harbour Property Owners Association and Fairfield Sapphire Valley Master Association

T. C. Brown, Jr., Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For the Using and Consuming Public:

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

BY THE COMMISSION: On August 9, 1993, CWS Systems, Inc. (CWS or Company), filed an application with the Commission seeking authority to increase its rates for providing water and sewer utility service in Fairfield Harbour Subdivision in Craven County, North Carolina; Fairfield Mountains Subdivision in Rutherford County, North Carolina; and, Fairfield Sapphire Valley Subdivision in Jackson and Transylvania Counties, North Carolina.

On September 8, 1993, the Commission issued an Order establishing a general rate case, suspending rates, scheduling hearings, and requiring public notice. On November 30, 1993, Fairfield Sapphire Valley Master Association, Inc. filed a motion to intervene. On December 22, 1993, the Fairfield Harbour Property Owners Association filed a motion to intervene (all hereinafter collectively referred to as Associations). These motions were granted on November 30, 1993, and December 23, 1993, respectively. Public hearings were held as scheduled for the specific purpose of receiving testimony from public witnesses. The following public witnesses testified:

At Sapphire Valley Conference Center (Sapphire Valley Subdivision)
Clyde Evers, Robert D. Jacobs, W. Shouppe Howell, Hal Detjen, Dwight Carithers, Henry T. Fielding, O. W. Lindgren, Kenneth Moye, Eugene Wayne Williams, Douglas C. Adamson, Odell Stamey, Terry Blackston.

At Colony Lake Lure Golf Resort, Lake Lure, NC (Fairfield Mountains Subdivision) Herbert R. Pahren, Clyde Lusk, Ray Kenyon, Howard Yergin, Bill Eubanks, Lois Zank.

At Tri-Community Fire Department Fire House (Fairfield Harbour Subdivision)
George Giffin, Leslie Bjork, L. N. Thompson, Paul Brading, Tom Reilly, John Crittenden.

At Raleigh
Mr. George Giffin.

The case was heard as scheduled in Raleigh. The Company presented the testimony of Carl Daniel, Vice President and Regional Director of Operations of CWS, and Mark F. Kramer, Regulatory Analyst for Utilities, Inc., and its subsidiaries, including CWS.

The Public Staff presented the testimony of Ronald D. Brown, Engineer with the Public Staff's Water Division, and Darlene P. Peedin, Staff Accountant, of the Public Staff's Accounting Division.

On January 3, 1994, the Company and the Public Staff filed a joint stipulation resolving the matters in dispute between themselves.

On February 4, 1994, CWS filed its Proposed Order which reflected Findings of Fact that pertained to the matters resolved in the Joint Stipulation between the Company and the Public Staff.

On February 10, 1994, the Fairfield Harbour Property Owners Association (FHPOA) filed recommendations that would result in changes in the Company's Recommended Order. On February 22, 1994, CWS filed a Response to the Recommended Findings of Fact of FHPOA.

Based upon the foregoing, the evidence adduced at the hearings and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. CWS is a wholly owned subsidiary of Utilities Inc., and is duly franchised by this Commission to operate as a public utility in providing water and sewer service to customers residing in its various North Carolina service areas.

2. CWS is seeking an increase in its rates and charges for providing water and sewer utility service in Fairfield Harbour Subdivision in Craven County, North Carolina; Fairfield Mountains Subdivision in Rutherford County, North Carolina; and Fairfield Sapphire Valley Subdivision in Jackson and Transylvania Counties, North Carolina.

3. The test period appropriate for use in this proceeding is the 12-month period ended December 31, 1992.

4. The Company, based on a test year ended December 31, 1992, has requested rates designed to produce additional gross annual revenues as follows:

Docket	Revenue
Fairfield Harbour Water	$ 34,894
Fairfield Harbour Sewer	$ 93,769
Fairfield Mountain Water	$ 39,144
Fairfield Sapphire Valley Water	$ 74,000
Fairfield Sapphire Valley Sewer	$ 10,897
TOTAL	$252,704

5. The Company in its application has requested permission to impose a recoupment of capital fee on new customers in Holly Forest XI, Holly Forest XIV and Whisper Lakes Phase I in order to recover the expense of installing additional mains to service new areas.

6. The Company also requests to increase its miscellaneous service charges in order to bring these charges up to the level approved for CWS's Clearwater systems and the Carolina Water Service, Inc. of North Carolina systems.

7. The Company is providing adequate water and sewer utility service in all of the subdivisions included in this proceeding.

8. The Company and the Public Staff filed a joint stipulation on January 3, 1994, resolving all matters in dispute between themselves. The only other intervening parties were the Associations. Only one public witness appeared after seeing the joint stipulation, and he objected to the stipulated rates relating to Fairfield Harbour.

9. The Company and the Public Staff agreed in the joint stipulation that the reasonable original cost rate bases, used and useful in providing water and sewer utility service within the systems involved in this proceeding, are as follows:

Docket	Original Cost Rate Base
Fairfield Harbour Water	$ 556,314
Fairfield Harbour Sewer	$1,151,185
Fairfield Mountains Water	$ 551,915
Fairfield Sapphire Valley Water	$1,476,483
Fairfield Sapphire Valley Sewer	$ 497,582

10. The Company and the Public Staff agreed in the joint stipulation that the appropriate level of gross service revenues for the test year under present rates, after end-of-period, accounting and pro forma adjustments, for the systems involved in this proceeding are as follows:

Docket	Service Revenue
Fairfield Harbour Water	$237,782
Fairfield Harbour Sewer	$377,012
Fairfield Mountain Water	$256,783
Fairfield Sapphire Valley Water	$404,617
Fairfield Sapphire Valley Sewer	$242,109

11. The Company and the Public Staff agreed in the joint stipulation that the reasonable level of test year operating expenses for the various systems are as follows:

Docket	Total Operating Expenses
Fairfield Harbour Water	$180,849
Fairfield Harbour Sewer	$257,964
Fairfield Mountain Water	$211,896
Fairfield Sapphire Valley Water	$249,310
Fairfield Sapphire Valley Sewer	$190,888

12. The Company and the Public Staff agreed in the joint stipulation that a capital structure consisting of 58.10% long-term debt and 41.90% common equity is appropriate for use in this proceeding. Additionally, the Company and the Public Staff agreed that the appropriate embedded cost of long-term debt is 9.42% and that the appropriate return on common equity is 11.85%. Combining a return on common equity of 11.85% with the recommended capital structure and cost of long-term debt yields an overall return of 10.44% to be applied to the Company's

original cost rate base to determine the revenue requirement for the following systems: (1) Fairfield Harbour water and sewer operations, (2) Fairfield Mountains water operation, and (3) Fairfield Sapphire Valley water and sewer operations.

13. In order to provide the Company with the opportunity to earn the stipulated returns, the Company and the Public Staff agreed in the joint stipulation that the appropriate gross revenue increases to be approved in the various systems are as follows:

Docket	Revenue
Fairfield Harbour Water	$ 2,055
Fairfield Harbour Sewer	$ 76,016
Fairfield Mountain Water	$ 39,144
Fairfield Sapphire Valley Water	$ 70,186
Fairfield Sapphire Valley Sewer	$ 5,411
TOTAL	$192,812

14. The Company and the Public Staff stated that the joint stipulation filed in this proceeding resulted from extensive negotiations and compromises and therefore does not necessarily reflect the parties' beliefs as to the proper treatment or level of specific components. The parties agree that such components are reasonable only in the context of the overall settlement between the parties. The parties have agreed that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue. Based on this understanding, the Commission accepts the joint stipulation of the Company and the Public Staff.

15. In accordance with the recommended increases in revenues set forth in Finding of Fact No. 13, the Company should be allowed an increase in its annual gross service revenues for water utility service and sewer utility service. The rates, as agreed to by the Company and the Public Staff and reflected in Appendices A-1 through A-3, will allow this increase, should enable the Company the opportunity to earn a 10.44% return on rate base, and are fair to the Company and its customers. Accordingly, the rates set forth in Appendices A-1 through A-3 are approved as the proper rates in this proceeding.

16. It is reasonable and appropriate for CWS to be allowed to impose a recoupment of capital fee on new customers in Holly Forest XI, Holly Forest XIV and Whisper Lake Phase I in order to recover the expense of installing additional mains to service the areas.

17. It is reasonable and appropriate for CWS to be allowed to increase its miscellaneous service charges to the same level approved for CWS's Clearwater systems and the Carolina Water Service, Inc. of North Carolina systems.

18. It is reasonable and appropriate to recover the high first year cost of water testing in the monthly surcharge of one year duration in Fairfield Harbour.

19. In regard to Fairfield Mountains and Fairfield Sapphire Valley, the application of a surcharge would cause the rates to exceed those requested and noticed to the public during the surcharge year.

20. It is reasonable and appropriate that the water surcharge not be applied to the Fairfield Mountains and Fairfield Sapphire Valley at this time, but the Company may request recovery of these testing costs through a pass through under the procedure established in Docket No. M-100, Sub 120.

21. Item 10 of the Form W-1 requires that the Company file detailed work papers showing calculations supporting all accounting, pro forma, end of period, and proposed rate adjustments. In any case filed after the date of the January 3, 1994, stipulation by CWS Systems or any other affiliated companies, allocation work papers shall be filed with the Item 10.

22. CWS shall prepare an allocation manual providing a written narrative of how each account is allocated among Utilities, Inc.'s affiliated companies. This allocation manual shall include every account, including those accounts which are directly assigned. The allocation manual should include allocations among the various water companies as well as allocations for Water Service Corporation.

23. Pursuant to the asset purchase agreement dated April 4, 1990, which was filed with the Commission in Docket No. W-778, Subs 2, 3 and 4, the Company has obtained a loan from the prior owner of the utility systems, Fairfield Communities, Inc. The proceeds of these loans are used by the Company to fund main extensions to new areas. The Public Staff views this financing arrangement as an advance in aid of construction, whereas the Company views the transaction as a loan. For the purposes of reaching a stipulation of this proceeding, the Public Staff and the Company recognize their difference of opinion and agree that it is appropriate to defer any ruling on this matter until a future rate case. The Commission defers ruling on this matter.

24. Included in the balance of contributions in aid of construction account, stipulated to by the Public Staff and the Company, are $10,854 and $20,128 for Fairfield Sapphire Valley and Fairfield Harbour, respectfully, that were received by the Company under the financing arrangement described in Finding of Fact No. 23.

25. These amounts are subject to reclassification as either an advance in aid of construction or a loan repayable.

26. The accumulated amortization of the plant acquisition adjustment balance included in the stipulation amounts is understated. The appropriate level of accumulated amortization that will offset the plant acquisition adjustment will be reviewed in future proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 THROUGH 6

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, the Commission's Orders scheduling hearings, and the testimony of the Company and Public Staff witnesses. These findings are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are for the most part uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding comes from the testimony of Pubic Staff witness Brown, the testimony of the public witnesses testifying at the different locations; and the testimony of Company witness Daniel.

Witness Brown stated that the systems were being operated properly and were being well maintained.

There were several witnesses testifying at the hearings in this matter; however, most testified to their concern of the magnitude of the rate increase. Only a few had complaints of service problems.

Mr. Leslie V. Bjork of Fairfield Harbour and Mr. Lawler Thompson of Fairfield Harbour expressed desire that the Company's water lines need to be upgraded to accommodate installation of additional fire hydrants in one section of the community. CWS witness Daniel testified that CWS has agreed to upgrade the water lines and install fire hydrants upon receiving approval from the FHPOA to move forward on this project. He stated that CWS has worked closely with Mr. Bjork in a cooperative effort to improve fire protection in Fairfield Harbour. He stated that improved fire protection would gain the community a better fire insurance rating, thereby reducing homeowners' insurance rates for the residents of Fairfield Harbour. He stated that CWS has worked with Mr. Bjork in this regard for the past two years.

Mr. Paul Brading of Fairfield Harbour stated that he had been experiencing water quality problems (odor). He also expressed concern about the water mains reportedly being buried only two to six inches deep.

In response to Mr. Brading's testimony, Mr. Daniel testified that Mr. Brading lives in a sparsely populated area with low water usage, which ultimately causes the water to remain within the mains for extended periods of time. The water main serving this area has been looped with an adjacent water main to increase water flow. CWS has also increased the flushing frequency in this area to enhance the water quality. During a follow-up visit by CWS's Regional manager, Mr. Brading stated that he was mainly concerned about the proposed rate increase. Mr. Brading was informed that his visual observation of an exposed water main was part of the golf irrigation system and not part of CWS's water system. Mr. Daniel testified to the best of the Company's knowledge, all mains in Fairfield Harbour are buried to a minimum of 30 inches below the surface.

Mr. H. T. Fielding of Sapphire Valley opposed the rate increase and indicated that he was experiencing an occasional loss of pressure. Mr. O. W. Lindgren of Sapphire Valley opposed the increase and stated that the water occasionally has a metallic taste. Mr. Kenneth Moye of Sapphire Valley presented testimony regarding his water pressure and occasional metallic taste. He stated that water pressure upstairs was 16 psi, and the pressure downstairs was 20 psi. Mr. E. W. Williams, President of the Holly Forest POA, presented testimony concerning the water quality and made reference to residents around Golf Club Estates occasionally experiencing a metallic taste in the water.

Mr. Daniel of CWS testified in response. He testified that in 1992 a representative from the Department of Environmental Health, along with CWS's staff, visited the Sapphire Valley area to investigate a taste problem. Samples taken and analyzed by the State confirmed that the system was in compliance with the EPA established parameters. He testified that since the hearing, a follow-up service order was issued, and CWS's operations staff contacted the customers involved to investigate the complaints. Additional samples were taken and are being analyzed to assure continued compliance with EPA health and aesthetic standards.

Mr. Daniel testified that CWS's operations staff visited Mr. Moye's home and found the pH to be within proper limits. The pressure at the water meter was 40 psi (20 psi above the state requirement and well in excess of what is necessary to provide reliable service). During this visit, Mr. Moye again complimented CWS's staff for doing a fine job.

A follow-up service order was issued to investigate the metallic taste reported being experienced by the residents of Golf Club Estates.

Mr. Hal Detjen presented testimony concerning a dispute between Fairfield Properties and CWS over sharing the costs of repairing well access roads. Mr. Detjen also expressed concern over CWS's delay in replacing a bridge used by CWS's staff for access to the wells.

Mr. Daniel testified that Fairfield Properties sought to pay only 50 percent of the road repairs of the road primarily used by Fairfield Properties and also used by CWS to access its wells. CWS felt it should be responsible for 10 percent of the repairs due to its limited use of these roads. An agreement was reached with CWS paying approximately 10 percent of the repair costs. As Mr. Detjen stated in his testimony, CWS has already scheduled the replacement of the bridge, with construction to be completed within 30 days.

Mr. Dwight Carithers, an employee of Sapphire Management, presented testimony opposing the proposed rate increase and expressed his concern regarding the high bill for the Tennis Center. Mr. Daniel testified that the Tennis Center water meter was removed, tested by an independent firm, and found to be 99 percent accurate. CWS's operations staff contacted Mr. Carithers and will be conducting an investigation to determine the cause of the high usage.

Mr. Ray Kenyon of Fairfield Mountains expressed his appreciation for CWS's installing 29 fire hydrants and asked that CWS consider upgrading the mains and installing additional hydrants in several other areas. Mr. Daniel testified that CWS will conduct a study to determine the feasibility and cost associated with

upgrading the water mains to accommodate additional fire hydrants. Once this is complete, CWS will meet with Mr. Kenyon, and if he and the Fairfield Mountains POA support the upgrades, CWS will move forward with the project immediately.

Mr. Bill Eubanks presented testimony regarding a higher than normal water and sewer bill for the previous four months. He also stated that the water quality was excellent.

Mr. Daniel testified that a review of Mr. Eubanks' account history revealed normal water consumption during 1993. However, CWS will follow up by testing Mr. Eubanks' water meter. CWS's operations staff has made several attempts to contact Mr. Eubanks and has left a door tag suggesting that he call CWS's office. CWS will continue its efforts to contact Mr. Eubanks to explain these charges and inspect his home for possible leaks.

Company witness Daniel addressed each service problem testified to by the public witnesses. He indicated that the Company had corrected or was in the process of correcting all service related problems.

Based on the above, the Commission is of the opinion that the Applicant is providing adequate service in the three service areas involved in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 THOUGH 21

The evidence supporting these findings is contained in the joint stipulation entered into between the Company and the Public Staff, wherein all their differences were resolved, and in the testimony provided by the Company witnesses and the Pubic Staff witnesses at the hearing on this matter. The only other intervening party was the Associations.

Only one public witness, George Giffin of Fairfield Harbour Subdivision, testified at the public hearing in Raleigh; he stated that the stipulated rates relating to Fairfield Harbour were still too high.

On February 10, 1994, the HFPOA filed a Recommended Findings of Fact, Evidence and Conclusions for Findings of Fact and changes to the Company's Recommended Order. These changes relate to excess capacity in respect to the sewage treatment plant; the recovery of high first year water testing costs; the requirement to include detailed, system-specific financial data in annual reports; and, the imposition of increased recoupment of capital and tap-on fees for certain sections of Fairfield Harbor as listed on the Schedule of Rates.

On February 22, 1994, CWS responded to each of the recommendations made by the FHPOA. In its first recommendation, the FHPOA urged the Commission to find that the sewage treatment plant contains excess capacity, which should be recognized as a rate base reduction. The Company stated that this recommendation should be rejected because the Public Staff, which represents the using and consuming public, has audited CWS's expenditures on this item and has determined that no excess capacity adjustment is appropriate in this proceeding.

The second recommendation of the FHPOA is that the recovery of high first year water testing costs should be the same for all three service areas at issue

in this case. The Company's response to this recommendation is that the recovery of these high first year water testing costs is the same for the three service areas. The Company further stated that the surcharge is proposed for Fairfield Harbour since the stipulated revenues, including the one year surcharge, did not exceed the total proposed revenues for Fairfield Harbour. According to the Company, the revenue increase in the other two service areas, as agreed upon by the Company and the Public Staff, would have exceeded the requested increase, including the one year surcharge.

The FHPOA required in its third recommendation that the Company be required to include detailed, system-specific financial data in its annual reports. CWS responded that its has the ability to include system specific financial data in its annual report, however, many expenses are not and cannot be accounted for on a system-specific basis. The Company stated that the system-specific financial data presented in this rate case were completed after extensive analysis and allocations and preparing financial statements for Fairfield Harbour on an annual, stand alone basis, would simply raise the costs of utility service without benefit to the rate payer.

The final recommendation of the FHPOA is that CWS's schedule of rates imposes increased recoupment of capital and tap-on fees for certain sections of Fairfield Harbour, although neither the application nor any testimony asked for or made any mention of such increases. In response, CWS stated that included in paragraph 7 of its application was a request for permission to impose new recoupment of capital fees, however, the Company did not request new recoupment of capital fees in Fairfield Harbour. CWS further responded that fees described in the proposed tariff were approved by the Commission for all new areas in its Order issued on July 24, 1989, Docket No. W-696, Sub 5. CWS added clarifying language to the tariff eliminating any ambiguities about who was to be charged what fee.

Based on the above, the Commission is of the opinion that the Recommended Findings of Fact, as filed by the FHPOA should be denied for the reasons generally set forth by CWS in its response of February 22, 1994.

Based upon the foregoing, the Commission accepts the joint stipulation of the Company and the Public Staff for purposes of this proceeding only. As stated by the Company and the Public Staff in the joint stipulation filed in this proceeding, the stipulation does not necessarily reflect the two parties' beliefs as to the proper treatment or level of specific components. The parties agree that such components are reasonable only in the context of the overall settlement between the parties. The parties have agreed, and the Commission concurs, that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

Based upon the Commission's findings hereinabove, concerning the Company's rate base, operating revenues, and operating revenue deductions, the Commission concludes that CWS should be allowed annual increases in its water and sewer service revenues as reflected in Finding of Fact No. 13, in order to have the

opportunity to earn a 10.44% return on rate base, which is a fair and reasonable return. Accordingly, the rates set forth in Appendices A-1 through A-3 are approved as the proper rates for use in this proceeding.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Stipulation of CWS Systems, Inc., and the Public Staff, filed on January 3, 1994, is adopted by the Commission, with the understanding that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

2. That the Recommended Findings of Fact as filed by the Fairfield Harbour Property Owners Association is denied.

3. That CWS be, and hereby is, authorized to adjust its rates and charges to produce annual increases in its water service and sewer service revenues as stated in Finding of Fact No. 13.

4. That the Schedules of Rates, attached hereto as Appendices A-1 through A-3, are approved for water and sewer utility service rendered by CWS and said rates and charges shall become effective for service rendered on or after the effective date of this Order.

5. That the Notices to Customers, attached hereto as Appendices B-1 through B-3, shall be served on the customers by inserting a copy of the appropriate Appendix in the Company's next regularly scheduled billing statement following the effective date of this Order. A copy of the appropriate Appendix A shall also be attached to the Notice.

ISSUED BY ORDER OF THE COMMISSION.
This 11th day of March 1994.

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

APPENDIX A-1

SCHEDULE OF RATES
FOR
CWS SYSTEMS, INC.
for providing water and sewer utility service in
FAIRFIELD HARBOUR DEVELOPMENT
Craven County, North Carolina

Water Rate Schedule

Residential:

(A) Base Facility Charge: $6.00 per dwelling unit. This $6.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $1.62 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 6.00
3/4 meter	$ 9.00
1" meter	$ 15.00
1 1/2" meter	$ 30.00
2" meter	$ 48.00
3" meter	$ 90.00
4" meter	$150.00
6" meter	$300.00

Commodity Charge: $1.62 per 1,000 gallons

Availability Rates:

Water: $2.00 monthly per customer

Connection Charges:

All Areas Except Harbor Pointe II Subdivision:

$335 per tap (recoupment of capital)
$140 per tap (tap-on fee)

Harbour Pointe II Subdivision and any area where mains have been installed after July 24, 1989:

$650 per tap (recoupment of capital)
$320 per tap (tap-on fee)

New customer charge: $27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected). This charge will be waived if customer is also a water customer. The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this exhibit to customers with cut-off notices.

Sewer Rate Schedule

Residential:

Flat rate per month per dwelling unit: $24.12

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

(Customers who do not take water service shall be charged $24.12 per single family equivalent.)

Base Charge, Zero Usage

5/8" X 3/4" meter	$ 6.00
3/4 meter	$ 9.00
1" meter	$ 15.00
1 1/2" meter	$ 30.00
2" meter	$ 48.00
3" meter	$ 90.00
4" meter	$150.00
6" meter	$300.00

Availability rates sewer:

$2.00 monthly per customer

Connection Charge: (Tap-on Fee)

All areas except Harbour Pointe II Subdivision:

$735.00 per tap (recoupment of capital)
$140.00 per tap (tap-on fee)

Harbour Pointe II Subdivision and any area where mains have been installed after July 24, 1989:

$2,215.00 per tap (recoupment of capital)
$ 310.00 per tap (tap-on fee)

New customer charge: $22.00
(If customer also receives water service, this charge will be waived).

Reconnection charge:

If water service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency: Shall be bi-monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Return Check Charge: $10.00

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 11th day of March 1994.

APPENDIX B-1

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	NOTICE TO CUSTOMERS

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission has granted a rate increase to CWS Systems, Inc., for water and sewer utility service provided in Fairfield Harbour Development in Craven County, North Carolina. The rates are fully described in Appendix A-1, attached hereto.

This decision is based on evidence presented at public hearings held on October 25, 1993, in New Bern, North Carolina, and on January 5, 1994, in Raleigh, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This 11th day of March 1994.

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

APPENDIX A-2

SCHEDULE OF RATES
CWS SYSTEMS, INC.
For providing water and sewer utility service in
SAPPHIRE VALLEY SUBDIVISION
Jackson and Transylvania Counties, North Carolina
Metered Water Rate Schedule

Residential:

(A) Base Facility Charge: $11.00 per dwelling unit. This $11.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $5.30 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 11.00
3/4 meter	$ 16.50
1" meter	$ 27.50
1 1/2" meter	$ 55.00
2" meter	$ 88.00
3" meter	$165.00
4" meter	$275.00
6" meter	$550.00

Commodity Charge: $5.30 per 1,000 gallons

Availability: $5.00

Connection Charge:

All Areas Expect Holly Forest XI, Holly Forest XIV, or Whisper Lake Phase I

Tap-on fee: $400.00

Holly Forest XI

$ 400.00 per tap (tap-on fee)
$2,400.00 per tap (recoupment of capital fee)

Holly Forest XIV

$ 400.00 per tap (tap-on fee)
$ 250.00 per tap (recoupment of capital fee)

Whisper Lake Phase I

$ 400.00 per tap (tap-on fee)
$1,250.00 per tap (recoupment of capital fee)

Meter installation charge: $150.00 (new service only)

New water customer charge: $27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

Sewer Rate Schedule

Residential:

Flat rate per month per dwelling unit: $27.65

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

Based on water usage as follows: (subject to a minimum rate of $27.65/month. Customers who do not take water service shall be charged $27.65/single family equivalent.)

(A) Base Facility Charge:

5/8" X 3/4" meter	$ 11.00
3/4 meter	$ 16.50
1" meter	$ 27.50
1 1/2" meter	$ 55.00
2" meter	$ 88.00
3" meter	$165.00
4" meter	$275.00
6" meter	$550.00

(B) Commodity Charge: $6.05/1,000 gallons

Availability: $7.50

New sewer customer charges: $22.00
(If customer also receives water service, this charge will be waived.)

Connection charge:

All Areas Except Holly Forest XIV

Tap-on fee: $550.00

Holly Forest XIV

$550.00 per tap (tap-on fee)
$1,650.00 per tap (recoupment of capital fee)

Reconnection charge:

If sewer service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency:

Metered Billings shall be rendered bi-monthly for service in arrears. Availability Billings shall be rendered semi-annually for service in advance.

Return Check Charge: $10.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 11th day of March 1994.

APPENDIX B-2

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	NOTICE TO CUSTOMERS

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission has granted a rate increase to CWS Systems, Inc., for water and sewer utility service provided in Fairfield Sapphire Valley Subdivision in Jackson and Transylvania Counties, North Carolina. The rates are fully described in Appendix A-2, attached hereto.

This decision is based on evidence presented at public hearings held on October 27, 1993, at Fairfield Sapphire Valley Subdivision, near Cashiers, North Carolina, and on January 5, 1994, in Raleigh, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This 11th day of March 1994.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A-3

SCHEDULE OF RATES
For
CWS SYSTEMS, INC.
For providing water and sewer utility service in
FAIRFIELD MOUNTAINS DEVELOPMENT
Rutherford County, North Carolina

Metered Water Rate Schedule

Residential:

(A) Base Facility Charge: $11.80 per dwelling unit. This $13.86 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $4.33 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 11.80
3/4 meter	$ 17.70
1" meter	$ 29.50
1 1/2" meter	$ 59.00
2" meter	$ 94.00
3" meter	$177.00
4" meter	$295.00
6" meter	$590.00

Commodity charge: $4.33 per 1,000 gallons

Connection charge: (tap on fee) $500.00

New water customer charge: $ 27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

Sewer Rate Schedule

Residential:

(A) Collection charge/dwelling unit $ 6.50

(B) Treatment charge/dwelling unit $16.00

Commercial and Other:

Based on water usage as follows: (subject to a minimum rate of $22.50/month. Customers who do not take water service shall be charged $22.50/single family equivalent.)

(A) Treatment charge per dwelling unit:

Smaller User (less than 5,000 gals/mo)	$ 18.00
Medium User (between 5,000 and 20,000 gals/mo	$ 36.00
Large User (over 20,000 gals/mo)	$110.00

(NOTE - Classification of user is determined by the Town of Lake Lure)

(B) Collection Charge: $5.95/1,000 gals.

Connection charge: (tap on fee) $550.00

New sewer customer charges: $22.00
(If customer also receives water service, this charge will be waived).

Reconnection charge:

If sewer service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency:

Metered Billings shall be rendered bi-monthly for service in arrears.

Return Check Charge: $10.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 11th day of March 1994.

APPENDIX B-3

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	NOTICE TO CUSTOMERS

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission has granted a rate increase to CWS Systems, Inc., for water utility service provided in Fairfield Mountains Subdivision in Rutherford County, North Carolina. The rates are fully described in Appendix A-3, attached hereto.

This decision is based on evidence presented at public hearings held on October 28, 1993, in Lake Lure, North Carolina, and on January 5, 1994, in Raleigh, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This 11th day of March 1994.

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

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	ERRATA ORDER

BY THE CHAIRMAN: By Commission order dated March 11, 1994, the Commission issued an Order Granting Partial Increase in Rates and Charges in the above-captioned matter.

The Commission has learned that errors exist in rates as shown in Appendices A-1, A-2, and A-3 found in the Schedules of Rates as issued in that Order. The Chairman finds good cause to order the correction of those errors.

IT IS THEREFORE, ORDERED that the Appendices, attached hereto, shall be substituted for the ones which were attached to the Order issued on March 11, 1994.

ISSUED BY ORDER OF THE COMMISSION.
This 4th day of April 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A-1

SCHEDULE OF RATES
FOR
CWS SYSTEMS, INC.

for providing water and sewer utility service in

FAIRFIELD HARBOUR DEVELOPMENT

Craven County, North Carolina

Water Rate Schedule

Residential:

(A) Base Facility Charge: $6.00 per dwelling unit. This $6.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $1.62 per 1,000 gallons for all metered water usage.

(C) Water Testing Surcharge: $1.15 per month. (This surcharge will be in effect for twelve months only.)

Commercial Other:	Base Charge Zero Usage	Water Testing Surcharge
5/8" X 3/4" meter	$ 6.00	$ 1.15
3/4 meter	$ 9.00	$ 1.73
1" meter	$ 15.00	$ 2.88
1-1/2" meter	$ 30.00	$ 5.75
2" meter	$ 48.00	$ 9.20
3" meter	$ 90.00	$17.25
4" meter	$150.00	$28.75
6" meter	$300.00	$57.50

Commodity Charge: $1.62 per 1,000 gallons

Availability Rates:

Water: $2.00 monthly per customer

Connection Charges:

All Areas Except Harbor Pointe II Subdivision:

$335 per tap (recoupment of capital)
$140 per tap (tap-on fee)

Harbour Pointe II Subdivision and any area where mains have been installed after July 24, 1989:

$650 per tap (recoupment of capital)
$320 per tap (tap-on fee)

New customer charge: $27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected). This charge will be waived if customer is also a water customer. The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this exhibit to customers with cut-off notices.

Sewer Rate Schedule

Residential:

Flat rate per month per dwelling unit: $24.12

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

(Customers who do not take water service shall be charged $24.12 per single family equivalent.)

Base Charge, Zero Usage

5/8" X 3/4" meter	$ 6.00
3/4 meter	$ 9.00
1" meter	$ 15.00
I 1/2" meter	$ 30.00
2" meter	$ 48.00
3" meter	$ 90.00
4" meter	$150.00
6" meter	$300.00

Commodity Charge: $ 3.76/1,000 gals.

Availability rates sewer:

$2.00 monthly per customer

Connection Charge: (Tap-on Fee)

All areas except Harbour Pointe II Subdivision:

$735.00 per tap (recoupment of capital)
$140.00 per tap (tap-on fee)

Harbour Pointe II Subdivision and any area where mains have been installed after July 24, 1989:

$2,215.00 per tap (recoupment of capital)
$ 310.00 per tap (tap-on fee)

New customer charge: $22.00
(If customer also receives water service, this charge will be waived).

Reconnection charge:

If water service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency: Shall be bi-monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Return Check Charge: $10.00

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 4th day of April 1994.

APPENDIX A-2

SCHEDULE OF RATES
CWS SYSTEMS, INC.

For providing water and sewer utility service in

SAPPHIRE VALLEY SUBDIVISION

Jackson and Transylvania Counties, North Carolina

Metered Water Rate Schedule

Residential:

(A) Base Facility Charge: $11.00 per dwelling unit. This $11.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $5.30 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 11.00
3/4 meter	$ 16.50
1" meter	$ 27.50
1 1/2" meter	$ 55.00
2" meter	$ 88.00
3" meter	$165.00
4" meter	$275.00
6" meter	$550.00

Commodity Charge: $5.30 per 1,000 gallons

Availability: $5.00

Connection Charge:

All Areas Expect Holly Forest XI, Holly Forest XIV, or Whisper Lake Phase I

Tap-on fee: $400.00

Holly Forest XI

$ 400.00 per tap (tap-on fee)
$2,400.00 per tap (recoupment of capital fee)

Holly Forest XIV

$ 400.00 per tap (tap-on fee)
$ 250.00 per tap (recoupment of capital fee)

Whisper Lake Phase I

$ 400.00 per tap (tap-on fee)
$1,250.00 per tap (recoupment of capital fee)

Meter installation charge: $150.00 (new service only)

New water customer charge: $27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

Sewer Rate Schedule

Residential:

Flat rate per month per dwelling unit: $27.65

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

Based on water usage as follows: (subject to a minimum rate of $28.00/month. Customers who do not take water service shall be charged $28.00/single family equivalent.)

(A) Base Facility Charge:

5/8" X 3/4" meter	$ 11.00
3/4 meter	$ 16.50
1" meter	$ 27.50
1 1/2" meter	$ 55.00
2" meter	$ 88.00
3" meter	$165.00
4" meter	$275.00
6" meter	$550.00

(B) Commodity Charge: $6.05/1,000 gallons

Availability: $7.50

New sewer customer charges: $22.00
(If customer also receives water service, this charge will be waived.)

Connection charge:

All Areas Except Holly Forest XIV

Tap-on fee: $550.00

Holly Forest XIV

$ 550.00 per tap (tap-on fee)
$1,650.00 per tap (recoupment of capital fee)

Reconnection charge:

If sewer service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency:

Metered Billings shall be rendered bi-monthly for service in arrears. Availability Billings shall be rendered semi-annually for service in advance.

Return Check Charge: $10.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 4th day of April 1994.

APPENDIX A-3

SCHEDULE OF RATES
For
CWS SYSTEMS, INC.

For providing water and sewer utility service in

FAIRFIELD MOUNTAINS DEVELOPMENT

Rutherford County, North Carolina

Metered Water Rate Schedule

Residential:

(A) Base Facility Charge: $11.80 per dwelling unit. This $13.86 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $4.33 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 11.80
3/4 meter	$ 17.70
1" meter	$ 29.50
1 1/2" meter	$ 59.00
2" meter	$ 94.00
3" meter	$177.00
4" meter	$295.00
6" meter	$590.00

Commodity charge: $4.33 per 1,000 gallons

Connection charge: (tap on fee) $500.00

New water customer charge: $ 27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

Sewer Rate Schedule

Residential:

(A) Collection charge/dwelling unit $ 6.50

(B) Treatment charge/dwelling unit $16.00

Commercial and Other:

Based on water usage as follows: (subject to a minimum rate of $22.50/month. Customers who do not take water service shall be charged $22.50/single family equivalent.)

(A) Treatment charge per dwelling unit:

Smaller User (less than 2,500 gals/mo)	$ 18.00
Medium User (between 2,500 and 10,000 gals/mo)	$ 36.00
Large User (over 10,000 gals/mo)	$110.00

(NOTE - Classification of user is determined by the Town of Lake Lure)

(B) Collection Charge: $5.95/1,000 gals.

Connection charge: (tap on fee) $550.00

New sewer customer charges: $22.00
(If customer also receives water service, this charge will be waived).

Reconnection charge:

If sewer service cut off by utility for good cause, the actual cost of the disconnection and reconnection will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service for CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Billing Frequency:

Metered Billings shall be rendered bi-monthly for service in arrears.

Return Check Charge: $10.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-778, Sub 20, on this the 4th day of April 1994.

DOCKET NO. W-778, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28224, for Authority to Increase Rates for Water and Sewer Utility Service in Fairfield Harbour Subdivision in Craven County, Fairfield Mountains Subdivision in Rutherford County, and Fairfield Sapphire Valley Subdivision in Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges	ERRATA ORDER

BY THE CHAIRMAN: On April 4, 1994, the Commission issued an Errata Order correcting the tariff issued on March 11, 1994 in the above-captioned matter.

The Commission has learned that additional errors exist on Appendix A-2, Page 2 of 3; and on Appendix A-3, Page 1 of 3 in that Order. The Chairman finds good cause to order the correction of those errors.

IT IS THEREFORE, ORDERED that the Appendix A-2, Page 2 of 3; and Appendix A-3, page 1 of 3, attached hereto, shall be substituted for the ones which were attached to the Order issued on April 4, 1994.

ISSUED BY ORDER OF THE COMMISSION.
This 15th day of April 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A-2
Page 2 of 3

Holly Forest XIV

$ 400.00 per tap (tap-on fee)
$ 250.00 per tap (recoupment of capital fee)

Whisper Lake Phase I

$ 400.00 per tap (tap-on fee)
$1,250.00 per tap (recoupment of capital fee)

Meter installation charge: $150.00 (new service only)

New water customer charge: $27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

Sewer Rate Schedule

Residential:

Flat rate per month per dwelling unit: $27.65

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

Based on water usage as follows: (subject to a minimum rate of $27.65/month. Customers who do not take water service shall be charged $27.65/single family equivalent.)

(A) Base Facility Charge:

5/8" X 3/4" meter	$ 11.00
3/4 meter	$ 16.50
1" meter	$ 27.50
1 1/2" meter	$ 55.00
2" meter	$ 88.00
3" meter	$165.00
4" meter	$275.00
6" meter	$550.00

SCHEDULE OF RATES

for

CWS SYSTEMS, INC.

For providing water and sewer utility service in

FAIRFIELD MOUNTAINS DEVELOPMENT

Rutherford County, North Carolina

Metered Water Rate Schedule

Residential:

(A) Base Facility Charge: $11.80 per dwelling unit. This $11.80 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Commodity charge: $4.33 per 1,000 gallons for all metered water usage.

Commercial Other:	Base Charge Zero Usage
5/8" X 3/4" meter	$ 11.80
3/4 meter	$ 17.70
1" meter	$ 29.50
1 1/2" meter	$ 59.00
2" meter	$ 94.00
3" meter	$177.00
4" meter	$295.00
6" meter	$590.00

Commodity charge: $4.33 per 1,000 gallons

Connection charge: (tap on fee) $500.00

New water customer charge: $ 27.00

Reconnection charge:

If water service is cut off by the utility for good cause: $27.00

If water service is disconnected at the customer's request: $27.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected).

DOCKET NO. W-957, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Unauthorized Abandonment of Utility Service at Yates Mill Run Subdivision, Wake County, North Carolina by Intech Utilities, Inc.	)))	ORDER APPROVING ASSESSMENT IN PART AND MONTHLY RATE INCREASE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 28, 1994, at 7:00 p.m.

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

APPEARANCES:

For the Commission Staff and Emergency Operator:

Larry S. Height, Assistant Commission Attorney, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

For the Public Staff:

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

BY THE COMMISSION: By Recommended Order entered in this docket on February 2, 1994, which became effective and final on February 18, 1994, the North Carolina Utilities Commission found and concluded that Intech Utilities, Inc. (Intech), had effectively abandoned the low-pressure pipe (LPP) sewer utility system it operated as a certificated public utility in the Yates Mill Run Subdivision in Wake County, North Carolina, and that, as a result, its customers were in imminent danger of losing adequate service. That being the case, the Commission further concluded that an emergency existed with respect to the LPP sewer utility system serving the Yates Mill Run Subdivision which required the appointment of Spectrum Environmental (Spectrum) as emergency operator pursuant to G.S. 62-116(b) and other relief determined to be immediate, pressing, and necessary. The Commission approved interim provisional rates of $35.00 per customer per month for sewer utility service provided by the emergency operator and provided that those interim rates were subject to review after six months. Spectrum, as the emergency operator, was required by the Order of February 2, 1994, to take charge of the daily operation of the sewer system and its duties and responsibilities were specified to include, among others, regular inspections of the system; routine and emergency maintenance and repair; system renovations necessary to maintain service; and monthly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent.

On September 1, 1994, Spectrum filed a letter in this docket requesting (1) assessments from customers pursuant to G.S. 62-118(c) to cover (a) repairs made to date to the LPP sewer system in the amount of $12,777.65 and (b) additional minimum repairs and improvements estimated to cost $54,391.09 (corrected and revised to $56,194.24 at the public hearing) as required by the Wake County Department of Health and (2) an increase in the monthly service rate from $35.00 to $42.50.

By Order entered in this docket on September 8, 1994, the Commission scheduled a public hearing to consider Spectrum's request for customer assessments and an increase in its monthly service rate. The Order of September 8, 1994, required Spectrum to mail or hand deliver a copy of said Order to each affected customer in the Yates Mill Run Subdivision.

Upon call of the matter for public hearing at the appointed time and place, the parties were present and represented by counsel. The following individuals presented testimony at the hearing: John Michael Halas, the President of Spectrum Environmental, the emergency operator; W. Everette Lynn, Jr., Soil Scientist II with the Wake County Department of Health; Brian Garriss, the President of Intech; and eight customers identified as follows: Eric Hyatt, President of Yates Mill Run Homeowners Association (HOA), Bruce Rinne, Vice President of the Yates Mill Run HOA, Vance Moore, Jay Gibson, Eugene Murray, Jennifer Baker, Tim Weiss, and Rafael A. Osuba. The Public Staff also presented the affidavit of Katherine A. Fernald, Supervisor of the Water Section of the Public Staff Accounting Division.

On the basis of the testimony and exhibits presented at the hearing and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Spectrum Environmental has operated the LPP sewer system serving the Yates Mill Run Subdivision as emergency operator since January 20, 1994, and has been charging a monthly rate of $35.00 per customer for sewer utility service. There are currently 71 customers served by the Yates Mill Run LPP sewer system.

2. Through August 30, 1994, Spectrum incurred outstanding extraordinary maintenance and repair expenses not recovered through monthly rates in the amount of $12,777.65 documented as follows:

Repair to Field #1 Dosing Station Pumps and Control Panel.

Invoice #3616	$7,286.14
Invoice #3634	813.60
Total Invoices	$8,099.74

Repair Pumps and Motors as Result of Lightning Damage on August 5, 1994, and Step Repairs to Date.

Invoice #3622	$ 364.24
Invoice #3623	424.30
Invoice #3636	316.10
Invoice #3637	1,953.16
Invoice #3640	136.31
Invoice #3642	74.34
Invoice #3643	522.46
Invoice #3644	887.00
Total Invoices	$4,677.91

TOTAL OUTSTANDING EXTRAORDINARY REPAIRS $12,777.65

3. One of the four dosing station pumps serving the Yates Mill LPP sewer system is currently out of service. This pump is in need of immediate repair. The estimated cost of such pump repair is $1,200.00

4. The nitrification fields serving the Yates Mill Run LPP sewer system should be posted against entry by unauthorized persons.

5. The interim monthly rate for sewer service provided by the emergency operator to customers in the Yates Mill Run Subdivision should be increased from $35.00 to $42.50. This interim provisional rate is subject to further review and adjustment by the Commission, as necessary, after public notice and hearing.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The extraordinary repairs in the amount of $12,777.65 undertaken by the emergency operator through August 30, 1994, were reasonable, appropriate, and required for reasons of public health and safety. In addition, it is imperative that the emergency operator be authorized to immediately repair an inoperable dosing station pump in order to ensure the safe operation of the LPP sewer system serving the Yates Mill Run Subdivision. A two-part customer assessment is required in order to (1) reimburse Spectrum for the expenses in the amount of $12,777.65 incurred for extraordinary repairs made through August 30, 1994, and (2) provide the working capital in the amount of $1,200 to immediately repair the inoperable dosing station pump. During the October and November 1994 billing periods, Spectrum is authorized to bill each customer in the Yates Mill Run Subdivision a two-part assessment in the amount of $98.44 per month to cover the total cost of $13,977.65 for these repairs. In addition, the evidence offered at the public hearing, including the affidavit of Public Staff Accountant Katherine A. Fernald, clearly supports the emergency operator's request for an increase in the per customer monthly service rate from $35.00 to $42.50.

As requested by the affected customers, the Commission will defer ruling on the remainder of the emergency operator's request for customer assessments to fund additional repairs and improvements to the LPP sewer system serving the Yates Mill Run Subdivision in order to allow further investigation of such

repairs and improvements by affected customers and the Wake County Health Department in particular. The Public Staff is hereby requested to monitor this process and keep the Commission fully informed of relevant developments. To that end, the Public Staff will be required to file a report with the Commission within 30 days detailing the status of this further investigation.

Although the Commission has decided to defer ruling on the remainder of the emergency operator's request for assessments at this time, further repairs and improvements to the Yates Mill Run LPP sewer system will in fact be required and will be undertaken within the next few months and affected customers are hereby so notified. That being the case, the Commission wishes to notify affected customers for budgetary purposes that further customer assessments in addition to the assessments approved by this Order will in fact be required in the relatively near future once the exact nature of the further required repairs and improvements has been finally determined.

G.S. 62-118(c) provides that where a customer is required to advance capital to or on behalf of a public utility to alleviate emergency circumstances, the customer then retains a proprietary interest in the system to the extent of the capital so advanced. This means that if the sewer utility system serving the Yates Mill Run Subdivision is ever sold or transferred by Intech Utilities, Inc., at any time in the future, customers who have been required to pay assessments will hopefully be reimbursed in whole or in part from the sale proceeds.

IT IS, THEREFORE, ORDERED as follows:

1. That Spectrum Environmental, as emergency operator of the LPP sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina, is hereby authorized to bill and collect customer assessments as set forth in this Order.

2. That Spectrum is authorized to begin charging an interim monthly rate of $42.50, as shown on the Schedule of Rates attached to this Order as Appendix A, for sewer service provided to customers in the Yates Mill Run Subdivision. This interim monthly rate is subject to further review and adjustment by the Commission, as necessary, after public notice and hearing.

3. That the Public Staff is requested to monitor the further investigation of additional repairs and improvements to be undertaken with respect to the Yates Mill Run LPP sewer system by affected customers and the Wake County Health Department in particular and shall file a progress report not later than 30 days from the date of this Order detailing the status of said further investigation, including recommendations for further action to be taken by the Commission.

4. That Spectrum shall mail or hand deliver a copy of this Order to each affected customer in the Yates Mill Run Subdivision not later than Friday, October 14, 1994.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of October 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

INTERIM SCHEDULE OF RATES

for

INTECH, INC.
(Spectrum Environmental - Emergency Operator)

for providing sewer utility service in

YATES MILL RUN SUBDIVISION

Wake County, North Carolina

Sewer Rates:

Flat Rate $42.50/month

Connection Charges: None when tap and service line are installed by developer.

Actual cost if utility makes tap or installs service line.

Reconnection Charges:

If sewer service cut off by utility for good cause by disconnecting water service:* $15.00

If sewer service cut off by utility for good cause by any method other than that noted above: Actual Cost

Deposits: Two months estimated bill (in accordance with NCUC Rule R12-4)

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly in arrears

Returned Check Charge: $20.00

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

*Heater Utilities, Inc., shall also be authorized to collect a reconnection charge of $20.00 for water service in such situations.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-957, Sub 1, on this the 10th day of October 1994.

DOCKET NO. W-354, SUB 133
DOCKET NO. W-354, SUB 134

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-354, SUB 133

In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Farmwood "B" Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets

DOCKET NO. W-354, SUB 134

In the Matter of
Application of Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Chesney Glen Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets

ORDER APPROVING TRANSFERS AND REQUIRING NOTICE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina, on Tuesday, June 7, 1994, at 9:30 a.m.

BEFORE: Chairman Ralph A. Hunt, Presiding; and Commissioners William W. Redman, Jr., Laurence A. Cobb, Allyson K. Duncan, and Judy Hunt

APPEARANCES:

For Carolina Water Service, Inc. of North Carolina:

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

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On November 18, 1993, Carolina Water Service, Inc. of North Carolina (CWS or Company) filed an application in Docket No. W-354, Sub 133, seeking authority to relinquish its certificate of public convenience and necessity to provide water utility service to a section of the Farmwood Subdivision in Mecklenburg County, North Carolina. In its application, CWS asserted that the area in question, Farmwood B, represents only a portion of the

entire Farmwood water system and that CWS will continue to provide service to the other portions of Farmwood Subdivision. CWS requested authority to transfer the Farmwood B assets to the Charlotte-Mecklenburg Utility Department (CMUD) and for CWS's stockholder to retain 100% of the gain on this sale.

On February 16, 1994, CWS filed an application in Docket No. W-354, Sub 134, seeking authority to relinquish its certificate of public convenience and necessity to provide water utility service to the Chesney Glen Subdivision in Mecklenburg County, North Carolina. CWS requested authority to transfer the Chesney Glen assets to CMUD and for CWS's stockholder to retain 100% of the gain on this sale.

By Order issued April 11, 1994, the Chairman consolidated these matters for hearing on June 7, 1994, in Raleigh. Upon call of the matters for hearing at the appointed time and place, both CWS and the Public Staff were present and represented by counsel. CWS presented the testimony of Carl Daniel, its Vice President, in support of the Company's applications. The Public Staff presented the testimony of Kenneth E. Rudder, Utilities Engineer, and Katherine A. Fernald, Supervisor of the Water Section of the Public Staff Accounting Division, in support of its position.

The present rates of CWS and CMUD are as follows:

Metered Rates	CWS	CMUD
Base charge	$ 9.35	$1.50
Usage charge, per		
1,000 gallons (133 cubic feet)	$ 2.90	n/a
100 cubic feet (748 gallons)	n/a	$0.82
Average bill (based on 6,000 gallons water usage)	$27.50	$8.04

There will be no additional charges or fees required by CMUD.

On June 27, 1994, Carl J. Wenz, the Vice President of Regulatory Matters of Utilities, Inc., filed letters in these dockets on behalf of CWS whereby the Commission was requested to enter an immediate Order in these consolidated dockets approving the transfers in question while deferring a ruling on the gain on sale issue to a later date, said ruling to be made by further Order.

On June 28, 1994, the Public Staff filed a response in these dockets stating that while it does not object to severing the issue of the regulatory treatment of the gain on sale of utility assets from the actual transfers of the property in question, it does object to Mr. Wenz sending a letter directly to the Commission in violation of the Order entered in Docket No. W-354, Sub 118, on March 22, 1994, requiring that "communications from CWS or any of its affiliates to the Commissioners or its staff from now on shall be through counsel only."

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause to approve the transfers in question. The parties agree that affected customers will benefit from lower monthly water bills and from fire protection from hydrants CMUD will install on the water mains. The Commission will rule on the gain on sale issue by further Order in these consolidated dockets. CWS is also admonished to abide by the requirement recently approved and ordered by the Commission in Docket No. W-354, Sub 118, to communicate with the Commission only through counsel.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the water utility systems serving the Farmwood B and Chesney Glen Subdivisions in Mecklenburg County from CWS to the Charlotte-Mecklenburg Utility Department be, and the same is hereby, approved.

2. That CWS shall notify the Commission in writing not later than 10 days after completion of the transfers authorized by this Order that said transfers have been completed.

3. That the public utility franchises currently held by CWS to provide water utility service in the Farmwood B and Chesney Glen Subdivisions shall be cancelled, with such cancellations being effective on the date or dates the transfers are completed.

4. That CWS shall mail or hand-deliver a copy of this Order to each affected customer not later than 15 days from the date hereof. CWS shall submit the attached Certificate of Service to the Commission properly signed and notarized not later than 30 days from the date of this Order.

5. That the Commission shall rule on the gain on sale issue by further Order in these consolidated dockets.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____ mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by Order of the North Carolina Utilities Commission in Docket Nos. W-354, Sub 133, and W-354, Sub 134, and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1991.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket Nos. W-354, Sub 133 and W-354, Sub 134.

Witness my hand and notarial seal, this the _____ day of _____ 1991.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-720, SUB 138

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Mid South Water Systems, Inc., Post Office Box 127, Sherills Ford, North Carolina 28673, for Authority to Transfer the Franchise to Provide Water Utility Service in Ashebrooke Park Subdivision in Gaston County from Paysour Water Works, Inc., and for Approval of Rates	)	ORDER APPROVING TRANSFER AND RATES

HEARD: April 20, 1993, Courtroom A, Gaston County Courthouse, 151 South Street, Gastonia, North Carolina

June 23, 1994, Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: (On April 20, 1993) Commission Hearing Examiner Rudy C. Shaw

(On June 23, 1994) Commissioner Charles H. Hughes, Presiding, Chairman Ralph A. Hunt, and Commissioners William W. Redman, Jr., Laurence A. Cobb, and Judy Hunt

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 8, 1993, Carroll and Mary Weber (Webers) filed an application in Docket No. W-278, Sub 2, seeking to transfer ownership of the stock in Paysour Water Works, Inc. (Paysour), from Paul E. Paysour.

By Order of March 1, 1993, the application was set for hearing on April 20, 1993. By Order dated April 19, 1993, the Commission indicated that the April 20 hearing would be for customer testimony only and that an additional hearing would be scheduled in Raleigh on the transfer application.

The customer hearing was held as scheduled in Gastonia but no customers appeared to offer testimony.

On March 18, 1994, the Webers and Mid South Water Systems, Inc. (Mid South or Applicant), filed a motion to transfer the franchise of Paysour to Mid South rather than the Webers.

The Public Staff presented this matter at the May 16, 1994, Staff Conference with a recommendation that the matter be set for hearing as provided by the Order of April 19, 1993.

By Order of May 23, 1994, the Commission closed Docket No. W-278, Sub 2, granted temporary operating authority, approved interim rates, required public notice, and set the matter for hearing.

The hearing on the transfer to Mid South was held as scheduled.

Jocelyn M. Perkerson, Mid South's Vice President of Regulatory Affairs, testified for the Company. Ms. Perkerson testified that the purchase of Paysour would be a system to system transfer with no CIAC. She further testified that the offer to purchase was for the amount of $6,000 and that a number of things needed to be improved which, in the opinion of Mid South personnel, would cost the Company approximately $10,000. Ms. Perkerson explained that the Company's estimated cost to repair was somewhat less than that suggested by the Public Staff. This was due to the fact that Mid South has an affiliate that can do the work much cheaper than if an outside contractor has to be called.

John Robert Hinton, Staff Economist, testified for the Public Staff. He testified that it was reasonable to expect that the addition of Paysour Water Works, Inc. would enhance the financial viability of Mid South.

Upon consideration of the foregoing, the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Mid South is seeking to acquire the certificate of public convenience and necessity to provide water utility service in Ashebrooke Park Subdivision, Gaston County, North Carolina, from Paysour.

2. There is a demand and need for water utility service in the Ashebrooke Park Subdivision which can best be met at the present time by Mid South.

3. The Applicant's proposed monthly water rates (which are the same as the existing Paysour rates, plus EPA testing fees) are as follows:

Metered Residential Water Rates	
Base charge include first 3,000 gal./mo.	$ 4.00, minimum
Usage charge	$ 1.00/1,000 gallons
Testing charge	
1st 12 months	$11.16/month
2nd 12 months	$ 9.20/month
After 2nd 12 months	$ 0.61/month

4. Mid South will prepare and submit the necessary application for DEH plan approval for the Ashebrooke Park Water System and make improvements to the system by pouring slabs for the two new wells, building well houses for the new wells, bringing electrical wiring into compliance, installing air control vents, correcting landscaping problems in low areas, repairing existing tank or replace with a tank Mid South has on hand, installing a master meter at the well, installing chlorination equipment, and closing two wells that are not currently in use.

5. DEH plan approval will be applied for within 120 days after the transfer is approved by the Commission.

6. Mechanical items will be taken care of within 90 days after the transfer is approved by the Commission.

7. Mid South will be allowed to file with the Commission a request for a rate increase for the customers in Ashebrooke Park Subdivision once the required system improvements and upgrades have been completed.

8. Once the improvements listed in no. 4 above are made and Mid South receives its uniform rates for Ashebrooke Park Subdivision, the purchase of Paysour Water Works, Inc., will enhance the financial viability of Mid South.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACTS 1-3

From a review and study of the application, the evidence presented at the hearing, and other information in the Commission's files in this docket, the Commission reaches the following conclusions:

1. There is a demand and need for water utility service in Ashebrooke Park Subdivision which can best be met by the Applicant at this time. Ms. Perkerson testified that the current owner of Paysour was an older gentleman who did not want to be involved any longer in running the water system. She further stated that she did not know of any other company that had a desire to purchase, improve, and operate the water system serving the Ashebrooke Park Subdivision at the current time.

2. The Applicant should be granted a certificate of public convenience and necessity to provide water utility service in the Ashebrooke Park Subdivision, Gaston County, North Carolina.

3. The rates approved by the Commission for water utility service in the Ashebrooke Park Subdivision are the same rates that are currently being paid by the customers plus the testing pass-through amounts previously calculated for Mid South. These rates are contained in the Schedule of Rates, attached hereto as Appendix B. These rates are not unfair or unreasonable and are unopposed by the parties of record.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Both Ms. Perkerson of Mid South and Mr. Darryl Herndon of the Mooresville Regional Office of the Public Water Supply Section testified to the improvements that need to be made at Ashebrooke Park Subdivision. They both agreed that well

slabs need to be poured at wells one and three, well houses need to be installed at wells one and three, electrical wiring needs to be improved, pressure relief or air control valves need to be installed, the tank needs to be repaired or replaced, well heads need to be reconstructed according to DEH standards, a master meter needs to be installed, some grading work needs to be done around the well head casing, the old wells need to be properly closed down and deeds and easements need to be properly executed and recorded. Mr. Herndon agreed with Ms. Perkerson's assessment of $10,000 to perform the work that needs to be done.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence for findingsof fact 5 and 6 is continued in the testimony of Jocelyn Perkerson and Darryl Herndon. Ms. Perkerson testified that the plan for DEH approval could be submitted to the State for approval within 120 days after the date of the Commission's Order approving the transfer and that the mechanical problems could be corrected by Mid South within 90 days after the date of the Commission's Order approving the transfer. Mr. Herndon stated that he believed these time frames to be reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 7

This finding is based primarily on the testimony of Company witness Perkerson. She testified that Mid South did not believe it was proper to increase the rates of a system just because it was acquired by another Company. She further explained that until Mid South had improved the system, the rates should remain the same as they were at the current time. She further testified that once the improvements were made, Mid South would like to be able to raise the rates (perhaps in step increases) until they were at Mid South's uniform level. She stated that step increases had been allowed in other situations for other companies. By allowing an increase for this one system on an incremental basis, the expense of bringing the entire Mid South system in for a general rate case would be avoided.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 8

This finding is based primarily on the testmony of Public Staff witness Hinton. His testimony was not contested. It indicated that, based upon the initial capital, cash flow and economic analysis, it was reasonable to expect that the addition of Paysour would enhance the financial viability of Mid South.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the certificate of public convenience and necessity to provide water utility service in Ashebrooke Park Subdivision from Paysour Water Works, Inc., to Mid South Water Systems, Inc., is hereby approved.

2. That Appendix A, attached hereto, shall constitute the certificate of public convenience and necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That Mid South shall prepare a plan approval for filing with DEH within 120 days of the date of this Order.

5. That mechanical items referenced in the Finding of Fact No. 4 shall be completed within 90 days of the date of this Order.

6. That upon completion of the mechanical improvements and receipt of approval from DEH, Mid South will be allowed to file an application with the Commission for incremental increases for the customers of Ashebrooke Park Subdivision to bring their rates up to the uniform rates of Mid South.

7. 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.

8. That a copy of this Order and Appendix B shall be mailed or hand delivered by Mid South to all of its customers affected by this proceeding; that said Order and Appendix B be mailed or hand delivered no later than 30 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service properly signed and notarized no later than 45 days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

Commissioner Charles H. Hughes dissents.

APPENDIX A

DOCKET NO. W-720, SUB 138
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
MID SOUTH WATER SYSTEMS, INC.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water utility service
in
ASHEBROOKE PARK SUBDIVISION
Gaston County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of 1994.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

APPENDIX B

SCHEDULE OF RATES

for

MID SOUTH WATER SYSTEMS, INC.

for providing water utility service in

ASHEBROOKE PARK SUBDIVISION
Gaston County, North Carolina

Metered Rates:

Base charge (includes first 3,000 gallons) 1/	$15.16
Usage charge (all over first 3,000 gallons)	$ 1.00/1,000 gals.

Connection Fee: $150.00

Reconnection Charges:

If water service cut off by utility for good cause:	$15.00
If water service discontinued at customer's request:	$15.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1/	March 1, 1995-February 28, 1996	After February 29, 1996
Metered Rates:		
Base charge	$13.20	$4.62

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-720, Sub 138, on this the 9th day ~~of September~~ 1994.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Order issued by the North Carolina Utilities Commission in Docket No. W-720, Sub 138, and said Order was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____, 1994.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Order was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-720, Sub 138.

Witness my hand and notarial seal, this the _____ day of _____ 1994.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-354, SUB 118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Water Service, Inc. of North Carolina - Investigation of Tap and Plant Modification Fees) ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, November 30, 1993, through Friday, December 3, 1993

BEFORE: Commissioner Charles H. Hughes, Presiding, Chairman John E. Thomas, and Commissioners Laurence A. Cobb, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For Carolina Water Service, Inc. of North Carolina:

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

For the Public Staff:

A. W. Turner, Jr., and James D. Little, Staff Attorneys, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

Jo Anne Sanford, Special Deputy Attorney General, Lorinzo L. Joyner, Special Deputy Attorney General, and Margaret A. Force, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

BY THE COMMISSION: On July 8, 1992, the Public Staff moved to open an investigation of the tap and plant modification fees (collectively referred to as connection fees) charged by Carolina Water Service, Inc. of North Carolina, (CWS or the Company) as a result of information obtained during the Sub 111 rate case. On August 4, 1992, CWS responded by suggesting that the Public Staff should instead file a complaint. The Commission issued its Order Initiating Investigation on August 19, 1992.

On September 2, 1992, the Attorney General intervened in this case.

On November 30, 1992, CWS filed its plant modification and tap fee report as required by the Commission's August 19, 1992, Order. On December 11, 1992, the Public Staff filed a data request. CWS responded to it on March 15, 1993.

Also on March 15, 1993, the Public Staff filed its response to the CWS report. As part of this response, the Public Staff requested an order requiring CWS to respond to outstanding data requests. CWS filed its reply to the Public Staff's response on April 6, 1993.

On May 14, 1993, the Commission ordered CWS to answer the Public Staff's data requests.

On July 19, 1993, CWS prefiled its direct testimony. On August 19, 1993, the Public Staff prefiled its direct testimony. On October 19, 1993, CWS prefiled its rebuttal testimony.

On September 1, 1993, CWS filed a data request to the Public Staff. On October 4, 1993, the Public Staff filed its response.

On September 9, 1993, the Commission consolidated this docket with Docket No. W-354, Sub 127. On November 9, 1993, the Commission severed the cases and closed Docket No. W-354, Sub 127.

On October 22, 1993, the Public Staff moved to strike parts of the CWS prefiled testimony. CWS filed its response in opposition to that motion on November 2, 1993. The Public Staff replied on November 5, 1993. The Commission denied the motion on November 10, 1993.

The case came on for hearing as scheduled. The Commission first confronted a preliminary matter. On August 26, 1993, Chairman Thomas filed his letter to the Attorney General regarding an ex parte letter he, the other Commissioners, and Commission staff members had received from CWS. The Attorney General wrote to CWS on September 3, 1993. CWS responded on September 23, 1993, and the Attorney General wrote back to CWS on November 12, 1993.

Under G.S. 62-70(b), the Commission cannot rule in favor of a party that engages in ex parte communications unless either the aggrieved party waives the violation or the Commission finds "that such party was not prejudiced thereby or that such prejudice, if present, has been removed."

The Commission issued its holding on this matter in a bench order on November 30, 1993, and now confirms that holding. The CWS letter to the Commission was an ex parte communication prohibited under G.S. 62-70. The Commission holds, however, that no prejudice resulted from the letter. The Commission further holds that communications from CWS or any of its affiliates to the Commissioners or its staff from now on shall be through counsel only. CWS has agreed in open hearing to this requirement. CWS or its affiliates may apply to the Commission for exceptions to this ruling if special circumstances warrant. Otherwise, violations of this ruling are subject to enforcement under Article 15 of Chapter 62 of the North Carolina General Statutes.

Upon call of the case for hearing, CWS presented the direct testimony of Carl J. Wenz, Director of Regulatory Accounting for CWS. The Public Staff presented the testimony of Andy Lee, Director of the Water and Sewer Division,

and David Kirkland Kibler, Staff Accountant. CWS presented rebuttal testimony from Carl Wenz, Byron F. Johnson, a partner with Arthur Andersen & Co., and James Camaren, Vice President of Business Development for Utilities, Inc., the parent of CWS.

Based on the testimony and exhibits received into evidence at the hearing, the Commission's official files, and the record as a whole, the Commission now makes the following

FINDINGS OF FACT

Background and Commission Procedures

1. CWS is duly organized as a public utility company under the laws of this State and is subject to the jurisdiction of the North Carolina Utilities Commission. CWS is engaged in the business of providing water and sewer utility service to customers located in service areas throughout North Carolina.

2. The word "rate" as applied to public utilities regulated by the North Carolina Utilities Commission is defined in G.S. 62-3(24), and includes tap fees, plant impact fees, management fees, oversizing fees, and all other connection fees.

3. The Commission has the authority to determine if the rates of a public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law.

4. The Commission accepts for filing its approved form requiring numerous exhibits for acquisition of a new or existing water and/or sewer system.

5. Since September 14, 1990, the Public Staff's Water and Sewer Division has more closely scrutinized applications and contracts from water and sewer companies for acquisition of new or existing water and/or sewer systems.

CWS Tariff History

6. CWS first requested and received approval to charge uniform usage rates and connection fees in Docket No. W-354, Sub 16, effective January 27, 1982. The uniform plant modification and expansion fees were applicable in all areas. The uniform tap fees were applicable in all areas except where otherwise prohibited by contract as approved by the Commission.

7. Both the amount of the connection fees and applicable language were changed in the Company's next general rate case, Docket No. W-354, Sub 26. The phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission," authorizing variation from the uniform connection fees, was inadvertently omitted from the Schedule of Rates approved in the Sub 26 case.

8. In the Company's next general rate case, Docket No. W-354, Sub 39, certain restrictive tariff language approved in the previous rate case was excluded from the Company's Schedule of Rates. Neither CWS nor the Public Staff noted that the phrase "unless prohibited by contract as approved by the North

Carolina Utilities Commission" had been inadvertently omitted from the tariff in the Sub 26 case or raised the issue of whether such phrase should be reinserted in the approved tariff in the Sub 39 docket.

9. In the Company's next general rate case, Docket No. W-354, Sub 69, the Commission in its Order dated January 7, 1989, found that CWS was not uniformly charging the connection fees approved in Docket No. W-354, Sub 39. Language was added back to the Schedule of Rates allowing CWS to seek approval by contract to deviate from charging its uniform tap fees and plant impact fees. This change, in effect, reinserted the phrase back into CWS's approved tariff which had been inadvertently omitted in the Sub 39 case. The Commission required CWS to file copies of all contracts and a tap fee report.

10. The Schedule of Rates approved in the Company's next general rate case, Docket No. W-354, Sub 81, which became effective on June 13, 1990, contained minor changes regarding uniform tap fees and plant impact fees. The language regarding deviation from those fees was changed to require not only that the Commission approve any contracts calling for different fees, but that those contracts be "on file with the Commission."

11. The Schedule of Rates approved by the Commission on October 12, 1992, in the Company's last general rate case, Docket No. W-354, Sub 111, did not change from the Schedule of Rates approved in W-354, Sub 81, regarding tap fees and plant impact fees. The Commission stated that the approval for deviations must be prior approval.

The Fairfield Settlement

12. The Fairfield Settlement does not provide a defense to CWS in this case.

Imputation of Connection Fees

13. CWS presently provides water and sewer utility service to approximately 18,000 customers in 73 water systems and 9,000 customers in 35 sewer systems in North Carolina.

14. Since its inception in 1972, CWS has negotiated and signed agreements to serve new water and sewer areas. In so doing, the Company's objectives have been to minimize development risk for itself and its ratepayers, to maximize contributions in aid of construction (CIAC) from developers and builders, and to obtain existing systems at a reasonable cost per connection with the opportunity to expand in the future. Through its contracts, CWS seeks to accomplish its investment objectives by balancing the price paid to the utility owner or developer with the CIAC received from such developer or builder.

15. When CWS enters into a contract to acquire a utility system, the Company and the seller conduct arms-length negotiations. The consideration exchanged by CWS and the seller is established through contractual provisions identifying the facilities to be conveyed to CWS and setting forth the compensation, if any, CWS pays for such facilities. The contract addresses issues such as the level of connection fees, whether connection fees are waived or collected, the timing of collection of such fees, and whether the fees are

retained by CWS or remitted to a third party. CWS has negotiated contracts that call for many different approaches to the timing, mechanics, and level of compensation based upon the Company's perception of the different risks and circumstances of each situation, thereby resulting in different mechanisms and levels of connection fees being imposed.

16. Where CWS has a contract establishing connection fees, the Company has relied upon and followed the applicable contractual terms in collecting such fees. Because occasions have arisen where connections were made to systems that were not covered by contracts, CWS requested and received approval to charge uniform tariffed connection fees in Docket No. W-354, Sub 16, effective January 27, 1982. In its filing in the Sub 16 docket, CWS requested that the tariffed tap fees apply only where there was no contract, approved by the Commission, calling for a different fee.

17. CWS has consistently followed the practice of relying in the first instance on the terms of contracts covering connection fees and on the uniform tariff where no contracts exist.

18. CWS generally acquires its utility systems from developers and builders, and it is those same developers and builders who generally pay any connection fees.

19. The contracts between CWS and sellers of utility systems contain all of the essential terms that determine the utility assets and facilities to be received by CWS and the investment the Company will eventually have in those facilities and assets.

20. In those instances where CWS attached contracts to applications for certificates of public convenience and necessity to provide water and/or sewer utility service in North Carolina, it was recognized and understood by the Commission and the Public Staff, or certainly should have been recognized and understood, that those contracts determined the compensation to be paid by CWS and that the terms of those contracts addressing connection fees were a feature of the mode of compensation. Neither the Public Staff nor the Commission, in certification proceedings, ever raised any concern that CWS was proposing transactions where insufficient CIAC was obtained. Nor were any ratemaking adjustments proposed by the Public Staff and/or Attorney General or approved by the Commission in subsequent general rate cases for CWS on the theory that the Company's net investment in plant was too high because it had obtained insufficient CIAC through any of its contracts with developers and/or builders.

21. CWS has been open and consistent in pursuing its investment objectives and practices since it began operating as a public utility in North Carolina. The Company has consistently relied upon its contracts as controlling its connection fee practices wherever contracts exist. The Public Staff, Attorney General, and Commission have been fully aware of this practice for many years.

22. The Public Staff is entrusted with the responsibility for investigating applications for certificates of public convenience and necessity filed by public utilities, including CWS, and determining whether such applications are complete and affected by any discrepancies and/or conflicts regarding the information supplied or rates requested. In reviewing applications for certificates applied

for by CWS where contracts were attached, the Public Staff noted no contradictions regarding connection fees and reported none to the Commission. The Public Staff has in fact admitted error on its part in conjunction with its so-called Category III cases; i.e., those cases in which CWS requested non-uniform connection fees and the Public Staff instead recommended and the Commission approved uniform fees. In presenting the certificate applications to the Commission, the Public Staff represented that the rates being requested by CWS were the Company's uniform tariffed rates. The Orders entered by the Commission were prepared by the Public Staff and contain no discussion of any discrepancy between the terms of those applicable contracts regarding connection fees and the uniform tariffs.

23. When CWS begins service in an area contiguous to a preexisting franchised service area, the Company is not required by law or Commission rule to apply for a certificate of public convenience and necessity. CWS did not file contracts with the Commission for systems served by contiguous extension at the time it undertook to serve such areas.

24. CWS's practice with respect to connection fees was the same for areas served through contiguous extension as for areas served pursuant to a certificate of public convenience and necessity. That is, CWS relied upon terms of its contracts with sellers of facilities dealing with connection fees where such contracts existed, and CWS relied upon the uniform tariff where no contract existed.

25. CWS charged only its tariffed usage rates for water and sewer service in the contiguous areas. With respect to connection fees, CWS relied on contractual terms in the first instance, as was its practice, because the contracts controlled the level of facilities conveyed and the consideration CWS paid for them.

26. A determination of the reasonableness of rate base is always at issue in general rate cases. The Public Staff has investigated the Company's rate base in numerous general rate cases and has proposed many ratemaking adjustments but has never questioned the reasonableness of rate base on the grounds that CWS failed to collect sufficient CIAC or paid too much for facilities acquired. In the past, the Public Staff has never recommended such an adjustment even though it has audited and scrutinized the very contracts that are at issue in this case.

27. Since 1988, the Commission has never indicated that any punishment in the nature of imputed connection fees was warranted or would be forthcoming for past failures by CWS to file contracts dictating connection fee practices for its service areas.

Management Fees

28. The Company has entered into contracts with developers which contain provisions for management fees.

29. The Company has collected management fees in the Riverbend/Lakemere, Southwoods, Cambridge and Stonehedge/Bradford Park Subdivisions.

30. The management fee is a one-time, set fee to be collected by the Company as customers connect to the system. Thus, it has all the characteristics of a connection fee.

31. The Public Staff's recommendation that CWS should be prohibited from charging a management fee in certain subdivisions is inappropriate and should be rejected.

Oversizing Fees

32. The Company has entered into contracts with developers which contain provisions for oversizing fees.

33. The Company has collected $1,200 of oversizing fees in the Winghurst Subdivision.

34. The oversizing fee is a one-time, set fee to be collected by the Company as customers connect to the system. Thus, it has all the characteristics of a connection fee.

35. The oversizing fee is reimbursed by the Company to the original developer.

36. The oversizing fee is designed to reimburse the developer for constructing facilities in an area of possible future expansion.

37. The Public Staff's recommendation that the Commission prohibit CWS from collecting any oversizing fees is inappropriate and should be rejected. The Public Staff's recommendation that CWS should refund, with interest, any oversizing fees which were collected from three contributors in Winghurst is inappropriate and should be rejected.

Deferred Payment Contracts

38. The Company has entered into contracts with developers or contractors which contain provisions for contingent deferred payments.

39. Only the contingent deferred payment contracts entered into after February 3, 1987 are at issue concerning the Company's compliance with the Commission's gross-up requirements; however, all CIAC received after December 31, 1986 is taxable.

40. Under these contracts, the actual purchase price and the timing of the payments are unknown to CWS at the time the systems are transferred to CWS, because the payments are dependent on the number of actual connections that will be made to the systems in the future.

41. Whether the actual purchase price is equal to the original cost of the facilities cannot be determined at the time the facilities are transferred to CWS.

42. The House Committee Report, which sets forth the legislative intent, and IRS Notice 87-82, which sets forth the IRS's overall position on CIAC, are relevant to this issue.

43. IRS Private Letter Rulings 8909019, 9024022, and 9040021 are applicable to this issue.

44. IRS private letter rulings issued to specific taxpayers provide guidance to other taxpayers concerning the IRS's position on CIAC transactions.

45. Although the Company cited Arthur Andersen's review as support for its position, the Arthur Andersen witness could not address the specific transactions involved in the contracts at issue in this proceeding.

46. Some of the contracts include the language that if the contractor's cost exceeds the amount of CWS's purchase price, the contractor is required to pay CWS the gross-up on the resulting taxable CIAC. Inclusion of this language in the contracts does not meet the Commission's gross-up requirements because it does not require the collection of gross-up in the year the CIAC is received.

47. CWS owns, operates, maintains, and pays property taxes on property that it has not recorded on its books and records.

48. CWS's accounting for property received under contingent deferred payment contracts does not comply with the property accounting requirements of the NARUC Uniform System of Accounts for Water Utilities.

49. CWS's accounting for property received under contingent deferred payment contracts does not comply with the property accounting requirements of the NARUC Uniform System of Accounts for Sewer Utilities.

50. CWS's accounting for property received under contingent deferred payment contracts does not comply with Generally Accepted Accounting Principles.

Systems With No Original Cost Data

51. The Company has not obtained actual original cost data for some of its systems.

52. The Commission and the Public Staff cannot review the reasonableness of the gross-up collected and the Company's compliance with the gross-up requirements without specific information on original cost, taxable CIAC reported, taxes collected, and taxes paid for each system.

Limitation Of Gross-Up In Contracts

53. The Company has entered into certain contracts limiting the amount of gross-up to be received from contributors of CIAC to less than the full amount that is required by the Commission.

54. Regardless of whether the Company used the partial gross-up method or the present value method for Blue Mountain, the Company did not have prior Commission approval to use either method.

55. The Company is in violation of the Commission's gross-up requirements by not obtaining prior approval to deviate from the full gross-up method for Blue Mountain as required in the Commission's Order issued on August 26, 1987, in Docket No. M-100, Sub 113.

56. The Company is in violation of the Commission's Orders in Docket No. M-100, Sub 113, because it did not obtain prior Commission approval not to collect any gross-up for the Southwoods sewer system.

57. The contracts with deferred payments do create taxable CIAC, so any limitation of the taxes to be paid by the developer or contractor will result in the Company having to pay any additional taxes above the limitation. Therefore, the Company is in violation of the Commission's gross-up requirements because it did not obtain prior approval to use a method other than the full gross-up method.

58. Because the Company did not obtain prior Commission approval to use a method other than the full gross-up method for any of the subject systems, any and all costs in any way associated with income taxes paid by CWS on CIAC related to such systems should be assigned to the stockholders of CWS. Such costs should not be recovered from or otherwise charged to CWS's customers.

Gross-Up on Certain Tap and Plant Modification Fees Set Forth in Contracts

59. The Commission's statement concerning pre-February 3, 1987, contracts set forth in its Order dated August 26, 1987, in Docket No. M-100, Sub 113, applies to tap and plant modification fees.

60. The Company's practices in regard to pre-February 3, 1987, contracts relating to tap and plant modification fees are not in violation of the Commission's gross-up requirements.

Background and Commission Procedures

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is procedural and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The Commission's procedures for approving and allowing rates are at issue in this case.

G.S. 62-3(24) defines the term "rate" as follows:

> "'Rate' means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification."

The Commission concludes that any compensation charged or collected by a regulated water or sewer utility from any entity for the immediate or ultimate purpose of providing water and/or sewer service is a "rate" as defined by the foregoing statute and must be approved or allowed by the Commission. Therefore, tap fees, plant impact fees, oversizing fees, management fees, and all other connection fees are "rates" as defined in Chapter 62.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

G.S. 62-136 provides, in pertinent part, that:

> "(a) Whenever the Commission, after a hearing had after reasonable notice upon its own motion or upon complaint of any one directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient and nondiscriminatory rates to be thereafter observed and in force, and shall fix the same by order."

G.S. 62-136 authorizes the Commission to inquire into rates charged by a public utility, to correct them if necessary, and to order refunds when appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Lee. As a matter of practice, the Commission requires that a specific form be filled out for any acquisition of a water and/or sewer service area. This form requires a number of attachments. Line fourteen specifically requests the tap fees that the Company proposes to charge. The filing of the acquisition form for water and sewer franchises is provided for in the statutes and Commission rules. The Commission and Commission Staff receive copies of the applications at the same time that the Public Staff receives them. By approving rates for these companies, the Commission, absent a clear and specific request for approval, is not approving the attachments to the companies' filings, which include items such as articles of incorporation, contracts with developers, partnership agreements, a letter from the Division of Health Services or from the Division of Environmental Management, a copy of purchase agreements or recorded deeds, and maps. As Public Staff witness Lee pointed out, these attachments often address subjects not within the Commission's jurisdiction, so the Commission has no authority or need to approve them.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Lee. On September 14, 1990, as a result of a change in the federal tax laws, the Commission issued an Order requesting that the Public Staff provide information on contributions in aid of construction (CIAC) in water and sewer matters that the Public Staff brought before the Commission. As a result, engineers in the Public Staff Water and Sewer Division have more carefully reviewed water and sewer contracts, according to the testimony of Public Staff witness Lee. In addition, the Public Staff Accounting Division now reviews these

contracts. Witness Lee stated that now the Public Staff attempts to identify any inconsistencies in applications and their attachments and give the applicant an opportunity to correct them, and that before 1990 there was less of a review of the contracts. The Public Staff has also admitted that certain agenda items presented to the Commission over the years for CWS-related matters contained errors.

CWS Tariff History

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 - 11

A discussion of this matter is best begun by summarizing and discussing CWS's tariff history regarding the Company's uniform and contractual connection fees.

Docket No. W-354, Sub 16 (1981)

CWS first requested the uniform usage rates and connection fees for the 35 systems or service areas that it had acquired as of June 1981, in Docket No. W-354, Sub 16. Prior to that time, different usage rates and connection fees were in effect for each system. The Commission approved uniform usage rates and connection fees for CWS effective January 27, 1982. At the request of CWS, the approved Schedule of Rates further provided, however, that the uniform tap fees would be "[a]pplicable in all service areas except where otherwise prohibited by contract as approved by the North Carolina Utilities Commission." 72 Report of the NCUC Orders and Decisions 568 (1982).

Docket No. W-354, Sub 26 (1983)

Both the amount of the connection fees and applicable language were changed in CWS's next general rate case, Docket No. W-354, Sub 26, filed on June 24, 1983, with final decision rendered on December 12, 1984. 74 Report of the NCUC Orders and Decisions 683 (1984), aff'd., 75 Report of the NCUC Orders and Decisions 705 (1985). In this case, CWS sought only to increase its tariffed connection fees; the Company proposed no changes in the terms of its tariffed connection fees. The Public Staff, through the testimony of witness Andy Lee, took the position that the increased connection fees proposed by CWS should only apply to situations involving the extension of new mains. Witness Lee contended that the increased connection fees proposed by CWS should not apply to new connections made to presently existing mains. Rather, the Public Staff took the position that the old or previously approved connection fees should be applied or charged for new connections to presently existing mains. Witness Lee also recommended that the proposed fees should not be applicable to existing contracts between the Company and developers or builders. The Public Staff did not propose deletion of the phrase included in the Sub 16 Schedule of Rates that the Company's uniform tap fees would be "[a]pplicable in all areas except where otherwise prohibited by contract as approved by the North Carolina Utilities Commission."

CWS opposed the Public Staff's recommendation that the uniform connection fee tariff contain two levels of fees dependent upon the timing of main extensions, arguing that such a distinction would be difficult to administer and would inevitably lead to problems of definition.

The Hearing Examiner in the Sub 26 case accepted and adopted the Public Staff's recommendation. Although the Hearing Examiner also recited Public Staff witness Lee's testimony to the effect that the proposed fees should not be applicable to existing contracts between the Company and developers or builders, the phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission" was apparently inadvertently omitted from the Schedule of Rates approved in the Sub 26 docket.

Docket No. W-354, Sub 39 (1985)

In its next general rate case, Docket No. W-354, Sub 39, the restrictive language approved in the previous rate case was excluded from its Schedule of Rates at the request of CWS. 76 Report of the NCUC Orders and Decisions 739 (1986). The Public Staff argued to retain the language. The Hearing Examiner agreed with CWS as discussed in the Order:

> "The Applicant objects to the addition of the proposed language. The Hearing Examiner notes that, as was asserted by Company witness O'Brien, such a restriction would result in varying fees from neighbor to neighbor--a system difficult to administer and likely to create unnecessary animosity. Further, this language would limit the Applicant's ability to charge the proposed fees when it is necessary to expand source of supply facilities to serve previously existing mains. Further, the concept of uniform rates presumes no differentiation in rate base. The imposition of a variety of circumstances by which tap fees are based circumvents that concept where there is no sufficient reason to do so. The difference in rate is therefore not justified and is unreasonably discriminatory. In the Order in Carolina Blythe Utilities Company, Docket No. W-503, Sub 2 (July 1, 1982), the Hearing Examiner found just such a difference in tap-on fees to be unreasonably discriminatory and a violation of N.C. Gen. Stat. 62-140 (1984). Based upon the foregoing and the record as a whole, the Hearing Examiner finds the proposed language to be counterproductive and denies its inclusion."

Id. at 763-64.

Thus, the amount of the tap fees and plant modification and expansion fees did not change; however, the restrictive language that exempted preexisting tap fees was removed from CWS's Schedule of Rates effective January 27, 1986. Likewise, the Sub 39 Order eliminated the restrictive language which had limited plant modification and expansion fees to systems lacking approved engineering plans at the time of the Sub 26 rate increase Order. During the course of the Sub 39 case, neither CWS nor the Public Staff noted that the phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission" had been inadvertently omitted from Schedule of Rates approved in the Sub 26 case. That being the case, neither party recommended that the phrase in question be reinserted in the approved tariff in the Sub 39 docket, and that phrase was not reinserted.

Docket No. W-354, Sub 69 (1988)

In CWS's next general rate case, Docket No. W-354, Sub 69, the Commission in its Order dated February 7, 1989, found that:

> "22. The Applicant is not uniformly charging the tap-on fees and plant modification and expansion fees approved in its last rate case."

79 Report of the NCUC Orders and Decisions 482, 494 (1989).

In support of its finding, the Commission discussed in its evidence and conclusions that:

> "Evidence presented in the current proceeding indicates that the Company charged the uniform tap on fee and plant modification fee to only a minority of the customers added since the last rate case. It appears that the uniform tap on fee and plant modification fee were charged primarily to customers connecting to systems or portions of systems where no contract prohibiting application of the uniform fees existed between the Company and developer. It also appears that in some cases new customers connecting on the same street were charged different fees. It also appears that the Company had existing contracts at the time its last rate case was being decided prohibiting application of uniform fees. Evidence presented in this proceeding and in filings by the Company since its last rate case indicate that the Company has entered into contracts prohibiting application of uniform tap on fees in the majority of systems added since the last rate case. The existence of these contracts contradicts the Company's argument and the decision rendered by the Hearing Examiner as in the last rate case previously noted.
>
> "Public Staff witness Lee has recommended that the tariff language be amended to state that the tap fee established in the tariff will be applicable unless provided for otherwise by contract approved by the Commission. Witness Lee testified that review of 1986 tap records revealed that in some cases the Company deviated from the approved uniform tap fees. These cases occurred where the Company had entered into contracts with developers specifying different tap fees. Witness Lee observed that the Company, by honoring contracts calling for different tap fees, may violate the uniform rates approved for the Company. Witness Lee expressed the opinion that language is needed in the Company's tariff to allow for deviation from the uniform tap fees if the Company is going to be allowed to negotiate different agreements with the developers.
>
> "Witness O'Brien addressed witness Lee's suggestion in his rebuttal testimony and agreed that the change advocated by witness Lee to add the language "unless otherwise approved by contract" is appropriate. Witness O'Brien testified that the differing fee arrangements are generally submitted to the Commission in connection with new acquisitions or the formation of new service territories. Other contracts are negotiated that provide for "front-end" payments for sewage treatment plant expansion, additional wells or added water

storage in lieu of tap fees. Witness O'Brien testified that the Company's efforts are designed to maintain a reasonable investment in line with the Company's historical cost per customer, to improve service to existing customers through installation of supplemental or stand-by facilities, and to recognize that a larger customer base in most areas will result in greater operational efficiencies. Witness O'Brien proposes tariff language that does not require prior Commission approval of contracts with different tap and plant impact fees. Witness O'Brien testified that the Company did not wish to usurp the provisions of its tariffs, but only to have the ability to negotiate the timing and manner in which the fees are paid. He testified that in negotiating with developers, timing is of the essence. Prior approval of the contract differences would be extremely costly, time-consuming and burdensome to the Commission. He testified that the propriety of the fees is most efficiently addressed at the time of a general rate case. He stated that the Company would be willing to bear the risk of such process because the Company believes the contracts accomplish the intent of the tariffs and are designed to keep the Company's investment at a reasonable level.

"The Commission has analyzed the arguments by the parties in favor of making this addition to the language contained in the tariff and hereby approves the language proposed by the Public Staff. However the Commission concludes that any contract should contain a clause, clearly shown, which provides that said contract is subject to Commission approval. A copy of each contract should be filed at the time the application for the franchise is filed.

"The Commission further concludes that the Applicant should file a copy of each of its present contracts and a report specifying the amount of the tap on fees and/or plant impact fees that can be charged in each system or portion of a system. This will be added to the tariff. Under the present tariff, it would be very difficult, if not impossible, for the Commission to determine those fees in any particular service area."

Id. at 535-36.

Docket No. W-354, Sub 69, changed the name of the "plant modification and expansion fee" to "plant impact fee" at CWS's request. Id. at 537. Also restrictive language was added back to the tariff concerning the application of the uniform tap fees and plant impact fees. The restrictive language, added as a footnote to the Schedule of Rates, read, "Unless specified differently by contract approved by Commission." This change, in effect, reinserted the phrase back into CWS's tariff which had been inadvertently omitted in the Sub 39 case allowing CWS to seek approval by contract to deviate from charging its uniform tap fees and plant impact fees. The amount of the uniform tap fees and plant impact fees did not change. However, three service areas were specifically excluded from uniform tap fees or plant impact fees. These service areas were Corolla Light (water and sewer), Hound Ears (water and sewer), and Brandywine Bay (sewer), which had non-uniform fees approved by Orders issued in Docket Nos. W-354, Subs 47, 55, and 60. The Commission also required CWS to file a copy of each of its present contracts and a report specifying the amount of tap fees

and/or plant impact fees that can be charged in each system or portion of a system and stated that "[t]his will be added to the tariff." The Commission further noted that "[u]nder the present tariff, it would be very difficult, if not impossible, for the Commission to determine those fees in any particular service area." Id. at 536.

In addition to the tap and plant impact fees discussed above, the Commission also included the following language concerning gross-up for taxes on CIAC:

> "The Tap on Fee and Plant Impact Fee are subject to Gross up Multiplier Provisions of the North Carolina Utilities Commission, Docket No. M-100, Sub 113."

Id. at 546.

Docket No. W-354, Sub 81 (1989)

The Schedule of Rates approved in CWS's next general rate case, Docket No. W-354, Sub 81, which became effective on June 15, 1990, contained minor changes regarding uniform tap fees and plant impact fees. The language regarding application of those fees was changed to require not only that the Commission approve any contracts calling for different fees, but that those contracts be "on file with the Commission." 80 Report of the NCUC Orders and Decisions 342, 434, 436 (1990).

Public Staff witness Lee testified that CWS filed copies of contracts on November 20 1989, as required by the Order entered in the Sub 69 docket on February 7, 1989, but that the Company had not filed the required connection fee report. Therefore, the Order in the Sub 81 case again required CWS to submit a report detailing its tap and plant impact fees by subdivision.

The Schedule of Rates also added Wolf Laurel and Sherwood Forest to Corolla Light, Hound Ears, and Brandywine Bay as service areas specifically excluded from uniform tap or plant impact fees. Non-uniform fees were approved for Wolf Laurel in Docket No. W-354, Sub 61, and Sherwood Forest in Docket No. 354, Sub 67, prior to the W-354, Sub 69 rate case; however, Wolf Laurel and Sherwood Forest were excluded from that rate case and were therefore excluded in the Sub 69 tariff from the uniform fees.

Docket No. W-354, Sub 111 (1992)

The Schedule of Rates approved by the Commission on October 12, 1992, in CWS's last general rate case, Docket No. W-354, Sub 111, did not change from the Schedule of Rates approved in W-354, Sub 81, regarding tap fees and plant impact fees. The Public Staff stated that a number of contracts between CWS and developers had still not been filed with the Commission notwithstanding the Orders in the Subs 69 and 81 dockets requiring all such contracts to be filed. The Commission ordered CWS to file copies of certain contracts specified by the Public Staff and any other contracts with developers that had not previously been filed. CWS was also required to henceforth file all contracts with developers with the Commission within 30 days of signing, including contracts covering contiguous expansions. In addition, the Company was required to file a list of

all systems where the uniform connection fees were not being charged. The Commission, upon recommendation of the Public Staff, further concluded that:

> "the Company should charge the uniform tap fee and plant modification fee in all of its service areas unless it receives prior Commission approval to deviate from the uniform fees. This requirement should apply to both existing and new service areas. The filing by CWS of contracts that provide for non-uniform fees does not constitute Commission approval of such fees."

82 Report of the NCUC Orders and Decisions 387, 503 (1992).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Fairfield Settlement

Company witness Camaren testified on this issue. The Commission's conclusions are supported by previously reported cases involving Utilities, Inc., companies.

CWS claims that the Fairfield Settlement precludes the Commission from taking any action to remedy the problems identified by the Public Staff. Witness Camaren specifically testified that "the Fairfield Settlement directs the Commission to take action on contracts or terms on a go-forward basis." A thorough study of the written Settlement, to which the Commission notes neither the Public Staff nor the Attorney General was a party, shows that the Fairfield Settlement is unrelated to the issues in this case. Therefore the Settlement has no bearing on the remedy the Commission may order in this case.

The Fairfield Settlement was signed by the Commission staff and the attorney for CWS Systems, Inc., in Docket Nos. W-778, Sub 6, and W-354, Sub 91, on April 24, 1991. The Settlement document explicitly points out that the Fairfield show cause proceeding was "established to determine whether CWS should be fined for its actions in acquiring the Fairfield systems" (emphasis added) and that the Grandview show cause proceeding was "established to determine whether CWS should be fined for its actions in acquiring the Grandview and Lockhurst system." (emphasis added) The issue in both acquisitions was whether the Company had violated G.S. 62-111(a) by obtaining the systems prior to Commission approval. In Docket No. W-778, Subs 2, 3, and 4, the Commission specifically concluded that "it is clear that CWS violated G.S. 62-111(a), particularly in view of the interpretation of this statute in the Pinehurst case by the Court of Appeals." In re Application of CWS Systems, Inc., 80 Report of the NCUC Orders and Decisions 456, 466 (1990).

The case referred to by the Commission is State ex rel. Utilities Commission v. Village of Pinehurst, 99 N.C. App. 224 (1990), aff'd per curiam, 331 N.C. 278 (1992). The Commission quoted at length from the opinion of the Court of Appeals on the appropriate time to seek Commission approval of a transfer. Pinehurst itself involved a transfer, and a key issue in that case was whether the utility had actually completed the transfer before requesting Commission approval.

Thus, the Commission, responding to the Pinehurst transfer hearing and the Pinehurst appeal, was closely scrutinizing transfers in the 1989-90 time frame.

Several utilities, including CWS, were acquiring systems in such a way that the Commission had virtually no choice but to approve them. For example, in the Fairfield subdivisions, CWS Systems, Inc., had been operating the utilities, billing customers, and collecting the utility revenues before it even filed its application. In re Application of CWS Systems, Inc., 80 Report of the NCUC Orders and Decisions 456, 459 (1990).

Because of what Commissioner Cobb's dissent described as a "blatant disregard...for both our rules and the law of this state," id. at 472, the Commission instituted a show cause proceeding. The reason for that proceeding was the Company's violation of G.S. 62-111(a). Therefore, the only purpose of the show cause proceeding was to decide if the Commission should penalize the Company for the way it was presenting essentially completed transactions to the Commission as transfer applications.

The language quoted from the Settlement by witness Camaren must therefore be read in the context of the acquisition controversies. The Commission agreed to release CWS and its affiliates from any claims "arising out of or in any way relating to Docket Nos. W-778, Sub 6, and W-354, Sub 91, and the dispute described" in the document. The only "disputes" described in the Settlement are the Fairfield and Grandview transfer applications and the resultant show cause proceedings.

The Settlement goes on to extend the release "to all acquisitions approved prior to execution of this agreement or acquisitions, whether by contiguous extension or otherwise, that have been expressly noted in any previously decided CWS rate application." (emphasis added) The Settlement repeatedly refers to the "acquisitions" issue, which the Commission construes to be the repeated violations of G.S. 62-111(a) that led to the show cause proceeding. The claims from which the Settlement released CWS were therefore those that related to G.S. 62-111(a) specifically and the procedure for approving acquisitions generally. This case does not involve any G.S. 62-111(a) issues, nor does it present the Commission with any proposed transfer. This case is about connection fees and CIAC tax liability. Therefore, the Commission holds that the Fairfield Settlement is unrelated to the issues in this docket and does not operate as a release for CWS regarding the issues raised by the Public Staff.

The Commission further holds that specific limitations on the Fairfield Settlement such as it has found appropriate in this case are essential. CWS apparently claims that the Settlement is a complete defense in this case. Witness Camaren testified that the document "directs the Commission to take action on contracts or terms on a go-forward basis." (emphasis added) Thus he apparently believes the Commission has no authority to take any action against CWS on any existing contract or term. This interpretation is neither reasonable nor lawful. G.S. 62-32 requires the Commission to supervise "the rates charged and service rendered by" CWS. G.S. 62-139(a) requires CWS to charge its approved rates and charges. Thus, the Commission, under the CWS interpretation of the Settlement, would be prohibited from performing a duty prescribed to it by the General Assembly. Such an interpretation obviously cannot be sustained and indeed could subject the Commission to writs of mandamus.

The Commission therefore concludes that the Fairfield Settlement is not an effective defense for CWS in this case. Factually it does not apply to

connection fees and CIAC. Moreover, the broad interpretation of the Settlement urged by CWS would be unlawful. Furthermore, the Commission is disturbed that CWS would assert an unrelated settlement as a defense in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 - 27

The evidence in this case indicates that CWS has utilized two primary methods over its 22-year history in North Carolina to acquire new systems and expand into new areas. One method has been the purchase of existing utility systems. The other method has been to contract with developers of areas contiguous to an already certificated CWS system for the authority to provide water and/or sewer utility service. The systems generally are constructed by others in order to facilitate the construction of residential subdivisions. In obtaining systems during the time it has operated in North Carolina, CWS has followed a consistent pattern. CWS has entered into contracts with the sellers of systems through which the Company has sought to minimize development risk for CWS and its ratepayers. CWS's objectives have been to maximize contributions in aid of construction (CIAC) collected from developers of new areas and to obtain existing systems at a reasonable cost per connection. CWS asserts that it has sought to obtain systems where there was an opportunity to expand in the future to take advantage of economies of scale.

Each contract CWS enters into when it acquires systems contains provisions addressing the mechanism through which CWS accomplishes its investment objectives. The consideration exchanged by CWS and the developer or builder is established through contractual provisions identifying facilities the seller conveys and setting forth the compensation, if any, CWS pays for such facilities.

The pattern of compensation and facility transfer differs with each CWS system acquisition. Each service area is unique; each seller, developer or builder has different needs and objectives. The varying competitive market forces dictate what compensation the seller requires for the facilities conveyed in an arms-length transaction to CWS and the price CWS is willing to pay for those facilities. The sales prices for the systems are not regulated per se, for there is no tariff or Commission rule controlling the price of facilities CWS acquires. However, regulation does exist in the form of oversight in certificate of public convenience and necessity proceedings or subsequent general rate cases.

Issues such as the level of connection fees, whether connection fees are waived or collected, the timing of collection of such fees, and whether the fees are retained by CWS or remitted to a third party, are necessarily tied to the agreed upon compensation paid for the facilities conveyed. For the reasons outlined above, CWS has negotiated contracts that call for many different approaches to the timing, mechanics, and level of compensation, reflecting the different risks and circumstances of each situation. This has caused different mechanisms and levels of connection fees to be charged to builders. CWS asserts that the delicate balance between the purchase price paid for utility facilities and CIAC collected has resulted in a reasonable and appropriate investment per connection and that the reasonableness of the Company's investment is evidenced by the approvals granted in general rate case and certificate of public convenience and necessity Orders issued over a long period of time. According to CWS, accomplishment of its investment goal has resulted in a reasonable rate base and the payment of a reasonable amount as return on that rate base through

rates paid by consumers. CWS takes the position that the evidence for this conclusion is found not only in the record of this proceeding but in the Orders entered by the Commission during the Company's 22-year history.

An examination of CWS's investment practices over its history in North Carolina reveals that the Company's practices have been consistent in that the mechanism of connection fees has been used to obtain funds from or convey funds to sellers of systems. Where CWS has a contract establishing connection fees, the Company has relied upon those contractual terms as dictating its subsequent activities regarding the connection fees. The Commission, the Public Staff, and the Attorney General been fully aware of this practice for many years. In certification proceedings in particular, CWS assumed that if either the Commission, the Public Staff, or Attorney General deemed the terms of the contracts regarding connection fees to be in conflict with other portions of the Company's applications, questions would have been raised and the conflicts addressed and resolved. CWS asserts that it is inconceivable that the Public Staff in particular never read the contracts in question and never understood what they meant regarding connection fees. In fact, CWS states that the evidence is to the contrary, citing Public Staff witness Lee's testimony in the Sub 69 case as an indication that the Public Staff knew exactly what the contracts meant and how the Company had relied on them in fashioning its connection fee practices. CWS further asserts that the Public Staff is at fault for failing to fully investigate and prosecute connection fee issues in a timely manner; instead, the Public Staff has, according to the Company, allowed and through inaction encouraged this matter to drag on for many years and through many cases.

Although CWS relies primarily upon its contracts with the seller to determine the connection fees charged within a service area, occasions arise where connections are made that are not covered by any contract. For example, the developer may complete the sales of homes within a subdivision and leave a number of lots without new homes. Subsequently, someone else will buy the lots and construct homes in situations not covered under the contract with the original developer. In other situations, a portion of the subdivision will be sold by the original developer to a third party before homes are constructed. CWS may have no contract with the subsequent developer of the new section.

Without a provision in the Company's tariffs authorizing it to assess connection fees in those situations, CWS would have difficulty collecting any connection fees at all. Consequently, in 1981, CWS requested uniform system-wide rates in the Sub 16 docket and at that time sought a tariffed set of connection fees. In its filing, CWS clearly indicated that the tariffed tap fees established by the Commission were to apply only where no contract existed calling for a different fee.

The phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission," which was approved by the Commission in the Company's Sub 16 general rate case and which authorized variation from the uniform connection fees, was inadvertently omitted from the Schedule of Rates approved for CWS in the Company's Sub 26 general rate case. Furthermore, the inadvertent omission of that phrase was apparently neither discovered nor discussed during the Company's next general rate case in the Sub 39 docket, and, therefore, the phrase was not reinserted in the tariff approved by the Commission. In the Sub 69 general rate case, the Public Staff conducted an examination of CWS's

contracts with sellers of utility facilities and requested the Commission to order CWS to file all of its contracts with the Commission. In the Sub 69 case, the Public Staff also requested CWS to file the contracts so that the differing levels of connection fees could be added to CWS's tariffs. In our February 7, 1989, Order in the Sub 69 docket in response to the Public Staff's recommendation, the Commission ruled:

> "The Commission further concludes that the Applicant should file a copy of each of its present contracts and a report specifying the amount of tap on fees and/or plant impact fees that can be charged in each system or portion of a system. This will be added to the tariff. Under the present tariff, it would be very difficult, if not impossible, for the Commission to determine those fees in any particular service area." (Emphasis added.)

CWS filed its contracts on November 20, 1989, but apparently did not file the required tap fee report.

In CWS's 1990 general rate case, Docket No. W-354, Sub 81, issues again arose as to whether the Public Staff had a complete list of the contracts. In that case, the Public Staff renewed its request that CWS file its contracts and a report detailing tap fees and impact fees in each subdivision. The justification for the Public Staff's request was the same as was previously given in Docket No. W-354, Sub 69. The Public Staff claimed that its representatives and CWS were spending large amounts of time responding to inquiries. The Commission again required CWS to file the report, which was subsequently filed.

By filing its contracts and listing its connection fees, CWS asserts that the Company fulfilled its obligations with respect to obtaining any authorizations to charge contractual connection fees. In our Order in the Sub 69 docket, the Commission ruled that the filing of such contracts and reports would indicate what connection fees "can be charged in each system or portion of a system" by CWS and that the fees indicated on the report were to be "added to the tariff."

CWS interprets the actions of the Public Staff and the Commission regarding this matter as indicating that the Company's prior practices were completely acceptable to both agencies and that the Public Staff and Commission acted only to remedy an administrative problem; i.e., quick identification of which connection fees applied in a particular area. CWS correctly asserts that the Commission provided in the Sub 69 Order that the tariffs should be adjusted so that the fees could be published as a point of speedy reference. As a result, CWS further maintains that the Public Staff's current position that once it has obtained all contracts, it is free to use them not for the stated purpose of documenting fees being charged, but to compare what was charged to what was not and then make a $3 million rate base adjustment is without merit and unreasonable.

The Commission believes that the intent of the Public Staff in 1988 in the Sub 69 case was to compile connection fee data from contracts and to add this data to the Company's tariffs in order to be "legally and technically correct." CWS made no attempt to resist this effort based on the reason given for it. The

Commission required the Company to file the contracts so that its files would reflect the connection fees "that can be charged" and to add them to the tariff.

CWS also asserts that the only appropriate action for the Commission to take to the extent it deems a filing of the contracts a technical requirement necessary for CWS to comply with the contracts in assessing connection fees, is to deem the filings by the Company in 1989 and 1990 satisfactory nunc pro tunc. Indeed, CWS takes the position that by requiring the Company to file the contracts in response to the Public Staff's 1989 testimony, the Commission has implicitly already approved CWS's activities.

Since 1988, the Commission has never indicated that any punishment in the nature of imputed connection fees was warranted or would be forthcoming for past failures to file contracts dictating connection fee practices for service areas served by contiguous extension or to get express approval in certification proceedings. By ordering CWS in the Company's 1988 general rate case to file contracts indicating which connection fees "can be charged" and to obtain information that "will be added to the tariff," the Commission in effect found and concluded that the Company's practices had been permissible, were reasonable, and that no substantive harm had been identified that needed rectification by way of ratemaking adjustment in particular. If the Commission now accepts the Public Staff's recommendation and uses the information obtained pursuant to previous Orders on the pretext of fulfilling an administrative function, CWS will be punished in a wholly inappropriate ex post facto fashion, despite a lack of evidence of harm. Such an action by the Commission would be unreasonable and unwarranted.

In each of the Company's five general rate cases heard and decided by the Commission since 1982, issues regarding connection fees have been raised by the Public Staff. The uniform tariff provisions covering connection fees have been changed, and issues regarding CWS's connection fees covered by contracts have been addressed. CWS has consistently followed the practice of relying in the first instance on the terms of contracts covering connection fees and on the uniform tariff where no contract exists. Notwithstanding the concerns which the Public Staff has been strenuously expressing regarding the Company's tap fee practices and procedures beginning more than five years ago in the Sub 69 general rate case in particular, the Public Staff never proposed a ratemaking adjustment, such as the imputation of connection fees, in any of the five general rate cases heard and decided by the Commission since uniform fees were first approved for CWS in 1982. The record clearly indicates that the Public Staff was well aware of CWS's connection fee practices and procedures and the Company's failure to file and receive approval of contractually set connection fee charges as early as the Sub 69 case, yet the Public Staff proposed no ratemaking adjustment in either that case or the cases subsequently decided by the Commission in the Sub 81 and Sub 111 dockets. Nor was there any appeal by the Public Staff in those dockets of issues related to the Company's tap fee practices and procedures. The Public Staff has, by its actions in many general rate case proceedings, waived its right to, and is in effect now estopped from, imputing connection fees for ratemaking purposes with regard to any prior failure by CWS to seek and gain approval of contractually set connection fees. This principle

is also true for the Attorney General and even the Commission. The Public Staff, Attorney General, and Commission are now bound by the Final Orders entered in multiple general rate cases where no imputation of connection fees and associated rate base adjustments were proposed and those Orders are no longer subject to appeal.

Furthermore, over the years, the Public Staff has at the very least acknowledged CWS's practices regarding connection fees. CWS and the Public Staff have differed on how the uniform tariff covering connection fees should be written; and the Public Staff has complained that it is difficult to keep track of the differing contractual connection fee arrangements so as to reply to inquiries from time to time. Nevertheless, until the waning hours of CWS's most recent general rate case in 1992, Docket No. W-354, Sub 111, the Public Staff had never previously suggested any fundamental disagreement with the basic premises of CWS's connection fee practices and procedures.

Now, after more than 20 years of consistent application of these connection fee practices by the Company, the Public Staff asserts that CWS has been remiss in relying on its contracts with sellers of systems to determine the connection fees it collects. The Public Staff asserts that in most instances CWS has had no authority to charge connection fees established in these contracts. The Public Staff claims that submission of the contracts as a required exhibit in CWS's applications for certificates of public convenience and necessity was not adequate to establish contractual connection fees unless the Commission Order granting the certificate expressly authorized the contractually determined connection fees. Long after the Company's practices were established and known to the Commission and the Public Staff, the Public Staff further asserts that CWS was wrong to charge connection fees established by contract where service was lawfully provided through contiguous extension, because CWS did not apply for authority to rely upon the contracts at the time it began service.

The penalty the Public Staff urges the Commission to employ is to reduce rate base by $3 million, or by approximately 20%. The theory of this penalty is that CWS should have charged its uniform, tariffed connection fees, and, had it done so, cash CIAC would have increased by $3 million. Notwithstanding the many harsh admonitions and reprimands the Commission has delivered over the years to CWS regarding its connection fee practices and procedures, there is no reasonable basis, legal or equitable, upon which to adopt the ratemaking adjustment through the imputation of connection fees proposed in this case by the Public Staff and Attorney General. The time has come to bring this longstanding saga to an end. All parties, including CWS, the Public Staff, the Attorney General, and the Commission, share responsibility for failing to pursue these connection fee issues to a timely and reasonable conclusion. That being the case, CWS will be required, once and for all, to conform its tariffs on a subdivision-by-subdivision basis to reflect the connection fees actually being charged by the Company and future deviations will not be tolerated, but no imputation of connection fees will be ordered in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 28 - 31

Management Fees

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witness Wenz and Public Staff witness Kibler.

A management fee is contained in the contracts for the following subdivisions: Riverbend/Lakemere, Southwoods (water), Cambridge, and Stonehedge/Bradford Park. The management fee is a one-time fee payable to the Company as each new customer connects to the system and takes service. It, therefore, has all the characteristics of a tap fee, plant impact fee, or other similar connection fee. The Company has collected management fees in the service areas listed above, as well as tap and plant impact fees.

Public Staff witness Kibler testified that the management fee is not listed in the specific tariffs for the service areas in question. The Public Staff requests that the Commission order CWS to cease from collection of the management fee unless the Commission gives prior approval, in the form of a tariff, for CWS to collect the fee.

In rebuttal, Mr. Wenz testified that any contract for management fees is with the developer, not a customer. The fee is intended to cover the costs associated with the management of the infrastructure construction in the area under contract. As such, the management fee requires the developer to pay for costs incurred on his behalf. At the very least, the management contract benefits those who in fact are customers through a reduced revenue requirement.

Mr. Wenz further testified that a similar issue was addressed in Docket No. W-354, Sub 111. A contract to provide billing services, as opposed to management services, was entered into with the City of Charlotte, also a non-customer. The only issue was the bookkeeping of revenues, not the propriety of the contract. Mr. Wenz testified that in Docket No. W-354, Sub 111, the Public Staff recommended that management fees be classified as miscellaneous revenues, thereby reducing rates for water and sewer services. The Public Staff addressed the management fees in the Riverbend/Lakemere, Southwoods, Wolf Laurel and Cambridge Subdivisions. CWS and the Commission agreed with the Public Staff's recommendation in Docket No. W-354, Sub 111. Additionally, witness Wenz testified that the contract between CWS and the Cambridge developer was approved by the Commission, without objection by the Public Staff, in Docket No. W-354, Sub 78.

After reviewing the evidence of record, the Commission concludes that it is appropriate to reject the Public Staff recommendation. The Commission agrees with CWS that provision of this service is beneficial to ratepayers. When this issue was last addressed in Docket No. W-354, Sub 111, the management fees were treated as miscellaneous revenues reducing the revenue requirement for which CWS's ratepayers were responsible. The Commission deems it unreasonable to eliminate this source of revenue that has been used to reduce the revenue requirement. The Commission notes that the Public Staff has been aware of these management fees in past cases and has made no objection to the Company's providing the services and receiving the fees. The Public Staff has had ample opportunity to review these contracts in the past and has made no objection to them. Had the Public Staff objected when these contracts were first submitted, CWS and the parties with whom it contracted would have had an opportunity to renegotiate the contracts. The Commission concludes that the Public Staff's position is inappropriate and should be rejected. The Commission will, however, require CWS to amend its tariffs to include and reflect all applicable management fees.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 32 - 37

Oversizing Fees

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witness Wenz and Public Staff witness Kibler.

An oversizing fee is contained in the contracts for Riverbend/Lakemere and Winghurst Subdivisions. The oversizing fee is a one-time fee collected by the Company as each new customer connects to the system. The oversizing fee is designed to reimburse the developer for constructing water and/or sewer facilities in an area of possible future expansion which is not in the original area covered by the contract. It therefore has all the characteristics of a tap fee, plant impact fee, or other similar connection fee. The Company has collected $1,200 in oversizing fees in the Winghurst Subdivision. No oversizing fees have been collected in Riverbend/Lakemere. The Company is also collecting tap and plant impact fees in both subdivisions.

Public Staff witness Kibler testified that the oversizing fee is not included in the Company's tariffs. Company witness Wenz agreed that the fee is not included in the tariffs. Witness Wenz testified that "the rationale for negotiating oversized contributed facilities is to allow CWS the economic means to service contiguous areas in the future. The customer benefits from the opportunity to participate in future economies of scale, yet they are insulated from the associated development risk." Witness Wenz also testified that the contract for Woodside Falls, which contains the oversizing fee to be charged in Winghurst, has been approved by the Commission.

Company witness Wenz testified that under the two agreements mentioned by the Public Staff, the developer has agreed to install and contribute to CWS certain oversized water and sewer facilities in consideration for their potential future reimbursement by means of an oversizing fee. Mr. Wenz testified that under both agreements the intent is to collect the oversizing fee from new third-party builders or developers who benefit from the installation and use of the oversized facilities. The rationale for negotiating oversized contributed facilities is to allow CWS the economic means to service contiguous areas in the future. Obviously, the initial oversizing of certain facilities can minimize the need to install costly and inefficient duplicate facilities. The customers benefit from the opportunity to participate in future economies of scale, yet they are insulated from the associated development risks.

Mr. Wenz further testified that the oversizing arrangements are consistent with the Commission's policies regarding "used and useful" facilities. The Public Staff recommends that CWS make prudent, long-term economic investments while at the same time recommending to the Commission that CWS be penalized for doing so. Mr. Wenz testified that conflicting Commission decisions and court orders have also contributed to the uncertainty as to how a utility can expand facilities without being penalized for prudently sizing the expansion to accommodate the needs of customers connecting in the future. He testified that by requiring the developer to fund an expansion wherever possible, any risks that

the oversized facilities will never be used is placed solely on the developer that installs them, not CWS or its ratepayers. The level of risk is certainly evidenced in these instances where after seven or more years, only $1,200 out of a potential $118,000 has been collected.

Mr. Wenz also testified that it is reasonable that the developer be reimbursed for the cost of the facilities that eventually are used by someone else. He testified that the oversizing fees place the cost of the facilities on the appropriate entity, the builder or developer that benefits from the oversized facilities. He testified that the Public Staff's position on this issue is inconsistent with its position in other utility company proceedings. For example, in Docket No. W-720, Sub 86, the Public Staff did not object to the sale of capacity by the developer directly to third parties.

After reviewing this evidence, the Commission concludes that the Public Staff's recommendation should be rejected. The Commission accepts CWS's practice of entering into contracts which contain oversizing fees in an attempt to prevent the incurrence of costly, duplicative facilities. The Commission will, however, require CWS to amend its tariffs to include and reflect all applicable oversizing fees.

CIAC Tax Issues

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 38 - 60

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witnesses Wenz and Johnson and Public Staff witnesses Lee and Kibler. Company witness Camaren also addressed these issues.

Issues to be resolved in these regards pertain to certain aspects of the Tax Reform Act of 1986, hereafter referred to as the Tax Reform Act. Therefore, at this juncture, a brief review of the Tax Reform Act is in order.

The Tax Reform Act, among other things, changed the status of capital contribution made to investor-owned public utilities such that those contributions, effective January 1, 1987, were, and are now, to be treated as ordinary income subject to taxation in the year received. In the public utility industry, such contributions are traditionally referred to as contribution(s) in aid of construction (CIAC). CIAC is typically received by utilities in the form of plant assets and/or cash. In the water and sewer utility industry, cash is usually received in payment of tap-on and plant modification fees. In the past, the Commission has considered tap-on fees, plant modification fees, and contributed plant to all represent CIAC. Additionally, all such contributions and/or fees are subject to taxation under the provisions of the Tax Reform Act.

In response to enactment of the Tax Reform Act, the Commission on February 3, 1987, issued an Order which essentially required all utility companies under its jurisdiction to collect from contributors of CIAC, in addition to the customary contribution, an amount equivalent to the state and federal income taxes that would be, and continue to be, due on CIAC under the Tax Reform Act. That additional amount, which is to be collected from the contributor, is commonly referred to as the "gross-up".

The Tax Reform Act as well as the Commission's gross-up requirement had a profound effect on the investor-owned water and sewer utility industry. That impact results from the fact that much, if not most, of the utility plant facilities owned and operated by investor-owned water and sewer utilities in North Carolina are acquired by such utilities through some form of CIAC. It is not uncommon for the major investor-owned water and sewer utilities operating in the state to receive tens of thousands, if not hundreds of thousands, of dollars of CIAC from developers over relatively short periods of time.

With the advent of the Tax Reform Act and the Commission's gross-up requirement, the competition between the major water and sewer utilities operating in the state with respect to the acquisition of water and sewer systems from developers became more intense. As a result, the Tax Reform Act became, and for that matter remains, a high profile, controversial issue in the investor-owned water and sewer utility industry. The preponderance of the controversy continues to surround the gross-up payment, if any, to be received from developers and other contributors of CIAC.

Due to the Commission's gross-up requirement, competing utilities have a strong incentive, in negotiating with developers to acquire systems, to structure contractual arrangements such that the gross-up payment(s), if any, to be received from developers are minimized. Parenthetically, it is noted that, because of the painstaking specificity with which the Internal Revenue Service (IRS) has addressed this matter, it is exceedingly difficult to avoid the receipt of taxable CIAC with respect to matters of the nature here under review. The Commission's findings in that regard are largely the result of its evaluation of numerous Internal Revenue Service (IRS) pronouncements which have been issued concerning this issue. Such pronouncements are discussed subsequently.

The significance of this issue to the Commission and to jurisdictional water and sewer companies is underscored by the following language which is contained in the Ordering Paragraphs of the Commission's Order issued on August 26, 1987, in Docket No. M-100, Sub 113:

> "That water and sewer companies shall use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval for a different method in a particular case or unless the company applies for and is granted approval to use the present value method....
>
> "That, if a company does not follow the gross-up requirements established by this Order, it shall not recover the costs of the taxes arising from the CIAC through rates or other charges to customers."

Before proceeding to the more specific issues involving CWS, there is a threshold issue which the Commission first needs to address. That issue stated in question form is: Was it reasonable for CWS to have concluded that the Commission had approved certain provisions contained in certain contracts filed with the Commission relating to gross-up?

The matter of gross-up since inception has been a high profile, controversial issue, which in conjunction with the Tax Reform Act, as previously stated, has had a profound effect on the investor-owned water and sewer industry.

Moreover, gross-up was the central issue in a prolonged and monumental Commission investigation of certain matters concerning another jurisdictional water and sewer utility in Docket No. W-720, Subs 96 and 108, of which the Commission hereby takes judicial notice. CWS was a party to that docket. The major issue in that investigation is the very same issue that is being litigated here, i.e., has the company complied with the Commission's gross-up requirements? Finally, it should be noted that the Commission's Order concerning gross-up is clear and unequivocal: "...water and sewer companies shall use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval for a different method in a particular case or unless the company applies for and is granted approval to use the present value method."

The Commission, after having carefully considered all of the evidence presented in this regard, including the evidence presented and the Commission's Orders entered in Docket No. W-720, Subs 96 and 108, finds and concludes that it was unreasonable for CWS to have concluded that the language in the subject contracts pertaining to the gross-up of CIAC had been approved.

In the Public Staff Response filed March 15, 1993, the Public Staff stated that it "believes CWS has violated the Commission's gross-up orders in the M-100, Sub 113, tax docket." The Public Staff indicated that it had not received responses to data requests concerning this and other issues that the Company considered to be irrelevant to this proceeding. The Public Staff recommended that

> "the Commission require CWS to provide the requested information because (1) the tap/plant impact fees under investigation are integral parts of contractual arrangements which give rise to related issues being asked about in the data requests; (2) it is far more efficient to resolve related issues (such as inadequate tax gross-up on tap/plant impact fees paid by developers, or paid back to developers) in the same investigation rather than take a piecemeal approach; (3) G.S. 62-15(d) authorizes the Public Staff to investigate these matters regardless of the scope of this particular case."

On May 14, 1993, the Commission issued an Order requiring CWS to answer the data requests and broadening the scope of this investigation.

It is the Public Staff's position that the Company has violated the Commission's gross-up orders as follows:

(1) The Company has not collected gross-up on taxable contributions in aid of construction (CIAC) obtained under contingent deferred payment plans.

(2) The Company has received CIAC gross-up in systems where the total cost has not been obtained from the developer. Public Staff witness Kibler listed several questions this problem raised concerning the Company's compliance with the Commission's gross-up orders.

(3) The Company has limited the amount of gross-up in certain contracts, which violates the Commission's gross-up orders.

(4) The Company has not collected gross-up on tap and plant impact fees set forth in certain contracts.

Company witness Wenz testified that CWS has not violated the Commission's gross-up Orders.

The Commission will now discuss each of the foregoing issues.

Contingent Deferred Payments

The first area of disagreement between the Company and the Public Staff relates to the tax treatment of property CWS has received under contracts with contingent deferred payments. The Company has entered into contracts with developers or contractors which contain provisions for contingent deferred payments. The Commission has reviewed such contracts related to each subdivision. Of the contracts with deferred payments, only the ones signed after February 3, 1987, are at issue concerning CWS's compliance with the Commission's gross-up requirements, but CWS is liable for income taxes on all CIAC received after December 31, 1986. Under these contingent deferred payment contracts, the developer or contractor installs the water distribution and sewer collection systems and transfers the systems to CWS so that CWS can provide utility service to the houses in the developments. Generally, CWS then pays the developer or contractor a set amount per lot as each customer is connected to the system.

Public Staff witness Kibler testified that if property is acquired by the method described above, the value of the property must be recognized as taxable CIAC for income tax purposes in the year the property is received by CWS. In essence, the Public Staff contends that CWS, under contracts with contingent deferred payment provisions, receives facilities to serve an entire system or an entire phase of a system in the first year when any property is first transferred, and not just some pro rata share of the entire system or phase. Witness Kibler further testified that the amount of taxable CIAC would equal the difference between the total cost of the property and any amount CWS paid for the property in the year received. He also testified that CWS can claim an income tax deduction as payments are later made to developers or contractors after collecting tap fees as customers connect to the systems. Witness Kibler cited the Committee Report of the United States House of Representatives (House Committee Report), IRS Notice 87-82, and IRS Private Letter Rulings 8909019, 9024022 and 9040021 in support of his position.

Company witness Wenz testified that these contracts do not result in taxable CIAC because CWS's payments to the developers or contractors represent the original cost of the facilities installed. Witness Wenz further testified that if the contractors' costs exceeded the amount of CWS's purchase prices for facilities within the Cambridge; Stonehedge and Habersham Subdivisions the contractors are required to pay CWS the gross-up on the resulting amounts of taxable CIAC.

Witness Wenz stated that the documents cited by the Public Staff do not pertain to the CIAC issues in this case. He also testified that the IRS concludes each and every private letter ruling with a caveat that the ruling is directed only to the taxpayer who requested it and may not be used or cited as precedent. Wenz said that unless the circumstances surrounding a transaction are

identical to those outlined in a private letter ruling, one should not draw a conclusion regarding the status of the transaction based on a casual analysis of the private letter ruling.

Company witness Johnson testified that Arthur Andersen had reviewed the contracts and believes that Utilities, Inc., has always followed reasonable positions with respect to complying with the IRS requirements as to the calculation of taxable income resulting from the receipt of CIAC. However, when questioned about the contracts, Witness Johnson was not aware of the specific transactions involved. Witness Johnson testified that it is surprising to him that this Commission would put itself in the position of being the overseer of an income tax issue.

CWS's witnesses stressed repeatedly throughout the hearing that these contracts were construction contracts and that the parties transferring the property to CWS were contractors, not the developers of the subdivisions. Witness Camaren ultimately admitted, however, that under at least some of these contracts the developer is taking on two roles, the role of the developer and the role of the contractor. The Company witnesses never explained why accepting property from a contractor would not result in taxable CIAC. Moreover, the Company did not cite any Internal Revenue Code (IRC) reference, IRS Notice(s), private letter ruling(s), or any other authority to support its contention that these contracts do not result in taxable CIAC, other than to stress that one must look at the substance of the transaction.

Company witness Camaren testified concerning the way a developer who contributes property to CWS would account for it and how the developer's accounting treatment affects CWS's gross-up requirements. In an attempt to justify CWS's failure to gross-up for income taxes on the property received in connection with contingent deferred payment contracts, Witness Camaren testified as follows:

> "Developers can no longer expense it if it's under the normal development rules. If he conveys it to a utility he gets an immediate write-off. But if he conveys it through contributions to a utility they must write it up and depreciate it. So if he doesn't take it -- if he doesn't take the tax benefit on one side, we're not required to go ahead and gross it up on the other side, and that's the substance of the deal and that's why Arthur Anderson [sic] and McDermott, Will, and Emery said, you've got a fine deal."

Witness Camaren acknowledged under examination from Commissioner Cobb that there have been no rulings from the IRS that support that position.

Under cross examination Company witnesses Wenz and Johnson testified concerning the Company's accounting treatment of transactions involving the receipt of and payment for property received under contingent deferred payment contracts. Witness Wenz testified that for deferred payment transactions involving property transferred to CWS prior to the Tax Reform Act, CWS recorded the amount of the cost of the property as a debit to plant and as a credit to CIAC in the year of receipt of the property. He further stated that as each

customer connects to the systems and a connection payment is made, CWS debits CIAC for the amount of the payment, resulting in an increase to rate base. He testified that subsequent to the Tax Reform Act, the Company no longer records any amount of CIAC for deferred purchase transactions involving construction agreements. As testified to by Company witness Johnson, the Company accounts for these transactions by increasing its plant accounts by the amount that CWS pays the developer or contractor as each customer is connected to the system. Thus, plant in service and rate base increase for each customer connection at the time a payment is made.

Before analyzing the witnesses' testimony on this issue, a brief review of the legislative history establishing the taxability of CIAC is appropriate. Before the Tax Reform Act, contributions made to public utilities for construction purposes were treated as nontaxable contributions to capital and excluded from gross income under Section 118 of the IRC. Section 824 of the Tax Reform Act made taxable the great majority of CIAC transactions that had previously been nontaxable. New Section 118(b) of the IRC of 1986 expressly provides that CIAC and other contributions made by a customer or potential customer are not contributions to capital and thus are not excluded from gross income under Section 118. Accordingly, these amounts are required to be included in gross income under Section 61 of the IRC. Thus, for a contribution to be taxable, it must be received from a customer or potential customer. For purposes of Section 118(b), the definition of a "customer" is fairly broad. The legislative history of Section 118(b) indicates that if someone contributes property to a utility as a prerequisite to the provision of service and the transferor benefits either directly or indirectly, the contribution is taxable to the utility.

Since the enactment of the Tax Reform Act this Commission has been greatly concerned about the taxability of CIAC, especially as it relates to water and sewer utilities. In its "Order Establishing Interim Procedures Related to Taxes on Contributions In Aid of Construction and Scheduling Hearing," dated February 3, 1987, the Commission ordered:

> "6. That all utility companies receiving contributions in aid of construction between the date of this Order and the date of the Order issued as the result of the scheduled public hearing be, and hereby are, ordered to increase said contributions for the amount of taxes due, except to the extent that said collection is prohibited by contracts already approved by the North Carolina Utilities Commission.
>
> "7. That all water and sewer utility companies under the jurisdiction of this Commission should use the table shown on Appendix A, attached hereto, to compute the increase in contributions needed to recover the taxes on contributions in aid of construction in accordance with the methodology set out in Ordering Paragraph No. 6."

In our "Order Establishing Procedures Related to Contributions In Aid of Construction," dated August 26, 1987, under Evidence and Conclusions for Finding of Fact No. 15, the Commission concluded:

"that the taxation of CIAC has the potential to financially impact the water and sewer industries more severely than the electric and natural gas industries. Therefore, the Commission concludes that, for purposes of determining the manner in which CIAC related taxes are collected from the contributor, different rules should be applied to those utilities, primarily water and sewer companies, for which CIAC represent the major source of capital for system growth and expansion."

Under Evidence and Conclusions for Findings of Fact Nos. 16-18 of that same Order the Commission stated:

"The Commission notes that the full gross-up method places the risk on the developer, rather than the utility, for the ultimate completion of a project. Consequently, the full gross-up method prevents the potentially adverse situation where a water or sewer utility pays from its own funds the tax related to a substantial contribution of a large system serving a generally undeveloped area. Had this situation been allowed to occur, then the company would suffer a drain of capital in the amount of the tax paid, without the assurance of short term cash in flow from the contributed system, because it serves an undeveloped area.

"Based on the foregoing, the Commission concludes that water or sewer companies should seek prior Commission approval before using any method other than the full gross-up method in any particular case. This approval should be sought on a case by case basis, except where the company has chosen the present value method, as spoken to above."

Under Evidence and Conclusions for Finding of Fact No. 23, the Commission stated:

"Based on the Foregoing, the Commission concludes that the rules and procedures contained in this Order are applicable to CIAC subject to taxation that was not under oral or written contract prior to February 3, 1987, the date of the Commission's Interim Order requiring gross-up procedures. Consistent with this conclusion, the Commission concludes that utilities receiving CIAC that were under contract prior to February 3, 1987, should be authorized to pay any related taxes on CIAC from the utility's funds."

In the "Order Approving Language For Water and Sewer Franchise Orders Related To Recovery of Taxes on Contributions In Aid of Construction," dated January 26, 1988, the Commission ordered:

"That each order granting franchise for newly acquired water or sewer systems issued after the date of this Order shall include the following language, provided that the acquisition contract was not executed prior to February 3, 1987:

> "Absent a strong, clear, and convincing showing of exceptional cause, no ratemaking treatment will be allowed in a future proceeding for taxes on Contributions in Aid of Construction if the appropriate tax authority or court rules at some future date that taxes are due."

In the "Further Order Establishing Procedures Related to Taxes on Contributions In Aid of Construction," dated September 14, 1990, the Commission stated:

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

The Commission emphasized that failure to employ the valuation approach described and adopted in that Order would result in an Application for a Certificate of Public Convenience and Necessity related to a contributed system being denied. In its "Order of Clarification and Modification" issued on February 6, 1991, the Commission amended the September 14, 1990, Order to apply to CIAC resulting from contracts signed after October 15, 1990.

As can be seen from the above quotations from its Orders, the Commission has always been concerned with the appropriate valuation of CIAC, the appropriate gross-up factor, and the resulting amount of income taxes on CIAC. The Commission, therefore, finds as puzzling Company witness Johnson's testimony that it is surprising to him that the Commission would put itself in the position of being the overseer of an income tax issue. Income tax expense and income tax liability are important financial aspects not only for CWS, but for all utilities regulated by this Commission. Based on the large dollar amounts of property that are contributed to CWS on an ongoing basis as a result of its acquisition of additional utility systems and the taxability of CIAC effective with the Tax Reform Act, CWS has the probability of incurring a substantial income tax liability arising from CIAC. Contrary to witness Johnson's surprise that the Commission would concern itself with a utility's potential income tax liability associated with CIAC income, it is imperative that the Commission concern itself with this issue. A utility's financial viability could very well depend on whether it correctly values for tax purposes the CIAC that it receives, whether it uses the proper gross-up rate, and whether it collects the taxes on CIAC from the transferor. If a utility does not use the appropriate CIAC value and gross-up rate and does not collect the gross-up of taxes from the transferor, additional income taxes may be assessed to the utility in the future.

The Commission has carefully studied and analyzed the testimony and exhibits presented by the witnesses concerning taxes on CIAC, including what does or does

not constitute CIAC. The Commission agrees with the Public Staff that the House Committee Report, IRS Notice 87-82 and IRS Private Letter Rulings 8909019, 9024022 and 9040021 cited by witnesses Kibler and Lee are relevant to this issue. All of these documents, as well as Section 118 of the IRC, address the issue of the taxability of CIAC. Certainly the House Committee Report, which sets forth the legislative intent of changes to Section 118 of the IRC as a result of the Tax Reform Act, and IRS Notice 87-82, which sets forth the IRS's position on CIAC, are relevant to this issue. Also, although the caveat contained in private letter rulings states that the rulings are directed only to the taxpayers in question, private letter rulings provide information to other taxpayers on the IRS's position on CIAC transactions. IRS written determinations, including private letter rulings, determination letters, and technical advice memoranda, as well as any background file documents relating thereto, are open to public inspection once identifying details and financial information have been deleted. Because private letter rulings are open to public inspection, the IRS obviously intends that these rulings be used by other taxpayers as a guide in determining the taxability of similar transactions. Several utilities, including CWS in Docket No. W-720, Subs 96 and 108, and Docket No. M-100, Sub 113, have previously cited private letter rulings issued to other taxpayers to support positions they have taken concerning matters pertaining to income taxes. Also, this Commission has relied on private letter rulings issued to utilities in other states in making decisions concerning income tax issues for utilities operating in North Carolina.

The House Committee Report contains an explanation for the change in Section 118(b) of the IRC under the Tax Reform Act. Based on the change in Section 118(b) of the IRC, CIAC is no longer treated as a nontaxable contribution to a utility but is now treated as taxable income. The following language reflecting the reasons for the change in Section 118(b) of the IRC is included in the House Committee Report:

> "The Committee intends that the effect of the change is to require that a utility report as an item of gross income the value of any property, including money, that it receives to provide or encourage the provision of services to or for the benefit of the person transferring the property. A utility is considered as having received property to encourage the provision of services if the receipt of the property is a prerequisite to the provision of the services, if the receipt of the property results in the provision of services earlier than would have been the case had the property not been received, or if the receipt of the property otherwise causes the transferor to be favored in any way.
>
> "The committee intends that a utility include in gross income the value of the property received regardless of whether the utility had a general policy, stated or unstated, that requires or encourages certain types of potential customers to transfer property, including money, to the utility while other types of potential customers are not required or encouraged to make similar transfers.
>
> "The person transferring the property will be considered as having been benefitted if he is the person who will receive the services, an owner of the property that will receive the services, a former owner

of the property that will receive the services, or if he derives any benefit from the property that will receive the services. Thus, a builder who transfers property to a utility in order to obtain services for a house that he was paid to build will be considered as having benefitted from the provision of the services. This will be the case despite the fact that the builder may never have had an ownership interest in the property and may make the transfer to the utility after the house has been completed and accepted."

Clearly, then, Congress intended that the value of property transferred to a utility from a person that would benefit from the transfer must be recognized as CIAC income by a utility. Language from the House Committee Report is quoted extensively by the IRS in IRS Notice 87-82 and in subsequent IRS private letter rulings, some of which will be referred to and discussed in this Order.

IRS Notice 87-82 contains voluminous language that is applicable to the issue of whether the initial receipt of water or sewer utility property by a utility with contingent payments over an unspecified time period in the future as customers tap onto the system results in taxable income to the utility upon receipt of the property. IRS Notice 87-82 contains the following language which is applicable to this issue:

"III. Fair Market Value of CIACs

"A utility shall include in income the amount of any cash received as a CIAC and the fair market value of all property received as CIAC. If the property received by the utility will be used in the provision of utility services, all of the relevant facts and circumstances are taken into account in determining the fair market value of the property. Absent unusual circumstances, normally the value of such property provided to a utility is the 'replacement cost' of the property, i.e., the cost that another party would incur to construct property that is functionally similar to the subject property in the performance of the property's intended function. The fact that property received as a CIAC is not included in the utility's rate base or cost of service for regulatory accounting purposes shall not, in any manner, affect the determination of the fair market value of the property for this purpose.

"In addition, a transaction will be treated as a CIAC if the utility effectively obtains the burdens and benefits of ownership with respect to property, although legal title to such property is held by the customer, a governmental entity, or another person. Transactions which purportedly avoid CIAC characterization through the retention of legal title to property by a person other than a utility will be scrutinized carefully and will be treated as taxable CIACs to the utility if, in fact, the utility is, for Federal income tax purposes, the owner of the property. Factors which suggest ownership of the property by the utility include, but are not limited to, (i) whether the utility is responsible for maintaining the property; (ii) whether the utility effectively has unrestricted access to and control of the property; and (iii) whether the utility would bear legal liability with respect to a malfunction of or accident involving the property.

"Moreover, a purported loan to a utility from a person benefitting from utility services relating to the loan (e.g., a real estate developer, customer, or potential customer) will be treated as a CIAC and included in the utility's gross income if the transaction lacks the economic characteristics of a genuine loan for Federal income tax purposes. As an example, where repayment of a "loan" by a utility to the lender is contingent and the contingent loan is made to allow or to encourage the utility to provide services for the benefit of the person making the loan, the amount received by the utility will be treated as a taxable CIAC. Where a utility included the entire amount of such a "loan" in taxable income as a CIAC, repayments of such loan by the utility to the lender would normally be deductible by the utility when made."(emphasis added)

IRS Notice 87-82 directly applies to this issue in several respects. First, IRS Notice 87-82 requires a utility to include in income the amount of cash and the fair market value of property that it receives as a CIAC. CWS initially receives all of the assets of a water or sewer utility system, or an entire phase of a system, but recognizes no CIAC income as a result of receiving the assets. IRS Notice 87-82 specifically requires a utility to recognize as CIAC income the value of property that it receives, not the value of a partial payment for the property that it receives.

The Commission agrees with the Public Staff that under these contracts, CWS receives facilities to serve a whole system or an entire phase of a system in the first year. Under each of these contracts the developer or contractor installs the facilities, and the facilities become CWS's property as installed. Also, under these contracts CWS pays the developer or contractor a set amount per lot as connections are made to the facilities. For example, a developer or contractor may install a system to serve 50 customers and the system is transferred to CWS. If only one customer taps onto the system in the first year after CWS receives the system, CWS did not receive only the mains, service connections, etc. applicable to just that one customer, but instead received the mains, service connections, etc. to serve the whole subdivision or an entire phase of the subdivision.

Second, IRS Notice 87-82 states that a transaction will be treated as a CIAC if the utility effectively obtains the burdens and benefits of ownership with respect to property. Factors that suggest ownership by the utility include whether the utility is responsible for maintaining the property, whether the utility effectively has unrestricted access to and control of the property, and whether the utility would bear legal liability with respect to a malfunction of or accident involving the property. CWS meets each of these factors in all of the systems with contingent deferred payment provisions in the contracts.

Third, IRS Notice 87-82 states that where repayment of a "loan" by a utility to a lender is contingent and the contingent loan is made to allow or encourage the utility to provide services for the benefit of the person making the "loan," the amount received by the utility will be treated as taxable CIAC to the utility. IRS Notice 87-82 further states that where a utility included the entire amount of such a "loan" in taxable income as a CIAC, repayments of such a "loan" by the utility would normally be deductible by the utility when made.

When a developer or contractor transfers a complete or partial utility system to CWS and CWS pays the developer for the system or partial system when and if customers tap onto the system in the future, the difference between the developer or contractor's cost of the assets transferred to CWS and the amount initially paid by CWS represents a "loan" to CWS and must be recorded as taxable CIAC income by CWS in the year the system or partial system is received by CWS. Any repayments of the "loan" are contingent on customers tapping onto the system in the future. If and when customers tap onto a system in the future, the repayments of the "loan" may be taken as an income tax deduction by CWS in the years the repayments are made to the developers or contractors.

CWS's argument that there is no unrecorded income tax liability associated with these contingent deferred payment contracts because CWS is paying the original cost of the systems is not supported by the evidence. The Commission does not agree with CWS that its payments under these contingent deferred payment contracts represent the original cost of the facilities installed. Under these contracts the amount of money the Company is actually going to pay for the utility plant depends on how many connections will be made to the systems in the future. The actual purchase price and the timing of the payments are unknown when a system is transferred to CWS; therefore, whether the actual purchase price is equal to the original cost of the facilities cannot be determined at the time the facilities are transferred to CWS. Additionally, CWS will only pay the developers' original cost of these systems if the associated subdivisions are fully developed and customers tap onto the systems sometime in the future. Even if CWS ends up paying the total original cost over a long period of time, the present value of those payments would not equal the original cost of the systems due to the time value of money. Because of inflation, a dollar received in the future is not equal to a dollar received today. Neither witness Wenz nor witness Johnson could provide any IRS ruling or other documentation to support CWS's position.

The Commission is of the opinion that the IRS is unwilling to accept the risk of a subdivision not building out. The Commission believes this concern is the reason IRS Notice 87-82 states that CIAC income must be recognized in the year a utility system is received, and a tax deduction may be taken in future years if and when customers connect to the systems and CWS makes repayments to the developers or contractors. This policy by the IRS makes sense. If CWS's position were adopted by the IRS, it is highly probable that a large amount of income taxes resulting from CIAC taxable income would never flow to the U. S. Treasury. Under the guidelines of IRS Notice 87-82, the Treasury is assured of receiving income taxes resulting from 100% of taxable CIAC income.

The Commission has analyzed IRS Private Letter Ruling 8909019 in reaching its decision on this issue. The subject of this request for a ruling is whether the lease or conveyance of water mains constructed by a Town to a water utility will be included in the water utility's gross income as a CIAC under Section 118(b) of the IRC. The Town requested a ruling that such a lease or conveyance would not be a CIAC under Section 118(b) of the IRC. The IRS ruled that if the Town does not receive the fair market value of the water mains upon the conveyance of the water mains to the water utility, or if the Town leases the

water mains at less than their fair market rental value, the conveyance or lease will result in a taxable CIAC to the water utility. In reaching its ruling, the IRS referred to language contained in the House Committee Report and IRS Notice 87-82. The following language is included in Private Letter Ruling 8909019:

> "Under pre-1986 Act law former section 118(b) of the Code allowed certain regulated public utilities to exclude from gross income as contributions to the capital of the corporation certain contributions made by a customer or potential customer in aid of construction. Section 824(a) of the 1986 Act repealed this special exclusion. As a result, all CIACs, even those received by a regulated public utility, are includable in the gross income of the receiving corporation. The House Ways and Means Committee Report ('House Report') explains that property is to be treated as a contribution in aid of construction (rather than as a capital contribution) if it is contributed to provide or encourage the provision of service to or for the benefit of the person making the contribution. A utility is considered as having received property to encourage the provision of service if any one of the following conditions are met: (1) the receipt of the property is a prerequisite to the provision of the services, (2) the receipt of the property results in the provision of services earlier than would have been the case had the property not been received or (3) the receipt of the property otherwise causes the transferor to be favored in any way.
>
> "Notice 87-82, 1987-2 C.B. 389, provides additional guidance with respect to whether certain payments will be considered CIACs after enactment of section 824 of the 1986 Act. Notice 87-82 provides, in part, that payments that are made to a utility as a prerequisite for providing new or additional services to particular customers are treated as CIACs and included in gross income because such payments are a prerequisite to the provision of services by the utility, even though a governmental entity may be making the payment in question.
>
> "It is clear from the facts that Town will convey or lease the water mains to Company in order to encourage Company to provide new water services. Unless Town either sells the water mains at their fair market value to Company or leases the water mains at their fair market rental rate to Company in a transaction that would be treated as a lease for federal income tax purposes, then all that Company will provide in exchange for the water mains is services. Moreover, Company will receive the water mains as a prerequisite for services and receipt of the water mains will result in provision of services earlier than would have been the case if Town had not conveyed the water mains for less than fair market.
>
> "Therefore if Town does not receive the fair market value of the water mains upon the conveyance of the water mains to Company, or if Town leases the water mains to Company in transaction that would be treated as a lease for federal income tax purposes, and Town does not lease

them at their fair market rental, then Company will have to include the excess of the value of the water mains over the amount paid by Company in its gross income as a CIAC under section 118(b) of the Code." (emphasis added)

The Commission concludes that IRS Private Letter Ruling 8909019 directly applies to this issue. There the IRS ruled that the Town would convey or lease the water mains to the water utility so the water utility could provide new water service, and that the water utility would receive the water mains as a prerequisite for services. The same circumstances exist between CWS and the developers or contractors who transferred property to CWS under contingent deferred payment contracts. The developers or contractors transferred the property to CWS so CWS could provide new water service to future customers in the subdivisions. Also, CWS received the property as a prerequisite for providing water or sewer service in the subject subdivisions. The IRS ruled that if the Town did not receive the fair market value for the water mains upon the conveyance of the water mains to the water utility, or if the Town did not lease the water mains to the water utility at their fair market rental value, the water utility would have to include the excess of the value of the water mains over the amount paid by the water utility in its gross income as a CIAC under Section 118(b) of the IRC. Based on the IRS ruling in Private Letter Ruling 8909019, it is clear that, upon the conveyance of property to CWS, CWS incurs income taxes on the difference between the fair market value of the property it has received and the amounts it has paid the developers or contractors of the property it has received under contingent deferred payment contracts.

The Commission has also analyzed IRS Private Letter Ruling 9024022. The subject of this request for a ruling is, in part, whether a non-interest bearing advance to a water utility (Taxpayer) in an amount that is estimated to reimburse the water utility for its actual cost of materials, labor, and overhead expended in constructing a water main constitutes CIAC income to the water utility. The water utility is required to refund the advance under a specified formula for a certain number of years. The amount that will have to be refunded by the water utility will equal:

"(a) i percent of the metered revenue from the sale of water billed by Taxpayer from all metered connections to the subject main during the preceding calendar year. Such refund is fixed and determinable at year end and is made during the first calendar quarter of the following year, or

"(b) in the alternative, when and if j percent of the proposed dwelling units become metered connections to the subject main, Applicant can request a one time lump sum refund on a formula of $k for each such dwelling unit that has become a metered connection, less any amounts previously refunded based on metered revenue. Payment under this alternative terminates any further obligation of Taxpayer to make refunds."

Any amounts that have not been refunded at the end of h years, or on earlier termination of the Agreement, will become the property of the water utility as a non-refundable CIAC. The purpose of the Advance is to assure that the costs of the main are not borne initially by the water utility and its customers, but instead by the lender Applicant through the Advance.

The IRS ruled that the Advance would be a non-interest bearing loan to the water utility, and that the loan will be contingent on services provided by the water utility to the lender Applicant. Because repayment of the loan is contingent on future services to be provided by the water utility to the lender Applicant, the IRS concluded that such a loan lacks the economic characteristics of a loan for federal income tax purposes, and will, therefore, be treated as taxable CIAC. The IRS also quoted from IRS Notice 87-82 as follows:

> "Notice 87-82 provides, in part, that if a purported loan to a utility from a person benefitting from utility services relating to the loan (e.g., a real estate developer customer, or potential customer) will be treated as a CIAC and included in the utility's gross income if the transaction lacks the economic characteristics of a genuine loan for Federal income tax purposes. As an example, where repayment of a "loan" by a utility is contingent and the contingent loan is made to allow or to encourage the utility to provide services for the benefit of the person making the loan, the amount received by the utility will be treated as a taxable CIAC.
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> "[W]here a genuine loan with a "below market" interest rate is made from persons benefitting from utility services to the utility, the utility shall currently include in income as a CIAC the benefit that the utility receives from the below-market interest rate."
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> In making its ruling on this private letter ruling request, the IRS stated:
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> "The Advance received by Taxpayer will be a non-interest bearing loan to Taxpayer for the purpose of reimbursing Taxpayer for its actual costs of materials, labor, and overhead expended in construction of a main at the request of Applicant. Such loan will be contingent on services provided by the Taxpayer to the lender Applicant. As a result, we conclude that such loan lacks the economic characteristics of a loan for federal income tax purposes, and, therefore, the Advance received by Taxpayer will be treated as a taxable CIAC."

The Commission concludes that Private Letter Ruling 9024022 directly applies to the issue of the contingent deferred payment contracts in this proceeding. Although in this private letter ruling the water utility constructed the water mains, while in CWS's contingent deferred payment contracts CWS did not construct the water systems, the principle of a party receiving a "loan" on which repayment of the "loan" is contingent is applicable to both situations.

Based on the language of the House Committee Report it does not matter whether a utility receives money or property other than money. In either case the value of the money or other property must be recognized as a CIAC if the property is received by the utility to provide or encourage the provision of services to or for the benefit of the person transferring the property.

The water utility involved in this private letter ruling request received money, and the repayment of that money to the lender Applicant was contingent on certain events taking place in the future. Under CWS's deferred payment contracts, CWS initially received property, and the payment for that property is contingent on certain events taking place in the future (customers tapping onto the systems). The IRS's ruling in Private Letter Ruling 9024022 makes it clear that any repayment of a "loan" that is contingent on the occurrence of some future event or events results in the creation of CIAC when the money or other property constituting the "loan" is received by a utility. Based on the IRS's ruling in Private Letter Ruling 9024022, it is clear that CWS receives taxable income on the difference between the fair market value of the property it has received and the amounts it has paid the developers or contractors for the property it has received under the contingent deferred payment contracts.

The Commission has also analyzed IRS Private Letter Ruling 9040021. Private Letter Ruling 9040021 is a private letter ruling issued by the IRS to Utilities, Inc., on behalf of CWS. In its private letter ruling request Utilities, Inc., asked the IRS to rule that the transfer of water and sewer facilities with an estimated original cost of approximately $65,000 to a subsidiary of Utilities, Inc., that have been installed or will be installed in the future, but are not yet in service, constitutes taxable CIAC. The subsidiary that is the subject of this ruling request is CWS. Utilities, Inc., requested the IRS to rule that the transfer of water and sewer assets to CWS constitutes a CIAC as that term is defined in Section 118(b) of the IRC of 1986 and, thus, is taxable under Section 61 of the IRC. Utilities, Inc., also requested the IRS to rule that the taxable amount of the CIAC is determined by a consideration of all the factors inherent in the determination of fair market value, including the fact that the assets transferred will not be included in rate base, and consequently, will not earn a return for CWS.

The IRS ruled that the transfer of the water and sewer facilities to CWS would constitute CIAC because CWS will receive property as a prerequisite for the provision of services, and the transferor will be considered as having benefitted from the transfer. The IRS also ruled that the fact the property transferred to CWS will not be included in CWS's rate base shall not affect the determination of the fair market value of the property transferred to CWS.

In arriving at its ruling that the transfer of the facilities to CWS results in taxable CIAC income to CWS, the IRS quoted language from the House Committee Report as follows:

> "The person transferring the property will be considered as having been benefitted if he is the person who will receive the services, an owner of the property that will receive the services, a former owner of the property that will receive the services, or if he derives any benefit from the property that will receive the services. Thus, a builder who transfers property to a utility in order to obtain services for a house that he was paid to build will be considered as having benefitted from the provision of the services. This will be the case despite the fact that the builder may never have had an ownership interest in the property and may make the transfer to the utility after the house has been completed and accepted."

In arriving at its ruling that the property should be valued at its fair market value, the IRS quoted language from IRS Notice 87-82 as follows:

> "A utility shall include in income the amount of any cash received as a CIAC and the fair market value of all property received as a CIAC. If the property received by the utility will be used in the provision of utility services, all of the relevant facts and circumstances are taken into account in determining the fair market value of the property. Absent unusual circumstances, normally the value of such property provided to a utility is the "replacement cost" of the property, i.e., the cost that another party would incur to construct property that is functionally similar to the subject property and thus could replace such subject property in the performance of the property's intended function. The fact that property received as a CIAC is not included in the utility's rate base or cost of service for regulatory purposes shall not, in any manner, affect the determination of the fair market value of the property for this purpose." (emphasis included in Private Letter Ruling)

Although the contract involved in this private letter ruling request by CWS was not one with a contingent deferred payment provision, the principles involved in this private letter ruling apply to the facts and circumstances involved in the contingent deferred payment contracts. In this private letter ruling the IRS ruled that the party transferring the property benefitted by the transfer and that CWS received the property as a prerequisite for the provision of services. The same facts exist for property transferred to CWS by the developers or contractors under the contracts with contingent deferred payments. The transfers benefitted the transferrers and were a prerequisite for CWS providing utility services. The facts involved in this private letter ruling request and the contracts with contingent deferred payments are similar. In this private letter ruling the IRS ruled that CWS was required to recognize the fair market value (as defined in IRS Notice 87-82) of the property as CIAC income, not the fair market value of a portion of the property transferred to CWS. In fact, the IRS specifically ruled that CWS must include in income the fair market value of all property received as a CIAC. Under the contracts with contingent deferred payments, CWS has received all of the property that was transferred, not just the portion related to the customers that have tapped onto the systems; therefore, transfers of property to CWS under contingent deferred payment contracts have resulted in taxable CIAC income to CWS for the difference between the fair market value of the property, as defined in IRS Notice 87-82, and the amount CWS has actually paid for the property. The Commission concludes that CWS has an unrecorded income tax liability resulting from this difference.

When Section 118(b) of the IRC was amended as part of the Tax Reform Act to make CIAC taxable, the IRC potentially increased by a significant degree the income tax liability of expanding water and sewer utilities such as CWS. The Commission's Orders in Docket No. M-100, Sub 113, requiring water and sewer utilities to use the full gross-up method were intended to relieve the water and sewer utilities of financing the taxes associated with CIAC and place that burden on the transferrers of the property. If a water or sewer utility followed the full gross-up method as required by the Commission, it would not be faced with financing the payment of income taxes on CIAC income. The taxes would be paid by the contributor. CWS has not always followed the Commission's Orders.

Instead CWS has taken various actions to attempt to justify its actions of not grossing-up CIAC arising from the receipt of property under contingent deferred payment contracts. Some of the arguments used by CWS to defend its actions of not grossing-up this CIAC include:

(1) That property received under contingent deferred payment contracts is not CIAC because the Company is paying the original cost of the property.

(2) That Arthur Andersen has reviewed and approved CWS's position that property received under contingent deferred payment contracts does not constitute taxable CIAC.

(3) That CWS received the property from contractors, not the developers of the subdivisions.

(4) That language included in some contracts provided that if the contractor's cost exceeded the amount that CWS ultimately pays for the property in the future, the contractor was required to pay the gross-up on the resulting amount of taxable CIAC at that time.

(5) That if a contractor or developer does not take an income tax benefit for the cost of a utility system, CWS is not required to gross-up the value of the contributed system.

The foregoing arguments offered by CWS are not persuasive. The Commission has thoroughly discussed why arguments (1) and (2) are inappropriate; therefore, such discussion need not be repeated here. CWS's argument that, because it received the property from contractors instead of developers, it is not taxable as CIAC has no merit. Witnesses for CWS never explained why receiving property from a contractor would result in a different treatment for tax purposes than receiving the property from a developer. Witness Camaren even admitted that under some of these contracts the developer is taking on two roles, the role of the developer and the role of the contractor. Based on the House Committee Report, IRS Notice 87-82, and IRS Private Letter Rulings 8909019, 9024022, and 9040021, the Commission concludes that the receipt of property under the contingent deferred payment contracts at issue in this docket results in taxable CIAC to CWS without regard to whether the property was received from a contractor or a developer.

Some of the contracts contain language stating that, if the contractor's costs exceed the amount CWS ultimately pays for the systems in the future, the contractors are required to pay CWS the gross-up on the resulting amounts of CIAC at that time. Such language, however, does not satisfy the gross-up requirements of this Commission. First, this language is not included anywhere in the Cambridge contract as asserted by witness Wenz. Also, although this language is included in the Habersham and Stonehedge contracts, it does not meet the Commission's gross-up requirements because it does not require the collection of gross-up under the full gross-up method in the year the CIAC is received. Under this language, when the Company ultimately determines that the system is built

out, the contractor would then pay gross-up on the difference between the original cost of the property and the payments made by CWS over the years. Any gross-up payment would be made in the year the last purchase payment was made or later, not in the year the taxable CIAC was received.

Witness Camaren testified that if a contractor or developer does not take an income tax benefit for the cost of the property contributed, CWS is not required to gross-up the value of the contributed property. Such testimony is, however, not persuasive. Section 824(a) of the Tax Reform Act speaks specifically to the taxability of CIAC. Section 118(b) of the IRC was amended to specifically require that the majority of CIAC that had previously been non-taxable would now be taxable. In addition to extensively presenting the IRS's position concerning the taxability of CIAC to the recipient of the CIAC, IRS Notice 87-82 presents the accounting requirements for the contributor of the CIAC. IRS Notice 87-82 states the following concerning the accounting requirements for contributors of CIAC:

"VII. Accounting Treatment of CIACs By Customers"

"Sections 1.461-1(a)(1) and (2) of the Income Tax Regulations provide that taxpayers using the cash and accrual methods of accounting, respectively, may not currently deduct the total amount of an expenditure which results in the creation of an asset having a useful life which extends substantially beyond the close of the taxable year. Instead, such taxpayers are required to capitalize such expenditures as assets and deduct the costs of the expenditures over the useful life of the asset in question. See. e.g., Rev. Rul. 70-413, 1970-2 C.B. 103.

"Any taxpayer paying a CIAC to a utility is incurring an expenditure which results in the creation of an intangible asset having a useful life extending substantially beyond the close of the taxpayer's taxable year. If a taxpayer incurs a CIAC with respect to property used in a trade or business and is required to replace the CIAC property upon its obsolescence or deterioration, the amount of such payment is capitalized and deducted on a pro rata basis over the useful life of the asset. In such a situation, the useful life of the intangible asset would correspond to the economic life (in contrast to the tax life or recovery period) of the public utility property to which the CIAC relates. See, e.g., Rev. Rul. 69-229, 1969-1 C.B. 86. In contrast, if the taxpayer incurs a CIAC with respect to property used in a trade or business and is not required to replace the CIAC property upon its obsolescence or deterioration, the intangible asset has an indeterminate economic life. In such a case, the taxpayer must capitalize the payment and is not permitted to amortize the amount of the prepaid asset. See, e.g., Rev. Rul. 68-607, 1968-2 C.B. 115.

"In the case of a taxpayer (e.g., a real estate developer or home builder) who incurs CIACs with respect to property primarily held for sale to customers in the ordinary course of the taxpayer's business,

the cost of the CIAC should be capitalized. The intangible asset should be allocated to the property held for sale to customers and deducted when such property and the related intangible asset are sold."

The Commission concludes that IRS Notice 87-82 does not support witness Camaren's testimony. IRS Notice 87-82 requires that CWS and all other recipients of CIAC must recognize the fair market value of the CIAC as taxable income, regardless of the accounting treatment specified by IRS Notice 87-82 for the contributor of the property.

If a contractor or developer transfers utility property to CWS, CWS is required by Section 118(b) of the IRC to recognize as taxable CIAC income the difference between the contractor's or developer's cost of constructing the property and the amount CWS pays for the property in the year it receives the property. The Commission concludes that CWS is required to recognize this amount of CIAC income. CWS's requirement to recognize taxable CIAC income upon the receipt of utility property is not dependent on whether the contributor of the property is required to expense or capitalize the cost of the property that was transferred to CWS. Regardless of the accounting treatment the contributor of the CIAC is required to follow, CWS must record the difference between the construction cost of the property and the amount it initially paid for the property as taxable CIAC income.

In its Order dated August 26, 1987, in Docket No. M-100, Sub 113, the Commission required all water and sewer utilities to use the full gross-up method for the collection of income taxes on CIAC unless it gave specific approval to use another method. CWS has never submitted a request to use a method other than the full gross-up method. From the testimony and evidence presented in this proceeding, it is clear that CWS has violated the Commission's Orders concerning the gross-up of CIAC with respect to contingent deferred payment contracts. This has put Utilities, Inc. and CWS in the position of facing a potential income tax assessment in the future.

In its "Order Establishing Procedures Related to Contributions in Aid of Construction," dated August 26, 1987, the Commission recognized the risk of a potential income tax liability associated with an undeveloped project. This risk is one of the reasons the Commission required water and sewer utilities to use the full gross-up method. Using the full gross-up method places the risk of income taxes associated with undeveloped projects on the contractor or developer, not the water or sewer utility. The use of the full gross-up method requires not only the use of the appropriate income tax factor, but also requires that the appropriate income tax factor be applied to the appropriate CIAC value. Instead of placing the income tax risk associated with undeveloped systems on the developers or contractors of the systems, CWS's actions have placed that risk on its stockholders.

CWS contends that Arthur Andersen, its independent auditor, has reviewed the contracts and concurs that its income tax treatment is appropriate. Witness Johnson, who testified as a witness for CWS, is a partner with the firm of Arthur Andersen. Witness Johnson was unfamiliar with the contracts at issue in this proceeding. He, as well as all the other CWS witnesses, was unable to cite any IRS ruling(s) that supports the positions CWS has taken concerning property it

has received under contracts containing contingent future payments as customers tap onto the utility systems. In contrast, Public Staff witness Kibler cited numerous IRS rulings, as well as the House Committee Report, which support the Public Staff's position.

By not reporting the taxable CIAC related to these three systems on its income tax returns in the years the systems were received, the Company has a potential income tax liability. Because the original cost of this property has not been provided in this proceeding, the Commission cannot estimate the level of that tax liability at this time. The Commission therefore will require that the Company file the original cost information for these systems within 60 days of the date of this Order. If the actual original cost cannot be obtained from the developer, the utility shall have the property appraised in time to file the data as required.

Another aspect of this issue that greatly concerns the Commission is CWS's accounting for property received under contingent deferred payment contracts. According to the testimony of Wenz and the testimony and Public Staff cross examination exhibits of witness Johnson, CWS only records on its books and records plant investment in the amount of the purchase payments at the time the payments are made. This accounting treatment was initiated by the Company after the Tax Reform Act was enacted. Prior to the enactment of the Tax Reform Act, the Company appropriately accounted for property received under contingent deferred payment contracts by debiting plant in service accounts and crediting the contributions in aid of construction account. The Company's present accounting treatment is inappropriate for several reasons, including the following:

(1) CWS owns, operates, maintains, and pays property taxes on property that is not recorded on its books and records or in Utilities, Inc.'s, income tax returns.

(2) CWS's accounting records do not reflect accrual accounting for property received under contingent deferred payment contracts.

(3) CWS's accounting for property received under contingent deferred payment contracts does not comply with the requirements of the NARUC Uniform System of Accounts for Water Utilities, the NARUC Uniform System of Accounts for Sewer Utilities, or Generally Accepted Accounting Principles.

Each of the foregoing matters are discussed hereafter. First, CWS owns property that is not reflected on its books and records. When CWS receives utility property under a contingent deferred payment contract, the utility property becomes CWS's property at that time. CWS has legal title to that property, operates the property, maintains the property, pays property taxes on the property, and would bear legal liability with respect to a malfunction or accident involving the property, yet the great majority of the original cost of that property is not recorded on CWS's books and records. Because CWS actually owns the property and has all the benefits and burdens of owning that property, the property should be recorded on its books and records. Further, such property should be included in its annual reports to this Commission and such property should be reflected in the tax returns of Utilities, Inc.

Second, CWS keeps its books and records on the accrual basis of accounting; however, CWS is accounting for property received pursuant to contingent deferred payment contracts on the cash basis of accounting. All of CWS's transactions, including the receipt of property under contingent deferred payments contracts, should be accounted for on the accrual basis of accounting and not on the cash basis of accounting.

Third, CWS's accounting for property received under contracts containing provisions for contingent deferred payments does not comply with the requirements of the NARUC Uniform System of Accounts (USoA) for Water Utilities and the NARUC USoA for Sewer Utilities which have been adopted by this Commission. Those USoAs require that when property is contributed to a utility, the utility must record that property in its plant in service accounts, and the difference between the amounts included in the plant in service accounts and any amounts recorded in accumulated depreciation and amortization associated with that property shall be credited to account 271, Contributions in Aid of Construction. With respect to the valuation of public utility property, the utility plant instructions state, in part, as follows:

"1. Utility Plant to be Recorded at Cost."

"A. All amounts included in the accounts for utility plant acquired as an operating unit or system, shall be stated at the cost incurred by the person who first devoted the property to utility service and all other utility plant shall be included in the accounts at the cost incurred by the utility except as otherwise provided in the texts of the intangible plant accounts. Where the term 'cost' is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

"B. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis. In the entry recording such transaction, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

"C. When property is purchased under a plan involving deferred payments, no charge shall be made to the utility plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

"D. Utility plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the utility plant accounts at cost of construction,

> estimated if not known. There shall be credited to the account for accumulated depreciation and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the utility plant accounts and the accumulated depreciation and amortization shall be credited to account 271, Contributions in Aid of Construction."

As can be seen in 1.C. above, plant acquired under a plan involving deferred payments is required to be recorded in plant accounts. The original cost of the plant acquired under a deferred payment plan is required to be recorded in the plant in service accounts, but any interest, insurance, or other expenditures occasioned by the deferred payment plan may not be charged to the plant in service accounts. As can be seen in 1.D., plant contributed to a utility must be recorded in the plant in service accounts.

The requirements of the USoA are specific. The construction cost of the plant CWS has received under the contingent deferred payment contracts must be recorded in the plant in service accounts on CWS's books and records and in its annual reports filed with this Commission.

Accepting for the sake of argument that the property CWS has received under contingent deferred payment contracts does not represent taxable CIAC for income tax purposes, it does represent plant in service and CIAC for book and regulatory purposes. CWS and its parent, Utilities, Inc., have accounting personnel, and its independent accounting firm, Arthur Andersen, is the largest independent accounting firm in the United States and is one of the largest, if not the largest, in the world. With its in-house and outside accountants, there is no reason CWS's accounting practices concerning the accounting for property received under contingent deferred payment contracts should not be correct. The USoA is specific regarding the required accounting for property received under deferred payment contracts. Also, Generally Accepted Accounting Principles (GAAP) do not permit accounting for property received under deferred payment contracts on a cash basis. GAAP requires that any and all property owned by an entity be recorded on the books and records of that entity. The testimony of the accounting professionals employed by Utilities, Inc. and Arthur Andersen to the effect that it is appropriate to record plant received under contracts with contingent deferred payment provisions on a cash basis is simply without merit.

With respect to this issue, CWS's books and records are not in compliance with the USoA or GAAP. Therefore, CWS should be required to properly account for property received under deferred payment plans and bring its books and records into compliance with the USoA within 60 days of the date of this Order. Such accounting shall clearly reflect the Commission's findings as set forth herein.

Systems Where Original Cost Has Not Been Obtained

The next area of disagreement between the Company and the Public Staff relates to the collection of gross-up and the reporting of CIAC for systems where the original costs of the systems have not been obtained.

Public Staff witness Kibler testified that the Public Staff is aware of at least three systems where CWS has received gross-up and has stated that the Company does not know the total costs of those systems. Witness Kibler indicated that this raised several questions, including whether CWS ever included the CIAC associated with these systems in its taxable income.

Company witness Wenz testified that CWS collected gross-up on the three systems in question, Windsor Chase, Hidden Hills, and Williams Station, based on the estimated original cost of those systems. Wenz further testified that although CWS has not obtained the original cost of the three systems, CWS has recorded and paid the taxes on the CIAC.

Company witness Wenz also testified that the Public Staff's assumption that CWS has an unrecognized income tax liability associated with such systems is invalid. He also said that CWS has estimated on its consolidated income tax return CIAC that exists, but remains unquantified due to a lack of supporting documentation. He added that, while not specifically identified, CIAC reported at the consolidated level can be assigned to subsidiary companies at a later point in time.

Company witness Wenz testified that CWS has only recently received original cost information for Blue Mountain. He pointed out that, as required by language contained in the contract, the developer has also provided CWS with a 40% gross-up for the associated tax liability.

Again, the issue is whether the Company has complied with the Commission's gross-up requirements as set forth in its Orders in Docket No. M-100, Sub 113. The Company's statements concerning the aforesaid systems appear to be inconsistent. Company witness Wenz testified that the Company has paid taxes on Windsor Chase; however, in its response to a Public Staff data request, the Company indicates that it has not reported taxable CIAC for Windsor Chase. (Public Staff Wenz Rebuttal Exhibit No. 3) Also, witness Wenz testified that subsequent to the Commission Orders in Docket No. M-100, Sub 113, CWS has collected gross-up on both cash and facility CIAC. However, on cross examination, he acknowledged that there were a few exceptions to this statement, such as Monteray Shores and Southwoods-sewer. Witness Wenz also contended that CWS has reported an amount for "unidentified CIAC" which covers those systems; however, he also testified that this "unidentified CIAC" is not related to any specific transaction.

The Commission's review of the foregoing matters uncovers more questions than answers, including whether or not the taxable CIAC was recorded on the books, whether the taxable CIAC was reported on the Company's income tax returns, what amount, if any, was reported, and what amount of income taxes, if any, was paid by the Company on the taxable CIAC. The Commission cannot review the reasonableness of the gross-up collected and the Company's compliance with the gross-up requirements without specific information on original cost, taxable CIAC reported, income taxes collected, and income taxes paid for each system. Therefore, the Commission finds and concludes that the Company should be required to file a breakdown of the consolidated "unidentified CIAC" showing, for each transaction, the estimated taxable CIAC and how it was calculated, including the original cost of the facilities for each transaction and any amounts paid for the plant by an affiliate of Utilities, Inc. Because the consolidated amount

includes amounts for other states as well as amounts for North Carolina, this information should be provided for all transactions, including transactions occurring in other states. Further, the Commission finds and concludes that Utilities, Inc., should also be required to file complete copies of all federal and state income tax returns that include data or matters related to those matters here under review.

Limitation of Gross-Up In Contracts

The next area of disagreement between the parties is related to the limitation of the amount of gross-up in contracts. Public Staff witness Kibler testified that the amount of gross-up is limited in the Stonehedge/Bradford Park, Monteray Shores, Habersham, and Blue Mountain at Wolf Laurel contracts. Witness Kibler further testified that CWS has not been given prior approval to use a different method than the full gross-up method in those subdivisions. Witness Kibler stated that by limiting the amount of gross-up, CWS will have to pay any additional income tax liability itself.

Company witness Wenz testified that, as required under the Blue Mountain contract, the developer provided CWS with a 40% gross-up for the associated income tax liability. Witness Wenz testified that under the full gross-up method the gross-up factor would be approximately 62.92%. He added that he thought the 40% was an attempt to use the present value gross-up method.

Witness Wenz also testified that under the Southwoods-sewer agreement, CWS's initial investment will be in the form of taxes on the CIAC and that over time the income taxes paid on the initial investment will flow back to CWS as the facilities are depreciated for income tax purposes. Company witness Camaren testified that in the Habersham contract the tax liability of the contractor is limited to $1,020. Witness Camaren further testified, "At the time those deals were done in like 1987 or '88, there was still some doubt as to whether somebody would ultimately construe them to be CIAC. They have since been affirmed that they're not CIAC and basically the whole point is moot."

Regardless of whether the Company used the partial gross-up method or the present value method, the Company did not have prior Commission approval, which is required, to use either of those methods. Therefore, the Company is in violation of the Commission's gross-up requirements as a result of not having obtained prior approval to deviate from the full gross-up method as required by Commission Order.

Company witness Wenz testified that CWS had not collected gross-up on CIAC received under the Southwoods-sewer contract. That contract was signed on October 1, 1988. According to Public Staff Wenz Cross Examination Exhibit No. 54, a copy of the contract was not provided to the Public Staff until August 9, 1993, and a copy of the contract was not filed with the Commission. According to witness Wenz, the only system where the Company has obtained prior approval not to use the full gross-up method is the Olde Pointe system. Because the Company has not obtained prior approval not to collect any gross-up for the Southwoods-sewer system, the Company is again in violation of the Commission's Orders in Docket No. M-100, Sub 113.

As to the systems, such as Habersham, where the developer's or contractor's liability was limited to an amount per lot, the Commission does not agree with witness Camaren that the whole point is moot since there is no CIAC. As we previously concluded, the contracts with deferred payments do create taxable CIAC, so any limitation of the taxes to be paid by the developer will result in the Company having to pay any additional taxes above the limitation. Again, the Company is in violation of the Commission's gross-up requirements because it did not obtain prior approval to use a method other than the full gross-up method.

In summary, the Commission finds and concludes that the Company has repeatedly violated the Commission's gross-up requirements by not obtaining prior approval not to use the full gross-up method in certain systems as previously discussed. In its Order dated August 26, 1987, in Docket No. M-100, Sub 113, the Commission stated:

> "That, if a company does not follow the gross-up requirements established by this Order, it shall not recover the costs of the taxes arising from the CIAC through rates or other charges to customers."

Company witness Wenz testified that income taxes paid by CWS on CIAC for which no gross-up was collected from the developer are booked as debit accumulated deferred income taxes (ADIT); thus, these taxes, absent some further action, would likely increase CWS's rate base. Witness Wenz testified as follows concerning the inclusion of CIAC taxes paid by a company in rates and the Commission's policy concerning not obtaining prior approval:

> "Q. Is CWS seeking to receive a return on these taxes from ratepayers by including the related debit ADIT in rate base in its recently filed rate case?
>
> A. In Monteray Shores, yes, we are. In Olde Point, we already have Commission approval to include those in rate base so, yes, in those two instances we are.
>
> Q. Now, it requires prior Commission approval to include those in rate base, does it not?
>
> A. What requires?
>
> Q. To place the debit ADIT in rate base requires Commission approval?
>
> A. Yes.
>
> Q. Has CWS obtained any prior approval from the Commission to include any of these taxes in rate base?
>
> A. In Olde Point, yes; Monteray Shores, no, and that was addressed extensively in the last rate case."

In its Final Order in CWS's last rate case, Docket No. W-354, Sub 111, the Commission stated the following concerning the issue of not obtaining prior approval:

"The Commission has carefully analyzed the testimony on this adjustment and rules that it is inappropriate for CWS to include the tax paid on the Monteray Shores acquisition in rate base. The majority of the issues raised by the Company have been discussed at length in the tax docket, Docket No. M-100, Sub 113. The Commission was aware of those issues when it issued its Order in Docket No. M-100, Sub 113 dated August 26, 1987, stating specifically that the full gross-up method for collecting taxes on CIAC is mandatory for water and sewer companies unless receiving prior Commission approval to use another method. In Docket No. M-100, Sub 113, the Commission further stated that if a Company did not follow the gross-up requirements established in that Order, a Company would not be allowed to recover any costs of income taxes arising from CIAC from ratepayers. Because the Company did not receive prior Commission approval to use some methodology other than the full gross-up method, the Commission concludes that its ratepayers should not be required to pay any costs associated with the taxes paid on CIAC for the Monteray Shores system. Furthermore, to make matters even worse, the Company failed to respond to Mr. Panton's letter of February 6, 1991. The Commission further notes, however, that even if CWS had made a formal filing in response to Mr. Panton's letter, the request would still have been denied as a result of the Company's failure to request and receive prior approval for the requested ratemaking treatment. The prior approval requirement is the centerpiece of the Commission's Orders regarding CIAC taxes."

Because the Company did not obtain prior approval to limit the gross-up on the subject systems, the Commission finds and concludes that any additional taxes paid by CWS and any cost associated therewith should be borne by its stockholders and not its ratepayers. Thus, it would be inappropriate to include any such cost in the Company's cost of service or revenue requirement for ratemaking purposes.

Gross-Up On Tap And Plant Impact Fees Set Forth In Contracts

The last area of difference between the Company and the Public Staff relates to the collection of gross-up on tap and plant impact fees set forth in contracts. It is noted that the term "plant impact fee" is synonymous with the term "plant modification fee". Public Staff witness Kibler testified that CWS is not collecting gross-up on tap and plant impact fees in some subdivisions because the fee is specified in the contract.

Again, the issue in question is whether the Company is complying with the Commission's gross-up requirements as set forth in its Orders in Docket No. M-100, Sub 113. In its Order dated August 26, 1987, in that docket, the Commission ordered:

"That water and sewer companies shall use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval for a different method in a particular case or unless the company applies for and is granted approval to use the present value method."

However, the Commission also stated in its Order:

"Based on the foregoing, the Commission concludes that the rules and procedures contained in this Order are applicable to CIAC subject to taxation that was not under oral and written contract prior to February 3, 1987, the date of the Commission's Interim Order requiring gross-up procedures. Consistent with this conclusion, the Commission concludes that utilities receiving CIAC that were under contract prior to February 3, 1987 should be authorized to pay any related taxes on CIAC from the utility's funds."

Company witness Wenz testified that CWS collects gross-up on all tap and plant impact fees except where contractually prohibited from doing so. Witness Wenz testified that in its Order in Docket No. M-100, Sub 113 the Commission acknowledged that contractual obligations prohibited the collection of the gross-up and that the Order specifically exempts from the gross-up requirement CIAC that was under oral or written contract prior to February 3, 1987.

Public Staff witness Kibler testified that the Commission's statement in its Order in Docket No. M-100, Sub 113 cannot apply to tap fees because they are tariffed rates; therefore, the Commission's statement must apply only to contributed plant, which is determined based on the contract with the developer. Witness Kibler further testified that because the tap fees are tariffed, the tariffs are controlling, not the contracts. Witness Kibler stated that, through its Orders in Docket No. M-100, Sub 113, the Commission revised the tariffed tap fees for all water and sewer companies so that CWS's tariffed tap fee was revised from the uniform fee to the uniform fee plus full gross-up. Witness Kibler also testified that for CWS to charge a tap or plant modification fee other than its uniform fee CWS must be authorized by the Commission to do so.

In its initial Order, issued on February 3, 1987, establishing the gross-up requirement, the Commission excluded from that requirement gross-up on CIAC where such collection was prohibited by contracts already approved by the Commission. With respect to this issue, the Public Staff contends that the foregoing exclusion applies only to contributed plant assets and not to tap-on and plant modification fees since such fees are set forth in tariffs approved by the Commission. The Public Staff, therefore, asserts that the tariffs are controlling and not the contracts. The Company contends that the Commission's Orders of February 3, 1987, and August 26, 1987 acknowledge that contractual obligations prohibited the collection of the gross-up requirement and that such Orders specifically exempts from gross-up CIAC that was under oral or written contract prior to February 3, 1987.

The Commission finds and concludes that the Company's position in this regard is correct. The Commission's Orders of February 3, 1987, and August 26, 1987, exclude from the Commission's gross-up requirement all CIAC that was under oral or written contract prior to February 3, 1987, including tap-on and plant modification fees.

Summary Of CIAC Issues

In summary, the Commission concludes that the Company has not complied with the Commission's gross-up requirements in numerous instances. The Company has

not collected gross-up on taxable CIAC received under the contingent deferred payment contracts and it has not reported such taxable CIAC on its tax returns. Thus, the Company has an unrecorded potential income tax liability associated with transactions undertaken under said contracts. In addition, the Company did not collect any gross-up with respect to the Southwoods-sewer system as required by Orders issued by this Commission. Also, the Company limited the amount of gross-up in some contracts without receiving prior Commission approval.

The Company has not obtained original cost information for some of its systems. Thus, based on the information available in this proceeding, the Commission cannot determine whether the Company has complied with the Commissions's gross-up requirements for those systems.

As a result of the Company's use of the cash basis of accounting for property received under contingent deferred payment contracts, its books and records are not in compliance with the NARUC USoAs for Water and Sewer Companies, which CWS is required to follow by Rule of this Commission, and GAAP. The Commission therefore finds and concludes that CWS should be directed to correct the foregoing deficiencies.

IT IS THEREFORE ORDERED as follows:

1. That the imputation of connection fees proposed in this docket by the Public Staff be, and the same is hereby, disallowed.

2. That CWS shall file and request approval of all future contracts with developers within 30 days of signing said contracts and, in the case of informal agreements or contracts that are effective without signing, CWS shall file a detailed written description of the terms of those agreements within 30 days of entering into such agreements. The requirements of this decretal paragraph shall apply to all future contracts, including those covering contiguous expansions. In all contracts that have provisions which allow for connection charges (tap-on fees) and/or plant impact fees that differ from the tariffed uniform connection charges and/or plant impact fees or that allow for special charges such as management fees, oversizing fees, availability fees or other such fees not common to all service areas, the referenced charges or fees shall be specifically brought to the attention of the Commission to be approved or disapproved.

3. That CWS shall prepare amendments to its tariffs detailing its connection fee practices and procedures on a subdivision-by-subdivision basis and shall include applicable management and oversizing fees in its tariffs. CWS shall file these tariff revisions with its rebuttal testimony in the Company's pending general rate case, Docket No. W-354, Sub 128.

4. That the Company shall immediately comply with the Commission's gross-up requirements in a manner consistent with the findings and conclusions set forth in this Order.

5. That the Company shall file, within 60 days of the issuance date of this Order, a statement of the original cost of each system subject to deferred payment contracts signed after February 3, 1987. If actual original cost

information cannot be obtained from the developer, the Company shall have appraisals performed. Original cost is to be determined in a manner consistent with the findings and conclusions set forth herein.

6. That the Company shall file with its rebuttal testimony in Docket No. W-354, Sub 128, a breakdown of the consolidated "unidentified CIAC" as described herein showing for each transaction the estimated taxable CIAC and how it was calculated, including the original cost of the facilities and any amounts paid by any Utilities, Inc., affiliate for the plant. This information shall be provided for all transactions included in the total consolidation amount(s) and shall be accompanied by complete copies of all federal and state income tax returns related thereto.

7. That the Company shall immediately begin accounting for property received under deferred payment plans in a manner consistent with the findings and conclusions set forth in this Order.

8. That the Company shall, within 60 days of the issuance date of this Order, bring its books and records into compliance with the NARUC USoA as prescribed for use by this Commission. Further, the Company shall, within 70 days from the issuance date of this Order, file with the Commission seven (7) copies of all journal entries made to its books of account as may be required in order to comply with the provisions of this Ordering Paragraph. Such filing shall also include seven (7) copies of all workpapers developed in this regard.

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

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioners William W. Redman, Jr., and Allyson K. Duncan did not participate in this case.

DOCKET NO. W-354, SUB 133
DOCKET NO. W-354, SUB 134

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-354, SUB 133

In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Farmwood "B" Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets

DOCKET NO. W-354, SUB 134

In the Matter of
Application of Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Chesney Glen Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets

ORDER DETERMINING REGULATORY TREATMENT OF GAIN ON SALE OF FACILITIES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, June 7, 1994, at 9:30 a.m.

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

APPEARANCES:

For Carolina Water Service, Inc. of North Carolina:

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

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On November 18, 1993, Carolina Water Service, Inc. of North Carolina (CWS or Company) filed an application in Docket No. W-354, Sub 133, seeking authority to relinquish its certificate of public convenience and necessity to provide water utility service to a section of the Farmwood Subdivision in Mecklenburg County, North Carolina. In its application, CWS

asserted that the area in question, Farmwood "B", represents only a portion of the entire Farmwood water system and that CWS will continue to provide service to the other portions of Farmwood Subdivision. CWS requested authority to transfer the Farmwood "B" assets to the Charlotte-Mecklenburg Utility Department (CMUD) and for CWS's stockholders to retain 100% of the gain on this sale.

On February 16, 1994, CWS filed an application in Docket No. W-354, Sub 134, seeking authority to relinquish its certificate of public convenience and necessity to provide water utility service to the Chesney Glen Subdivision in Mecklenburg County, North Carolina. CWS requested authority to transfer the Chesney Glen assets to CMUD and for CWS's stockholders to retain 100% of the gain on this sale.

By Order issued April 11, 1994, the Chairman consolidated these matters for hearing on June 7, 1994, in Raleigh. Upon call of the matters for hearing at the appointed time and place, both CWS and the Public Staff were present and represented by counsel. CWS presented the testimony of Carl Daniel, its Vice President, in support of the Company's applications. The Public Staff presented the testimony of Kenneth E. Rudder, Utilities Engineer, and Katherine A. Fernald, Supervisor of the Water Section of the Public Staff Accounting Division.

On June 27, 1994, CWS filed letters requesting that the Commission enter an immediate Order in these consolidated dockets approving the transfers in question while deferring a ruling on the gain on sale issue to a later date, said ruling to be made by further Order. On June 28, 1994, the Public Staff filed a response stating that it did not object to severing the issue of regulatory treatment of the gain on sale of utility assets from the actual transfers of the property in question.

On July 6, 1994, the Commission issued an Order approving the transfer of the water utility systems serving the Farmwood "B" and Chesney Glen subdivisions in Mecklenburg County from CWS to CMUD. The Commission's Order provided that the Commission would rule on the gain on sale issue by further Order in these consolidated dockets.

Based on the foregoing, the evidence adduced at the hearing, the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. The sales of Farmwood "B" and Chesney Glen by CWS are sales of portions of systems as both Farmwood "B" and Chesney Glen are parts of larger systems owned and operated by CWS.

2. Sales to municipal systems and sanitary districts result in advantages to the consumers of transferred systems through generally lower rates, fire protection, better water quality, more storage, better production facilities, and more economies of scale.

3. By Order entered in Docket Nos. W-354, Subs 82, 86, 87, and 88, on October 16, 1990, the Commission concluded that CWS and its remaining customers should equally share in the benefits of gains resulting from the sale of the Company's facilities used to provide utility service in the Beatties Ford/Hyde

Park East, Genoa, Raintree, and Riverbend Subdivisions. By Order entered in Docket Nos. W-354, Subs 71 and 72, on May 21, 1993, involving applications filed by Heater Utilities, Inc., the Commission reaffirmed that gain on sale policy.

4. Events occurring since the Commission initially established its gain splitting policy in 1990 indicate that such policy, contrary to the public interest, serves as a disincentive to sell and may thereby discourage and impede beneficial sales to municipal and other government-owned entities.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence supporting these findings of fact is found in the applications and the testimony of Company witness Daniel and Public Staff witnesses Rudder and Fernald.

CWS witness Daniel testified that only a portion of the Farmwood system is being transferred to CMUD. The section of Farmwood being transferred is Farmwood "B" which contains 175 customers. CWS acquired the Farmwood System along with 20 other systems as part of the purchase of the assets of Waterco in 1980. CWS proposes transferring two wells, including associated pumping equipment, and one 10,000 gallon storage tank to CMUD as part of the Farmwood "B" transfer.

Witness Daniel further testified that Chesney Glen is a residential subdivision in Mecklenburg County, southeast of the City of Charlotte, with 27 customers. Like Farmwood "B", Chesney Glen represents only a portion of a larger subdivision called Courtney. In fact, Chesney Glen was constructed as Phase III of Courtney. There are no wells or storage tanks located within Chesney Glen.

By Order entered in Docket Nos. W-354, Subs 82, 86, 87, and 88, on October 16, 1990, the Commission concluded that CWS and its remaining customers should equally share in the benefits of gains resulting from the sale of the Company's facilities used to provide utility service in the Beatties Ford/Hyde Park East, Genoa, Raintree, and Riverbend Subdivisions. By Order entered in Docket Nos. W-354, Subs 71 and 72, on May 21, 1993, involving applications filed by Heater Utilities, Inc. (Heater), the Commission reaffirmed the above-referenced gain on sale policy.

The issue now to be resolved by the Commission in these consolidated dockets is whether or not the Commission's policy of splitting gains continues to be in the public interest. The Public Staff takes the position that the Commission has addressed the issue of who should receive the gain on sale in past dockets and has decided to split the gain. The Public Staff further argues that CWS has offered no new evidence in this docket appreciably different from what was offered in past dockets and, therefore, the Commission should adhere to the position it adopted in the past.

CWS provided evidence that shows that action has been taken in response to the Commission's decision in past dockets to split the gain that is harmful to the public interest and that such developments exemplify why the Commission's gain splitting policy can be detrimental and should be revised. CWS states further that through written statements in the past Orders, upon which the Public Staff relies, certain members of the Commission have questioned the wisdom and appropriateness of the past decisions to equally split gains. Through these

written statements, those Commissioners have suggested that the issue should be revisited and that the ramifications to the public good of the decisions to split the gains should be taken into account. Based on those statements, CWS argues that the Public Staff's reliance on the past holdings equally splitting gains is inappropriate and not in the public interest.

With the benefit of hindsight, the Commission can now see that the policy to split the gains or losses on sales of water and/or sewer systems has had a negative impact on the public good. For example, the proposed sale of the Beatties Ford system from CWS to CMUD in 1990 was renegotiated after this Commission ruled to split the gain. That resulted in the Charlotte-Mecklenburg taxpayers and ratepayers spending more on the acquisition of the Beatties Ford system than they would have spent if this Commission's ruling had been to flow the gain to stockholders only. Furthermore, the Farmwood "B" contract between CWS and CMUD contains a provision wherein the price to CMUD escalates in proportion to the portion of any gain that is flowed to CWS's remaining customers. In addition, all involved parties know that CWS chose not to sell its Riverbend utility system as a result of the Commission's ruling in Docket No. W-354, Sub 88.

These facts, consequences of the Commission's decisions in the prior CWS and Heater dockets, suggest that the Commission's gain splitting policy is contrary to the public interest. A policy of gain splitting for sales of water and/or sewer systems may undermine the achievement of economies of scale and encourage inefficient operations. That result is clearly not in the public interest. Moreover, with respect to Beatties Ford, the sales price for Beatties Ford, paid from public funds, was artificially increased. The sales price for Genoa was reduced to the detriment of CWS. The beneficial sale of Riverbend to New Bern fell through. None of those harmful consequences would have taken place but for the Commission's decision to split the gain. On balance, the marginal benefit to remaining ratepayers of the gain splitting policy is outweighed by the harmful consequences of such policy.

The gain splitting policy must also be examined within the context of the impact of the policy on the process through which the ownership of private water and sewer systems customarily changes hands. Under the most common pattern, the private system is installed by a developer with no interest or ability to operate and maintain the system over the long term. Companies like CWS, with capital and operational expertise and with the long-term desire to operate the systems, acquire them from developers or small operators. Over time, as municipal development and expansion take place, opportunities often arise through which a municipality or governmental system takes over from the private utility operator. At each step, the customer benefits from the transfer of ownership. Water quality may improve, and the potential exists for lower rates. That being the case, the Commission should not impose economic barriers to the orderly transfer of water systems to municipal entities, as was inadvertently done in the Riverbend situation.

If economic incentives are removed so that this succession of ownership becomes inadvisable, customers are denied those benefits. If companies like CWS are prevented from retaining the gain on sale in North Carolina, a substantial incentive is removed for those companies to buy systems from developers or small, undercapitalized operators in the first instance. Likewise, a substantial

incentive is removed to negotiate to sell systems to municipal or governmental entities. At a minimum, the sale price is artificially increased above the fair market based price to adjust for the payment of part of the gain to customers. The result is harm to consumers because the natural progression of transfer of ownership to the most efficient provider is disrupted. These harmful consequences are clearly not in the public interest.

The Public Staff takes the position that the gain splitting policy will not hinder the beneficial transfer of ownership of systems. CWS, an actual participant in the transactions in question, asserts to the contrary. After further review, the Commission now agrees with CWS on this issue and concludes that the current gain splitting policy, as it pertains to transfer of water and sewer systems, should be changed in order to remove a significant disincentive to transfer to municipal and other government-owned entities.

The detrimental effect of the Commission's gain splitting policy as it pertains to the sale of water and/or sewer systems is reflected in the transactions at issue in this case. The purchase price for the Farmwood "B" system increases by $58,000 if the Commission requires CWS to split 50% of the gain with the remaining shareholders. This is an added taxpayer expense that is inconsistent with the public interest. It appears that this provision would not have been included in the CWS-CMUD contract except in response to the Commission's gain splitting policy.

Furthermore, Burnette Utilities recently sold two of its systems in Mecklenburg County to CMUD. Under the Commission's current policy, the utility is permitted to retain 100% of the gain where there is a complete as opposed to a partial liquidation. Burnette sold its remaining system to a former employee so that there was a complete liquidation, and Burnette therefore retained 100% of the gain. Structuring the transaction in that fashion poses risks to the customers of the system sold to the former employee. The Commission finds it difficult to conclude that the Commission's gain splitting policy had no effect on the way that Burnette structured the transaction.

The Public Staff relies upon the Commission's decisions to split the gain with respect to sales by CWS of the Beatties Ford, Genoa, and Riverbend systems in Docket Nos. 354, Subs 82, 86, 87, and 88, and the sales by Heater of the Country Acres and Pinewood systems in Docket Nos. W-354, Subs 71 and 72. Careful examination of the language from the two Orders in those cases, however, indicates that the Public Staff's reliance upon them as precedent is less than compelling. The Commission's October 16, 1990, Order in Docket Nos. W-354, Subs 82, 86, 87, and 88 was not unanimous. The Commission's May 21, 1993, Order in Docket Nos. W-274, Subs 71 and 72, indicated even less consensus on the part of the Commission in addressing the gain on sale issue.

Of the seven commissioners hearing the Heater case, only three sponsored the majority opinion. Two of those commissioners, Robert O. Wells and Julius A. Wright, are no longer members of the Commission. Even so, the majority opinion contains the following statement of policy:

> As noted earlier, the Commission recognizes the benefits to customers upon the transfer of systems to municipal operators or sanitary districts. It is the Commission's intent to continue to encourage

such transfers where feasible and, accordingly, the Commission will continue to monitor the policy adopted herein with regard to any adverse consequences that such policy may have upon the future transfer of systems to municipal operators.

Commissioners Tate and Duncan concurred in the majority opinion in the Heater case. Nevertheless, their concurrence stated:

> However, the Commission has an overriding responsibility to set public policy that is in the public interest. There is evidence in this case that our decision in the C.W.S. cases, Docket No. W-354, Subs 82, 86, 87 and 88 has discouraged sales from private water companies to cities. There is also evidence that planned sales have not taken place or that the sales price has been increased due to our decision. It is also alleged that water companies are forming separate corporations to circumvent the requirement to split the gains. In my view, none of these results are in the public interest of North Carolina. If additional proof is offered that our decision has prevented sales, the Commission should reverse the C.W.S. Order and conclude that good public policy is more important than an accounting practice.

Commissioner Hughes dissented in the Heater case. Commissioner Hughes stated in his dissent:

> Encouragement to sell systems arises or is enhanced when companies are allowed the opportunity to retain 100 percent of the gain realized on such sales. I believe that such encouragement reflects good public policy, since the quality and price of water and sewer services, generally speaking, tend to be much more favorable when provided by a governmental agency.
>
> . . .
>
> By denying the Company the opportunity to retain 100 percent of a gain from the sale of a system(s), the Commission is continuing a policy that can only serve to discourage the future sale of water and sewer systems to municipalities and to county-wide systems operated by governmental agencies. Such undesirable results are clearly evidenced by the record in this proceeding. Discouragement of such sales is a policy or practice to be shunned and not embraced. For the foregoing reasons, I dissent from the Majority's instant decision.

Commissioner Cobb concurred in the result of the Heater opinion. In his concurrence, Commissioner Cobb stated:

> I agree with the decision not to change our rulings with respect to gain and loss from the sale of water systems at the present time. I agree with Commissioner Tate that our decisions appear to have discouraged sales from private water companies to public utilities to the detriment of the public interest. However, great confusion could result if the Commission as presently composed were to change the rule

only to have it changed again after three new Commissioners are installed in a few months. I would hope that the "new" Commission would revisit this question in the near future. I am prepared to do so.

Far from constituting binding legal precedent in support of the Public Staff's position, the two cases upon which the Public Staff relies primarily indicate that the majority of the Commission, when it last addressed the issue, found the current policy contrary to the public interest. If anything, those decisions suggest that the Commission's views on this issue have evolved and that the Commission no longer supports the wisdom of the gain splitting policy. Therefore, the Commission rejects the Public Staff's reliance upon the prior CWS and Heater decisions for purposes of these consolidated dockets and hereby announces that in future proceedings, the Commission will follow a policy, absent overwhelming and compelling evidence to the contrary, of assigning 100% of the gain or loss on the sale of water and/or sewer utility systems to utility company shareholders. In so deciding, the Commission intends to encourage, to the maximum extent possible, the sale of water and sewer systems to municipalities and other government-owned entities. It is, and shall continue to be, the policy of this Commission to take such actions as will encourage the larger water and sewer utilities with greater operational and capital resources, including governmental entities, to acquire the smaller, under-capitalized, less efficient systems. Such policy serves the public interest by promoting efficiencies through economies of scale and generally results in more favorable rates and an enhanced quality of service.

IT IS, THEREFORE, ORDERED as follows:

1. That 100 percent of the gain on the sale of the public water utility systems owned by CWS which serve the Farmwood "B" and Chesney Glen Subdivisions in Mecklenburg County, North Carolina shall be assigned to CWS's stockholder.

2. That CWS shall file reports with the Commission and Public Staff concerning the calculations of the gain and the workpapers supporting the calculations. Any party disagreeing with the calculations of the gain may contest the amount of the gain in CWS's next general rate case.

3. That CWS shall file journal entries related to the gain including the removal of the plant and associated accounts from CWS's books and records consistent with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of September 1994.

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

Commissioner William W. Redman, Jr., dissents. Commissioner Redman supports an equal sharing of the gain resulting from the sale of the water utility systems at issue in these proceedings.

Chairman Hugh A. Wells and Commissioner Charles H. Hughes did not participate.

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
North State Utilities, Inc., Appointment of) ORDER
Emergency Operators Pursuant to G.S. 62-118(b))

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 21 and 27, 1994

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

APPEARANCES:

For Norwood Associates:

William Joslin and Nell Joslin-Medlin, Joslin & Seaberry, 4006 Barrett Drive, Raleigh, North Carolina 27609

For Manchester Homeowners:

M. Jackson Nichols and Robert F. Page, Crisp, Davis, Page, Currin & Nichols, Suite 400, 4011 Westchase Boulevard, Raleigh, North Carolina 27607

For Manchester Properties, Monticello Associates, Eastman Development Company, Westminster Development Company, and Westminster Homes:

Ronald M. Marquette, Poyner & Spruill, Post Office Box 353, Rocky Mount, North Carolina 27602

For the Public Staff:

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

For the Attorney General:

Karen Long, Assistant Attorney General, and Margaret A. Force, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27510
For the Using and Consuming Public

BY THE COMMISSION: On December 13, 1993, the Public Staff filed a motion requesting the Commission to order Manchester Properties, Inc., Monticello Associates, Eastman Development, Norwood Associates, and the Westminster Company to show cause, if any there be, why they should not be declared public utilities with respect to and required to repair or compensate the emergency operator for the repairs of the sewer utility systems serving Manchester, Monticello, Sutton

Estates, and Hollybrook Subdivisions, respectively. The motion of the Public Staff was based on a review of deed and tax records in Wake County which revealed that the named parties owned the nitrification fields which allegedly constitute an essential part of the sewer system serving each subdivision.

On December 17, 1993, the Westminster Company filed a response in opposition to the motion of the Public Staff. On December 20, 1993, the Public Staff filed a reply to Westminster Company's response. By Order dated December 23, 1993, the Commission set the matter for hearing. On January 11, 1994, Manchester Homeowners, an association of those residents of Manchester Subdivision receiving service from North State Utilities, filed a petition for leave to intervene which was allowed by Order of January 12, 1994.

The hearing was held as scheduled beginning on January 21, 1994, and being recessed to and concluding on January 27, 1994. Don Wright, a resident of Hollybrook Subdivision, Ms. Terryn Owens, a former homeowner in Monticello Subdivision, and Richard Murphy, a resident of Sutton Estates Subdivision, testified as public witnesses.

The Public Staff presented the testimony of Stanley I. Hofmeister, Vice-President of North State Utilities, and Steve Steinbeck, Head of the On-Site Wastewater Services Branch, Division of Environmental Health of the Department of Environment, Health, and Natural Resources.

Westminster Company and Westminster Homes presented the testimony of David B. Michaels and Bryan C. Grabowsky. Following its cross-examination of witness Michaels, the Public Staff moved that Westminster Homes be added as a party respondent. Counsel for Westminster Homes and Westminster Company did not oppose the motion to add Westminster Homes but moved that Westminster Company be dismissed. The Commission subsequently granted the Public Staff's motion to add Westminster Homes, Inc., as a party respondent and denied the motion to dismiss Westminster Company as a party respondent.

Monticello Associates presented the testimony of Don Kennedy and Steven B. Eastman. Mr. Eastman is President of Eastman Development Company. Eastman Development Company and witness Kennedy, individually, were the partners in Monticello Associates. Following the testimony of witness Eastman, the Public Staff filed a motion, subsequently granted, that Eastman Development Company and Don Kennedy, individually, be made parties respondent.

Manchester Properties presented the testimony of Frank Roebuck, Jr., and Neal Matthews.

Norwood Associates presented the testimony of Jack Stone, David Lasley, and Richard G. Singer. In a late-filed exhibit, the limited partners of Norwood Associates were identified as Jane E. Harris, Evelyn Thiem, Harry E. Stewart, Charles C. Harris, and Catherine N. Johnson. The Public Staff moved that these limited partners and Clifton L. Benson, Sr., the general partner, be added as parties respondent.

Based upon the evidence and exhibits adduced at the hearing, the late-filed exhibits, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Westminster Company and Westminster Homes, Inc., were, until 1993, wholly-owned subsidiaries of the Weyerhauser Company. Westminster Company was the original developer of Hollybrook Subdivision and contracted with North State Utilities to provide sewer service to a portion of that subdivision. The property owned by Westminster Company in Hollybrook Subdivision was subsequently transferred to Westminster Homes.

2. Monticello Associates, a general partnership, was the developer of Monticello Subdivision. The partners of Monticello Associates are Eastman Development Companies, Inc., and Don Kennedy.

3. Manchester Properties, Inc., was the developer of Manchester Subdivision.

4. Norwood Associates is a limited partnership of which Clifton L. Benson, Sr. is the general partner. Norwood Associates was the developer of Sutton Estates Subdivision.

5. Manchester Properties, Manchester Homes, Norwood Associates and Monticello Associates (collectively "the Developers") owned land and developed subdivisions in areas of Wake County not served by municipal sewer systems.

6. In order to develop their land more intensively, providing more lots than would have otherwise been available, the developers elected to provide service to at least some lots in each subdivision through the installation of low pressure pipe (LPP) sewer systems.

7. LPP sewer systems employ nitrification or dispersal fields to dispose of the liquid portion of the sewer discharged into the stream. The fields are an integral and essential part of the sewer systems.

8. The developers entered into contracts with North State Utilities providing that North State would construct the LPP sewer systems to serve the subdivisions and become the franchised sewer utility for each subdivision.

9. The intent of each of the developers at the time of contracting with North State was that gains from the sale of additional lots would be sufficient to offset the cost of installing these systems and would provide a profit to the developers.

10. Each of the contracts provided that the developer would transfer fee simple title to the system to North State.

11. North State filed the contracts with the Commission as exhibits to the applications for franchises.

12. Fee simple title to the real property from a part of each sewer system was never transferred to North State as required by the contracts.

13. Norwood Associates executed a deed of easement granting North State Utilities the right to use and control property within Sutton Estates Subdivision for the purpose of operating the LPP sewer system.

14. North State Utilities has operated the sewage systems in these subdivisions, and no developer has had any role in their operation.

15. North State Utilities, while operating the sewage systems in these subdivisions, billed the customers and collected the revenues for the utility service, and no revenues from the operations have gone to the developers.

16. North State applied to the Commission for a Certificate of Public Convenience and Necessity to operate the systems in its name alone and has never represented that any developer is an owner of a system or has had any role in its operation.

17. The developers do not own any stock in North State and have had no business association with North State other than the contracts mentioned above.

18. The developers have not yet formally conveyed title to North State but North State holds equitable title because each developer is obligated by its contract with North State to convey the land to North State.

19. The developers are willing to convey record title to North State or any other utility that the Commission so directs.

20. The developers have not interfered with North State's use of the land, nor has the land been considered an asset of the developers.

21. The developer, Westminster Homes, drafted a deed and sent the same to North State for review, but North State never responded and a deed was never finalized.

22. At the time of these hearings, North State had operated each one of the systems and collected all payments for over five years without any involvement or participation by the developers.

23. Some of the contracts stated specifically (between North State and Westminster Company and between North State and Manchester Associates) that once North State had a Certificate of Public Convenience and Necessity to operate the systems in those subdivisions, North State would own the systems.

24. The official files of the Commission establish that North State received a Certificate of Public Convenience and Necessity to operate the Hollybrook system in 1976, the Sutton system in 1986, the Monticello system in 1986, and the Manchester system in 1987.

25. The Commission has taken official notice of its records and files with respect to the granting of a franchise in each of these subdivisions.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The definition of public utility in G.S. 62-3(23) states that:

> "Public utility" means a person, whether organized under the laws of this state or under the laws of any other state or county, now or hereafter owning or operating . . . equipment or facilities for (2) diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation, or operating a public sewage system for compensation. (Emphasis added)

The facts, as outlined in the findings of fact, are uncontroverted wherein the developers of the subdivisions have record title to the dispersal fields and each contracted with North State Utilities to build a sewage system in their respective subdivisions. With reference to the dispersal field owned by the Westminster Company, however, there was some discrepancy. The Public Staff indicated that when North State Utilities applied for a Certificate of Public Convenience and Necessity to serve Hollybrook Subdivision in Docket No. W-848, Sub 4, the tax map in the office of the Wake County Tax Assessor identified Tax Map 719, Lot 358, Tax ID #0018155, as the parcel used for the dispersal field. (See Public Staff's response to the reply of Westminster Company filed on December 20, 1993.) Westminster does not deny ownership of this particular parcel, but denies that said property serves as the dispersal field for the sewer system serving Hollybrook Subdivision. (See Affidavit of David B. Michaels attached to Westminster's Opposition to Public Staff's Motion for Order to Show Cause). The Public Staff has asked that the Westminster Company be able to identify the land that is in fact used as the dispersal field by producing copies of the recorded deed or deeds transferring the land used as a dispersal field to North State. In any event, Westminster does not deny having record title to real property to be used as a dispersal field in this subdivision.

The Public Staff, North Carolina Attorney General's Office, and Manchester Homeowners Association's position is essentially this: each of the developers have retained ownership of the dispersal fields which should be considered an integral part of the sewer system. The Public Staff, Attorney General, and Manchester Homeowners Association would argue that by retaining ownership of utility property, the developers have subjected themselves to the jurisdiction of the Commission and therefore it follows, along with North State Utilities, they should be considered public utilities as well. The strength of their argument is found in the case of Ex. rel. Utilities Commission v. Mackie, 79 N.C. App. 19, 330 S.E. 2d 888 (1986), modified and affirmed, 318 N.C. 686; 351 S.E. 2d 289 (1987). The Public Staff, Attorney General, and Manchester Homeowners Association cite this particular case to hold the proposition that by retaining ownership of the fields, developers have associated themselves with North State as part of the utilities serving their respective subdivisions. The developers have in some form or fashion become de facto utilities as a result. Therefore, the Public Staff, Attorney General, and Manchester Homeowners Association's reading of Mackie supports their position that the developers should be defined as public utilities.

The developers turn to a decision by the North Carolina Supreme Court which specifically holds that the owners of property used for utility services, who have no involvement in the provision of the services, are not public utilities

for purposes of Chapter 62. State ex. rel. Utilities Commission v. New Hope Road Water Company, 248 N.C. 27, 102 S.E. 2d 377 (1958). The findings in the New Hope Road Water case are by far the strongest opposition to the position tendered by the Public Staff, Attorney General, and the Manchester Homeowners Association. In New Hope, the respondents constructed water lines from the lines owned by the City of Gastonia over their property so that the City of Gastonia could provide water to their land. Afterwards, other property owners who also wanted water from Gastonia were allowed to tap into their water lines for a fee. The City of Gastonia made the tap, installed a meter, and collected for the water service. Later, it was determined that the lines were inadequate to supply the amount of water needed. This posed a health problem in the communities at issue. The statutory language used in 1958 was very similar to the language used today relating to providers of waste disposal services. That language stated:

> The term "public utility" when used in this article, includes persons and corporations, or their lessees, trustees, or receivers now or hereafter owning or operating in this state equipment or facilities for: diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation. Id. at 29.

The Commission went on to hold that the respondents were public utilities, but a Superior Court Judge reversed and the North Carolina Supreme Court affirmed the Judge's ruling stating that:

> "In our opinion the mere fact that these respondents own their respective water lines or mains described hereinabove, and that such lines are used by the City of Gastonia for selling water for compensation, does not support the findings of fact to the effect that the respondents are engaged in selling water to the general public for compensation within the meaning of G.S. 62-65(e)(2), and are, therefore, public utilities." Id., at 32.

Both of these respective cases present strong arguments pro and con against defining the developers as public utilities in this docket. The cases can, however, be distinguished. It is on that basis that a significant difference can be found in the strength of the parties' cases. In the North State situation, the facilities (equipment, etc.) used for utility services belong to North State. (Tr., Vol. 1, p. 77; Vol. 2, pp. 41, 99, 114). The developers have record title to the land used as dispersal fields, but each has a contractual duty to convey the land to North State and North State could enforce its rights at any time to obtain the deeds. North State, therefore, under the principle of equity has equitable title to the land being used as dispersal fields in these subdivisions. (Testimony of Richard Singer, Tr., Vol. 3, pp. 122-123). North State, in no way, has been restricted or hindered in their free use of the land and at no point have the developers considered the land to be assets of their businesses. (See Testimony of North State Vice-President Stanley Hofmeister, Tr., Vol. 1, pg. 76. See also, Tr., Vol. 2, pp. 80, 118).

The facts as outlined above are distinguishable from the Mackie case. In Mackie, the property owner had been providing water and/or sewer service to 20 residences, many of which were located on lots too small to support both a well and a septic tank. Mrs. Mackie billed and received monthly fees for these services. The developers in this docket have never provided utility services for

these subdivisions. (Tr., Vol. 1, p. 77; Vol. 2, pp. 41, 99, 114). North State applied for a Certificate of Public Convenience and Necessity to operate these systems in its name alone and has never represented that any developer is an owner of a system or has had any role in its operation. (The applications for the certificates are contained in the Public Staff-Hollybrook, Public Staff-Manchester, Public Staff-Sutton Estates and Public Staff-Monticello exhibits.) The only reference to the developers in the applications is found in the section labeled "Exhibits" -Number 6-wherein it is indicated that "low pressure sewage waste disposal system contracts" are attached. Moreover, the developers did not own any stock in North State and the evidence will show that they have had no business association with North State other than the contracts mentioned above. (Tr., Vol. 2, pp. 46, 90, 119).

Arguably, a more closely analogous case to the North State case is found in Sayre Land Company v. Pennsylvania Public Utility Commission, 196 Pa. Super. 417, 175A. 2d 307 (1961). The Pennsylvania court was called upon to determine whether a land company was a public utility because it owned a substantial part of the plant equipment used by a water company for providing water to the public. The land company had leased the plant (equipment) to the water company. A Pennsylvania statute defining public utilities as "persons or corporations now or hereafter owning or operating in this commonwealth equipment or facilities for . . . furnishing water to or for the public for compensation." The Pennsylvania court held that the wording "owning" in a statute did not automatically make the owner of property a public utility where the owner leases the public utility facilities to the actual operator. In this situation, a strong argument can be made that the developers have done nothing more than make the land available to the operator, that being North State Utilities.

CONCLUSION

The Commission concludes that the Public Staff, the Attorney General, and Manchester Homeowners base their position that the developers occupy their status as a public utility on the following three theories:

(1) The principal of agency;
(2) Joint venture;
(3) De Facto public utility status.

The Commission concludes the case law (See Mackie), as indicated above, is not directly on point with the facts presented in this case. Secondly, in order for the Commission to reach a conclusion based on the theories presented by the Public Staff, Attorney General, and Manchester Homeowners, the Commission would have to give a very liberal interpretation of all three theories presented. Such an interpretation would call for an overly broad reading of the legal principles cited when applied to the facts given in this docket.

The Commission concludes the New Hope Road Water Company, 248 N.C. 27, 102 S.E.2d 377 (1958) case, is definitely on point both in its factual analysis and legal holding. The New Hope case is still sound law in North Carolina. The North Carolina Supreme Court states, in the Commission's opinion, that more than mere ownership of the real property in which the utility system is located is

required in order to hold an entity a public utility under our general statutes. Also, the North Carolina legislature provides parameters for determining if certain entities affiliated with a public utility can be defined as a public utility by stating:

> The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this state as a parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such an affiliation has an effect on the rates and services of such public utility. G.S. 62-3(23) (Emphasis added).

Affiliation through stock ownership or affiliation to the extent that the rates for service of the utility are affected are very definite guidelines lending credence to a finding on behalf of the Commission whether or not an entity is a public utility. In this particular docket, the North Carolina Utilities Commission does not have such specific benchmarks. (Tr. Vol. 2, pp. 46, 90, 119).

Looking at testimony of Public Staff witness Steve Steinbeck, Section 18A. 1938(g) Title 15A of the North Carolina Administrative Code, provides that:

> The entire sanitary sewer system shall be on property owned or controlled by the person owning or controlling this system. Necessary easements shall be obtained permitting the use and unlimited access for inspection and maintenance of all portions of the system to which the owner and operator do not hold undisputed title. Easements shall remain valid as long as the system is required and shall be recorded with the county registrar of deeds. (Emphasis added).

This language would seem to support the idea that the regulatory scheme places emphasis on control over waste disposal systems by the persons owning or controlling the systems. The person owning or controlling a waste disposal system does not have to have undisputed title to all portions of the property, but the regulation does state that a mere easement, permitting an operator access for inspection and maintenance, is sufficient. The Commission concludes that if an easement is valid to give a utility ownership or control of the property, then certainly equitable ownership in real property should be sufficient. Especially where the record title holders have not sought to exercise any dominion or control over the property.

In one instance, the developer, Westminster Homes, drafted a deed and sent the same to North State for review, but North State never responded and the deed was never finalized. (See testimony of Kathleen Southern, Tr. Vol. 2, pp. 81-83). The Commission further concludes, therefore, that the failure to transfer the deeds from the developers to the utility operator, North State Utilities, came about partly as a result of inaction by North State Utilities and not merely as a result of actions taken by the developers. (See David Michaels, Tr., Vol. 2, p. 38; Neal Matthews, Tr., Vol. 3, pps. 45-48; Don Kennedy, Tr., Vol. 2, pps. 86-87; and Stanley I. Hofmeister, Tr., Vol. 1, pps. 75-77)

The Commission concludes that there is no basis in fact or law for determining the Developers to be public utilities and therefore hold them liable for the cost of improvements, repairs, and maintenance to the North State waste disposal systems.

IT IS, THEREFORE, ORDERED as follows:

1. That Manchester Properties, Inc., Monticello Associates, Eastman Development Company, Norwood Properties, Westminster Company, and Westminster Homes are hereby ordered to transfer fee simple title to any easements, rights-of-way, fields, barriers, associated vegetation and soils to North State as designated in North State's Application for a Certificate of Public Convenience and Necessity filed with the Commission on the dates as set out in Finding of Fact Number 24.

2. That based on the transcript of testimony, evidence presented in Docket No. W-848, Sub 16, Volumes 1-3, briefs, and proposed orders, the Respondents do not come within the purview of Chapter 62 and regulation by the Commission.

3. That the Commission finds that there is no basis for determining the Developers to be public utilities and therefore hold them liable for the cost of improvements, repairs, and maintenance to the North State waste disposal systems.

4. That the Public Staff's Motion that the Commission order Manchester Properties, Inc., Monticello Associates, Eastman Development Company, Norwood Associates, Westminster Company, and the Westminster Homes be declared public utilities with respect to the sewer systems in their respective subdivisions and required to repair or compensate the emergency operator for the repair of those sewer systems in this docket be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of April 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioner Hughes concurs.

COMMISSIONER HUGHES, CONCURRING: While I do concur with the instant decision of the Commission, I must also express that my concurrence is based solely upon the fact that the law is the law. In good conscience, I must also admit that maybe this is a law that needs to be changed. The morality of this situation on the other hand is something else. It seems incredibly wrong that the ones who have profited the most and who have, as it would seem, not lived up to their total commitment, are not bearing some responsibility. I can only hope that those who have profited can realize they do have a moral obligation as their functions and duties to the public in this case have been worthless.

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
North State Utilities, Inc. - Appointment of Emergency Operators Pursuant to G.S. 62-118(b) - Piney Mountain Subdivision, Orange County, North Carolina	))))	ORDER REQUIRING IMPROVEMENTS, SETTING ASSESSMENTS, AND REQUIRING REPORTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, February 24, 1994, at 7 p.m.

BEFORE: Chairman John E. Thomas, Presiding; and Commissioners Charles H. Hughes and Judy Hunt

APPEARANCE:

FOR THE COMMISSION STAFF AND EMERGENCY OPERATOR:

Robert H. Bennink, Jr., General Counsel, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike, Chief Counsel, and Robert B. Cauthen, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0520

FOR PINEY MOUNTAIN HOMEOWNERS' ASSOCIATION:

Nancy Essex, Attorney at Law, Poyner & Spruill, Post Office Box 10096, Raleigh, North Carolina 27605

BY THE COMMISSION: North State Utilities, Inc. (North State), holds certificates of public convenience and necessity to provide sewer utility service in 11 subdivisions in Durham, Mecklenburg, Orange, and Wake Counties in North Carolina.

On May 20, 1993, the Piney Mountain Homeowners' Association (PMHA) filed a complaint (Docket No. W-848, Sub 15) against North State alleging that North State was operating the sewer plant serving the Piney Mountain Subdivision in Orange County without a proper permit and in violation of the regulations of the State of North Carolina and the Orange County Board of Health.

On June 7, 1993, North State filed an Answer to the Complaint. On June 9, 1993, the Commission issued an order serving the Answer upon PMHA who subsequently advised the Commission that a hearing on its complaint should be set as soon as possible. PMHA also requested that the Commission appoint an emergency operator pursuant to G.S. 62-118 as soon as possible.

On June 30, 1993, North State filed Petition to Abandon or for Alternate Relief in Docket No. W-848, Sub 16. The Petition set forth all of the service areas of North State and the number of customers served in each service area. In support of its Petition, North State alleged that its existing revenues are insufficient to provide service on an ongoing basis.

On July 14, 1993, the Commission issued an Order scheduling a hearing on the complaint on PMHA and the Petition to Abandon of North State. Hearings were scheduled in Raleigh on July 26, 1993, and in Charlotte on August 12, 1993. North State was required to give notice of the hearings to all of its customers.

The Order of July 14, 1993, also appointed Harrco Utility Corporation (Harrco) as emergency operator of the Piney Mountain sewer system pursuant to G.S. 62-116. The hearings were to consider the appointment of an emergency operator pursuant to G.S. 62-118(b) for all of North State's sewer systems, including Piney Mountain, and the imposition of assessments for capital improvements.

The Order of July 14, 1993, also required North State to continue to provide sewer service to all of its customers in all of its service areas pending hearing and decision on its Petition to Abandon.

On September 1, 1993, Commission Hearing Examiner Wilson B. Partin, Jr., entered a Recommended Order which denied the Petition to Abandon of North State and appointing emergency operators for all of North State's sewer systems.

Harrco was appointed the emergency operator for all sewer systems in Wake, Durham, and Orange Counties, and Tri-County Wastewater Management (Tri-County) was appointed emergency operator for the Oakcroft Subdivision in Mecklenburg County. The Order also forfeited the $20,000.00 in bonds posted by North State pursuant to G.S. 62-110.3.

The Order of September 1, 1993, also required Harrco, as emergency operator, to advise the Commission in writing of the need for any capital improvements requiring the imposition of an assessment under G.S. 62-118(c) and to obtain approval of an assessment prior to making such improvements.

By letters dated October 13, 1993, and October 31, 1993, Harrco set forth certain emergency repairs which it asserted should be made without delay to the sewer utility system serving the Piney Mountain Subdivision. Those repairs consisted of replacing three access hatches to the low pressure dosing stations with lockable aluminum units at an estimated cost of $2,203.18. A public hearing was held on Thursday, November 18, 1993, to consider the emergency operator's request for an initial assessment in the Piney Mountain Subdivision. By Order entered in this docket on November 23, 1993, the Commission deferred the assessment in the total amount of $2,203.18 requested by the emergency operator to replace three access hatch covers pending the preparation of repair cost estimates.

On December 1, 1993, and December 29, 1993, Harrco filed reports in this docket recommending that certain additional minimum repairs and improvements be made to the sewer utility system serving the Piney Mountain Subdivision in order to bring that system into an acceptable working order. The further repairs and

improvements recommended by Harrco were estimated to cost up to $207,610.57 and the emergency operator requested the Utilities Commission to authorize a customer assessment in that amount pursuant to G.S. 62-118(c). In addition, the Orange County Department of Health (OCDOH) has submitted a letter in this docket setting forth its recommendations regarding this matter.

The further repairs and improvements initially recommended by Harrco in its filing of December 1, 1993, in the Piney Mountain Subdivision has been reviewed by the Division of Environmental Health (DEH) of the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) which submitted a report to the Commission on December 29, 1993, setting forth its recommendations regarding this matter.

On December 28, 1993, PMHA filed an objection to the emergency operator's request for an assessment to fund repairs and improvements to the Piney Mountain sewer system. The PMHA requested the Commission not to consider any assessments, except to the extent required to meet an emergency situation, while it pursues its effort to obtain approval for municipal sewer service to the subdivision.

On December 29, 1993, Harrco, by letter filed with the Commission, submitted a revised estimate for Capital Improvements Requiring Assessment in the Piney Mountain Subdivision totaling $186,879.87.

By Order issued on January 7, 1994, a public hearing was scheduled for February 24, 1994, to consider the assessment in the amount of $186,879.87 proposed by Harrco to fund the additional repairs and improvements recommended by Harrco to the sewer system in the Piney Mountain Subdivision.

On February 2, 1994, Tom Konsler of the Orange County Health Department (OCHD) filed his report (dated January 31, 1994) of the repairs needed to the Piney Mountain sewer system assuming that the system would be abandoned within one year and that the STEP systems would be utilized in the connection of the system to the City of Durham (City) municipal sewer system.

On February 22, 1994, the Public Staff filed a Motion requesting that the Commission authorize the emergency operator to bill individual customers for pumping of individual STEP and septic tanks.

On February 23, 1994, the Public Staff filed the report of its consultant outlining its review of the recommendations of Bass, Nixon, and Kennedy, Inc.; the Orange County Health Department; the Department of Environmental Health; and the emergency operator.

On February 24, 1994, this matter came on for hearing as scheduled. The PMHA presented the testimony of John Marsh, a resident of Piney Mountain Subdivision, and James Gulick, an attorney with the Attorney General's office representing the Department of Environmental Health and Natural Resources (DEHNR). The Emergency Operator presented the testimony of Tom Konsler, an Environmental Health Program Specialist with the Orange County Health Department, and Lexie W. Harrison, President of Harrco. The Public Staff presented the testimony of its consultant, Eric T. Weatherly, an engineer with the firm of Hobbs, Upchurch & Associates.

Mr. Marsh testified that the PMHA was actively pursuing steps to get its sewage piped to and treated by the City via a main owned and operated by the Orange Water and Sewer Authority (OWASA). He testified that he anticipates the connection to occur by the end of June 1994. Mr. Marsh testified that the PMHA has presently spent over $100,000 in legal and engineering fees in its efforts to hook up to the City and that the estimated cost to complete the hookup is at least $250,000.

Mr. Marsh testified that representatives from the PMHA have met with Mr. Konsler in an effort to reach an agreement over the 12 items listed on his January 31, 1994, report. Mr. Marsh testified that they were in substantial agreement on all but two of the 12 items, those being item No. 1, a pump for the second dosing tank, and item No. 2, the replacement of the autodialer alarm system at each dosing station.

Mr. Marsh responded to Mr. Konsler's recommendation as follows:

Item No. 1. Instead of replacing the inactive pump, the PMHA suggested that a local vendor be contacted and a pump of adequate size be put on reserve in case one is needed. The PMHA also recommended replacing the existing check valves with effluent rated check valves.

Item No. 2. Repair the existing audible and visible alarms, not replaced with new ones. The homeowners would also be responsible for any calls to the operator if necessary. The PMHA was against replacing the inoperative autodialers.

Item No. 3. Replace the 6-8 inoperative solenoid valves in Phase II. If possible, replace them with existing operating solenoid valves from one of the inactive fields.

Item No. 4. Replace the hinges on the access hatch to the dosing station in Phase I. The PMHA is of the opinion that the access hatch hinges in Phase II are adequate at the present time. The customers plan to do this work themselves.

Item No. 5. The turnup cap adaptors have been checked and all needed repairs have been made under regular maintenance.

Item No. 6. The risers and covers in Phase I dosing tanks will not be used when the system is connected to the City; therefore, no repairs are needed.

Item No. 7. The dosing tanks will not be used when the system is connected to the City; therefore there is no need to upgrade the access roads.

Item No. 8. The PMHA agreed that the individual STEP system needs to be inspected and pumped as needed. However the PMHA asked that they be allowed to employ its own engineer for this work.

Item Nos. 9-12. The PMHA agree that the inspection report of the individual STEP systems should be sent to the Orange County Health Department; that, with the exception of recording flow meter and counter reading, the operator should

comply with the operation permit; that visits to the system necessary to insure proper valve and pump operation should be maintained; and that quarterly monitoring reports should be submitted to the Orange County Health Department.

Mr. Konsler testified that the Orange County Health Department was not recommending all the repairs suggested by the emergency operator since many of the repairs would not be necessary when the system is hooked up to the City.

Mr. Konsler did not agree with the position of the PMHA on items 1 and 2 of his report. Mr. Konsler testified that the replacement of the inoperative pump at the dosing station was critical. However, Mr. Konsler indicated that it would be acceptable to repair the existing inoperative pump. Mr. Konsler also recommended that the existing check valves be replaced. The one concession that Mr. Konsler made on his item 2, the replacement of the autodialers, was that if both dosing stations could be connected to one autodialer, he would agree with that procedure.

Mr. Konsler testified that he was in basic agreement with the testimony of Mr. Marsh and the position of the PMHA on Items 3-12.

Mr. Harrison testified that his estimate of making the repairs recommended by Mr. Konsler in the January 31, 1994, letter was $138,048.67; however, Mr. Harrison still maintained that all the repairs recommended in his December 21, 1994, report were necessary to allow proper maintenance to the Piney Mountain sewer system at a reasonable rate. Mr. Harrison further indicated that failure to complete all the items in the December 21, 1993, report may lead to situation out of control of the emergency operator in which fines may be levied against the system.

One of Mr. Harrison's main concerns was the potential liability if the system were allowed to "limp along" until a connection was made to the City. He stated,

> "We are being asked to basically agree with letting a system limp along and take the liability for that limping along. If someone else can indemnify us against any damage to anyone coming on that property, to any environmental damage, then we will be glad to go out there and hold a crutch under it, but I don't have anyone yet who has said; Yes, we will indemnify you fully against all damages due to something that we haven't replaced and told us to." (TR., p. 122, Lines 5-14)

On March 1, 1994, the PMHA filed a motion requesting the Commission to require the emergency operator to estimate the cost of the repairs to the sewer system that were testified to by Mr. Konsler. In the alternative, the PMHA moved the Commission to require the emergency operator to provide PMHA with sufficient information to calculate the cost of repairs recommended by Mr. Konsler.

By letter filed on March 2, 1994, Mr. Konsler indicated that the Orange County Health Department has no objection to the PMHA hiring an engineer to evaluate and file a report on the condition of the existing STEP systems in Piney Mountain Subdivision.

On March 4, 1994, the Commission Staff filed certain late-filed exhibits. The late-filed exhibits contained the following:

1. A cost breakdown of Items Nos. 4 and 11 set forth in Commission Staff Exhibit 2;
2. A cost breakdown of the "Materials" portion of Item No. 10 set forth in Commission Staff Exhibit 2; and
3. Letter from Tom Konsler, Environmental Health Specialist with the Orange County Health Department, regarding evaluations of STEP systems.

On March 7, 1994, the Public Staff filed the revised report of its consultant.

On March 17, 1994, the Attorney General filed its recommendations in the matter. The Attorney General indicated that, based on the evidence presented at the hearing on February 21, 1994, "...it appears that a very minimal level of capital investment needs to be made to repair this LPP system for the short time it will continue to provide service to Piney Mountain. The Attorney General recommends that any assessment be limited to the cost of a used second pump at the Phase II dosing tank and the cost of an autodialer to be wired to both dosing tanks. The Attorney General further suggests that if the Homeowners Association believes Harrco's estimates for these items is excessive, it supply estimates for a specific pump and autodialer to the Commission, Mr. Konsler and Harrco within fourteen days of any Commission Order on Harrco's requested assessment. If the specific equipment is acceptable to the Health Department, the Attorney General recommends the Commission allow its installation. With respect to the other cost items on Mr. Konsler's list, the Attorney General suggests these be viewed as operating and maintenance expenses with the understanding that if Harrco has to invest capital in an emergency, it will be permitted to come back to the Commission to request reasonable compensation."

On March 18, 1994, the PMHA filed its brief in this matter. In its brief, the PMHA renewed its request that "...the Commission approve assessments only for those repairs that are necessary to protect the public health and safety so that the homeowners will not be required to incur unnecessary expenses for repairs to a system that will be abandoned in the near future."

By letter filed on April 6, 1994, the emergency operator advised the Commission that it proposes to bill each customer for pumping of that customers' tanks at the rate of $115.77 per 1,000 gallons.

On April 8, 1993, the Public Staff filed comments to the April 6, 1994, letter of the emergency operator. The Public Staff indicated that the estimated cost of $115.77 per 1,000 for pumping of individual septic and STEP tanks was not unreasonable. By its Motion, the Public Staff renews its request that the emergency operator be authorized to amend its tariff to allow the emergency operator to individually bill the customers for the pumping of said tanks.

On April 14, 1993, the Attorney General filed a Response to the Motion to Amend Approved Rate for STEP Tank Pumping. It is the Attorney General's recommendation that STEP pumping costs "remain general utility costs and not be charged to individual customers."

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause for assessments pursuant to G. S. 62-118(c) to fund the additional repairs and improvements to the sewer utility system serving the Piney Mountain Subdivision as recommended by Harrco, the Public Staff of the North Carolina Utilities Commission, the Attorney General and Piney Mountain Homeowner's Association.

The Commission concludes as follows:

1. The Piney Mountain Subdivision will have a municipal sewer system served by the City of Durham within the very near future;

2. The existing low pressure pipe (LPP) system was allowed, by North State, to fall into serious disrepair and was installed in unsuitable soils; and

3. Tom Konsler, Engineer, Orange County Health Department, has determined that specific repairs are required to bring this system into compliance with the Operation Permit issued by the Orange County Health Department on June 4, 1993.

IT IS, THEREFORE, ORDERED as follows:

1. That Harrco Utility Corporation, as emergency operator of the sewer utility system serving the Piney Mountain Subdivision, is hereby authorized to bill and collect assessments as set forth below:

A. Provide minimum reasonable access for vehicles to the dosing tanks in Phase I and Phase II. This is to be accomplished by the use of less stone than recommended in Commission Staff Exhibit 2 filed with the Commission on or about December 21, 1993. The emergency operator is to provide the Commission, within ten (10) days of the receipt of this Order, an estimate with cost figures as to the minimum amount of stone that can safely be used to accomplish this goal. Removal of brush and debris left on site by North State Utilities is not necessary.

B. Replace the inactive multi-stage pump. Based on the requirements of OCHD, all systems above 3,000 gallons per day require two (2) pumps. Replace existing spring check valves with effluent rated swing check valves.

C. Repair or replace the access hatch hinges to the dosing tanks in Phase I and Phase II. It is not necessary to raise the buried access covers to ground surface for Phase I and Phase II dosing tanks.

D. Repair or replace any non-functioning and/or malfunctioning solenoid valves in the Phase I drainfield. There are two solenoid valves in Phase I that do not operate properly. If this number is incorrect, the Emergency Operator is to advise the Commission, within ten (10) days of the receipt of this Order, of

the exact number of non-operating solenoid valves in Phase I. If possible, the solenoid valves that are not working or not working properly should be replaced or repaired with the solenoid valves in the unused portion of the drainfields.

E. Repair or replace any non-functioning and/or malfunctioning solenoid valves in the Phase II drainfield. There are six (6) to eight (8) solenoid valves in Phase II that do not operate properly. If this number is incorrect, the Emergency Operator is to advise the Commission, within ten (10) days of the receipt of this Order, of the exact number of non-operating solenoid valves in Phase II. If possible, the solenoid valves that are not working or not working properly should be replaced or repaired with the solenoid valves in the unused portion of the drainfield.

F. Check and pump accumulated residuals from individual septic and pump tanks (STEPS). Repipe effluent pump to provide maintenance and repair from ground surface. Provide approved disconnect for pump, controls and alarm adjacent to pump chamber. Install proper access risers and covers to septic and pump tanks. Provide separate electrical circuit for pump alarm.

G. Repair or replace the auto dialer. Repair or replace the control panel or its components to provide for manual isolation of each drainfield zone, automatic rotation between drain field zones and alternation of pumps.

2. That Harrco shall prepare cost estimates of the work necessary to accomplish the repairs and improvements set out in ordering paragraph three (3), subparagraphs A through F of this Order. Harrco shall file these cost estimates with the Commission not later than ten (10) days from the date of this Order.

3. That the Commission, not later than five (5) days from the date Harrco files the cost estimation for the repairs and improvements listed in ordering paragraph three (3), subparagraphs A thru F of this Order, shall issue such further Order as necessary based on Harrco's estimates.

4. That the Piney Mountain Homeowners Association shall keep the Commission fully informed with respect to its efforts to secure municipal sewer service.

5. That Harrco shall, not later than five (5) days from the date of this Order, mail or hand deliver a copy of this order to each affected customer in the Piney Mountain Subdivision.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of May 1994.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

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E-7, Sub 544 (7-12-94)

Duke Power Company - Order Dismissing Complaint of Nancy J. Harrelson, and Closing Docket
E-7, Sub 547 (12-9-94)

Duke Power Company - Order Withdrawing Complaint of Marilyn Murphy and Closing Docket
E-7, Sub 551 (12-15-94)

Mountain Electric Cooperative, Inc. - Order Overruling Exceptions and Affirming Recommended Order Denying Complaint of Skiview Condominium Association (Chairman Ralph A. Hunt and Commissioner Judy Hunt dissent.)
EC-51(T), Sub 7

Piedmont Natural Gas Company - Order Dismissing Complaint of Donald F. Noe and Closing Docket
G-9, Sub 355 (10-25-94)

Surry-Yadkin Electric Membership Corporation - Order Dismissing Complaint of Edwin R. Harris and Closing Docket
EC-49, Sub 36 (12-9-94)

Western Carolina University - Order Finding no Reasonable Grounds to Investigate Complaint of Ronald A. Gamble, and Closing Docket
E-35, Sub 18 (3-21-94)

APPROVING PURCHASE POWER ADJUSTMENT

Company	Cents per kWh	Docket No.	Date
Nantahala Power and Light Company	.0284	E-13, Sub 142	4-20-94
Western Carolina University	.00197	E-35, Sub 19	4-20-94

RATES

Carolina Power & Light Company - Order Approving Rider CL-82
E-2, Sub 625 (12-21-94)

Carolina Power & Light Company - Order Approving Revisions to Rate Schedules and Service Regulations
E-2, Sub 637 (2-9-93)

Carolina Power & Light Company Order Approving Application to Reduce Rates
E-2, Sub 656 (4-26-94)

Carolina Power & Light Company Order Approving Rider IPS-1
E-2, Sub 667 (12-15-94) Errata Order (12-27-94)

Duke Power Company - Order Approving Economic Development Rider EC(NC)
E-7, Sub 548 (11-23-94)

North Carolina Power - Order Approving Revised Rate Schedules
E-22, Sub 349 (11-23-94)

SALES AND TRANSFER

Williams Service Group, Inc. - Order Transferring Certificate from United Supply of America, Inc. for a facility located at the Perdue Feed Mill Plant, Cofield, North Carolina
SP-110 (12-15-94)

SECURITIES

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (First Mortgage Bonds)
E-2, Sub 657 (5-4-94)

MISCELLANEOUS

Carolina Power & Light Company - Order Approving Church Service Schedule CH-TOUE-80A
E-2, Sub 577 (6-30-94)

Carolina Power & Light Company - Order Terminating Quarterly Reports and Additional Accounting Requirements
E-2, Sub 626 (3-18-94)

Carolina Power & Light Company - Order Approving Backup and Supplementary Service Rider No. 66T and Standby Service Rider SS-1
E-2, Sub 650 (1-26-94) Errata Order (2-1-94)

Carolina Power & Light Company - Order Approving Campground and Marina Rider CM-1
E-2, Sub 654 (3-15-94) Errata Order (3-21-94)

Carolina Power & Light Company - Order Approving Application and Requesting Comments on Proposed Change to guidelines (Commissioner Judy Hunt dissents in Docket No. E-2, Sub 660. Commissioners Allyson Duncan and Ralph Hunt did not participate in this decision.)
E-2, Sub 660; E-100, sub 73 (10-3-94)

Duke Power Company - Order Clarifying Rider LC
E-7, Sub 270 (2-23-94)

Duke Power Company - Order Approving Settlement Agreement Between Duke Power Company and North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc.
E-7, Sub 391; E-7, Sub 408 (3-30-94)

Duke Power Company - Order Approving Settlement Agreement Between Duke Power Company and North Carolina Municipal Power Agency Number 1 and Piedmont Municipal Power Agency
E-7, Sub 391; E-7, Sub 408 (8-23-94)

Duke Power Company - Order Approving Revised Schedule HP-X, Hourly Pricing for Incremental Load (Pilot)
E-7, Sub 526 (3-15-94)

Duke Power Company - Order Approving Revised Schedule HP-X, Hourly Pricing for Incremental Load (Pilot)
E-7, Sub 526 (9-15-94)

Duke Power Company - Order Approving Revised Service Regulations
E-7, Sub 541 (3-30-94)

Duke Power Company - Order Approving Revised Schedule OL (NC) Outdoor Lighting Service
E-7, Sub 543 (6-2-94)

Duke Power Company - Order Approving Revised Outdoor Lighting Schedules and Underground Installation Plan
E-7, Sub 552 (12-21-94)

Nantahala Power and Light Company Order Approving Service Regulations
E-13, Sub 157 (5-9-94)

Nantahala Power and Light Company Order Approving Deferral and Amortization
E-13, Sub 159 (2-2-94)

FERRY BOATS

COMMON CARRIER

Sea & Sand, William A. Dean, III, d/b/a - Order Granting Common Carrier Authority to Transport Passengers and Their Personal Effects from Beaufort and Marshallberg to Cape Lookout and Return
A-42 (3-30-94)

GAS

AMENDING AND DENYING

Pennsylvania & Southern Gas Company -- Order Denying Request for Postponement
G-3, Sub 181 (1-6-94)

COMPLAINTS

North Carolina Natural Gas - Order Closing Docket in Complaint of Mickey Barfield
G-21, Sub 320 (9-7-94)

Piedmont Natural Gas Company - Order Dismissing Complaint and Closing Docket in Complaint of James A. McArver, Standard Crankshaft Company, Inc.
G-9, Sub 343 (3-1-94)

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Mrs. Jill P. Falter
G-9, Sub 344 (1-14-94)

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Roger D. Lay, d/b/a Magic Cleaners
G-9, Sub 359 (12-28-94)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Gerber Products Company
G-5, Sub 287 (12-28-94)

Public Service Company of North Carolina, Inc. - Recommended Order Denying Complaint of Selee Corporation
G-5, Sub 291 (3-8-94)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Kenneth E. Furr
G-5, Sub 320 (3-23-94)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Kenneth E. Furr
G-5, Sub 320 (4-15-94)

Public Service Company of North Carolina, Inc. - Recommended Order Denying Complaint of James B. Mashburn
G-5, Sub 322 (6-9-94)

Public Service Company of North Carolina, Inc. - Order Finding no Reasonable Grounds to Investigate Complaint of Willem Vanden Broek, and Closing Docket
G-5, Sub 324 (3-23-94)

Public Service Company of North Carolina, Inc. - Order Allowing Withdrawal of Complaints of Kathy Wyrick
G-5, Sub 330 (5-17-94)

MERGER

Piedmont Natural Gas Company, Inc. - Order Approving Merger, Transfer of Certificates from Piedmont Natural Gas Company (Piedmont to PNG Acquisition Company (PAC), Abandonment of Service by Piedmont, Commencement of Service by PGN Acquisition Company and Issuance of Securities in Connection Therewith
G-9, Sub 346 (2-16-94)

RATES

North Carolina Natural Gas Corporation - Order Allowing Rate Reduction Effective February 1, 1994
G-21, Sub 322 (2-1-94)

North Carolina Natural Gas Corporation - Order Allowing Rate Decreases Effective May 1, 1994
G-21, Sub 327 (5-3-94)

North Carolina Natural Gas Corporation - Order Approving Deposit of Supplier Refunds
G-21, Sub 328 (10-19-94)

North Carolina Natural Gas Corporation - Order Allowing Rate Decreases Effective November 1, 1994
G-21, Sub 329 (11-1-94)

Piedmont Natural Gas Company, Inc. - Order Approving Depreciation Rates
G-9, Sub 77E (10-19-94)

Piedmont Natural Gas Company, Inc. - Order Modifying Refunds
G-9, Sub 339 (2-10-94)

Piedmont Natural Gas Company, Inc. - Order Modifying Suspension Order
G-9, Sub 340 (1-20-94)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Decrease Effective February 1, 1994
G-9, Sub 347 (2-1-94)

Public Service Company of North Carolina - Order Approving Deposit of Supplier Refunds
G-5, Sub 300 (11-29-94)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Reduction
G-5, Sub 334 (10-4-94)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Reduction
G-5, Sub 335 (11-29-94)

SECURITIES

North Carolina Natural Gas Corporation - Order Granting Authority to Issue and Sell 825,000 Shares of Common Stock
G-21, Sub 313 (1-27-93)

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell 1,000,000 Shares of Common Stock
G-9, Sub 348 (3-24-94)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Securities
G-5, Sub 328 (3-17-94)

TARIFF

Public Service Company of North Carolina, Inc. - Order Allowing Tariff Filing to Become Effective and Requiring Annual Reports
G-5, Sub 310 (1-14-93)

MISCELLANEOUS

Frontier Utilities of North Carolina, Inc.; Piedmont Natural Gas Company, Inc. - Order Ruling on Alternative Claim of Piedmont
G-38; G-9, Sub 357 (12-6-94)

North Carolina Natural Gas Corporation - Order Allowing Plan for Deferring Net Customer Costs Associated with E&D Programs
G-21, Sub 324 (4-12-94)

North Carolina Natural Gas Corporation - Order Requiring Mailing of Notice and Opportunity for Review
G-21, Sub 328 (8-29-94) Order Reissuing Notice (9-1-94)

Pennsylvania & Southern Gas Company - Order Allowing Plan for Deferring Revenues Received from E&D Programs
G-3, Sub 183 (4-12-94)

Pennsylvania & Southern Gas Company - Order on Annual Review of Gas Costs
G-3, Sub 185 (10-13-94)

Piedmont Natural Gas Company, Inc. - Order Allowing Plan for Deferring Revenues Received from E&D Programs
G-9, Sub 350 (4-12-94)

Piedmont Natural Gas Company, Inc. - Order Authorizing Construction of Pipeline
G-9, Sub 353 (6-2-94)

Piedmont Natural Gas Company, Inc. - Order Authorizing Construction of Pipeline Facilities in Lincoln County
G-9, Sub 354 (7-20-94)

Public Service Company of North Carolina, Inc. - Order Allowing Cross-Over of Franchised Territory
G-5, Sub 326 (1-19-94)

Public Service Company of North Carolina, Inc. - Order Allowing Plan for Deferring Net Customer Refunds Associated with E&D Programs
G-5, Sub 329 (4-12-94)

Public Service Company of North Carolina, Inc. - Order Allowing Cross-Over of Franchised Territory
G-5, Sub 333 (6-21-94)

HOUSING AUTHORITY

CERTIFICATE

Nash Health Care Systems - Order Granting Certificate of Public Convenience and Necessity and Canceling Hearing
H-65 (7-20-94)

MOTOR BUSES

APPLICATIONS WITHDRAWN

Fantastic Tours and Cruises, Jane Leonard & Jessie Yates, d/b/a - Order Allowing Withdrawal of Application
B-605 (9-13-94)

AUTHORITY GRANTED COMMON CARRIER

Company	Charter Operations	Docket No.	Date
A.M.A. Tours Unlimited, Alphonso Haigler and Mary L. Haigler d/b/a	Statewide	B-594	2-18-94
All-Ways Tours, Inc.	Statewide	B-611	8-3-94
C & C Bus and Trucking, Inc.	Statewide	B-618	9-22-94
Custom Mini Tours, Inc.	Statewide	B-597	1-20-94

Eyewitness USA Charter & Tours, I. Wade Allen, d/b/a	Statewide	B-614	7-18-94
Great American Tours, Inc.	Statewide	B-619	9-30-94
H & W Tours, Inc.	Statewide	B-612	6-28-94
Jordan, Shelton & Company	Statewide	B-623	11-14-94
L & R Tours, Larry Blackley, d/b/a	Statewide	B-603	4-6-94
McKenzie L & W Bus Lines, Inc.	Statewide	B-613	7-7-94
Paramore Coach, Co.	Statewide	B-570	5-13-94
Quality Tours, Good Time Enterprises, Inc., d/b/a	Statewide	B-606	5-18-94
Southeastern, Jeffrey Rodgers, d/b/a	Statewide	B-608	5-5-94
TBM Coachline, Inc.	Statewide	B-607	5-12-94
Trinity Bus Service, Melvin R. Barnes and Martha M. Barnes, d/b/a	Statewide	B-604	4-21-94
Walston Tours, Alonzo Walston, d/b/a	Statewide	B-616	7-18-94

BROKER'S LICENSE - (GRANTING)

Charlotte Arrangements, Destinations By Design, d/b/a - Order Granting Broker's License No. B-615
B-615 (12-5-94)

C-Mor Charters and Tours, J. Clyde Aycock, d/b/a Order Granting Broker's License No. B-599
B-599 (2-10-94)

Cristal Tours, Dianne C. Benson, d/b/a - Order Granting Broker's License No. B-620
B-620 (9-30-94)

Discount Travel Services, Brenda K. Allen, d/b/a - Order Granting Broker's License No. B-602
B-602 (4-21-94)

Fantasy Tours, Jessie Yates, d/b/a Order Granting Broker's License No. B-624
B-624 (11-16-94)

CERTIFICATES CANCELLED

Brantley Tours, Inc. - Order Cancelling Broker's License No. B-370
B-370, Sub 3 (3-17-94)

Bullock Tours - Order Cancelling Broker's License No. B-187
B-187, Sub 1 (7-27-94)

Duke Power Company - Order Cancelling Broker's License No. B-209
B-209, Sub 32 (12-9-94)

Care-Free Travels, Robert Donlad Watson, d/b/a - Order Cancelling Broker's License No. B-491
B-491, Sub 1 (1-11-94)

Cristal Tours, Christine E. Hunt, d/b/a - Order Cancelling Broker's License No. B-437
B-437, Sub 1 (8-2-94)

Introducing Asheville, Wendy W. Burns & Elizabeth H. Wellons, d/b/a - Order Cancelling Broker's License No. B-334
B-334, Sub 1 (1-18-94)

New Trails, Inc. - Recommended Order Cancelling Operating Authority Certificate No. B-541 - Termination of Liability Insurance Coverage
B-541, Sub 1 (9-4-94)

Scott's Transportation, Inc. - Order Cancelling Broker's License No. B-569
B-569, Sub 1 (12-19-94)

Specialty Tours, Vickie J. Ensley, d/b/a - Order Cancelling Broker's License No. B-587
B-587, Sub 1 (3-25-94)

Trinity Bus Service, Melvin R. Barnes and Martha M. Barnes, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. B-604 - Termination of Liability Insurance Coverage
B-604, Sub 1 (10-4-94)

Vilas, Carol C. and Associates Order Cancelling Broker's License No. B-546
B-546, Sub 1 (1-13-94)

NAME CHANGE

AMA Tours Unlimited, Alphonso Haigler, d/b/a -Order Approving Name Change from Alphonso Haigler and Mary L. Haigler, d/b/a A.M.A. Tours Unlimited
B-594, Sub 1 (10-10-94)

Adventure Tours & Travel, Inc. - Order Approving Name Change from Ann B. Clement, d/b/a Adventure Tours
B-503, Sub 1 (3-18-94)

Discount Travel Services, Inc. - Order Approving Name Change from Brenda K. Allen, d/b/a Discount Travel Services
B-602, Sub 1 (6-23-94)

JNM Tours, Inc. - Order Approving Name Change from J.N.M., Inc., Certificate No. B-596
B-596, Sub 1 (1-27-94)

Southern States Tours & Conventions, Peggy B. Bates, d/b/a - Order Approving Name Change from Peggy B. Bates, d/b/a Peggy Bates Tours & Conventions
B-600, Sub 1 (9-23-94)

TBM, Inc. - Order Approving Name Change from TBM Coachline, Inc.
B-607, Sub 1 (7-12-94)

MOTOR TRUCKS

APPLICATIONS AMENDED

Advantage Delivery Service, Gilbert F. Guittard, d/b/a Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3993 (6-22-94)

Black, Donald Mobile Home Service, Donald Black, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3487, Sub 2 (9-27-94)

Builders Transport, Inc. - Order Amending Contract Carrier Authority
T-1638, Sub 10 (6-6-94)

Carolina Public Warehouse, Inc. - Order Amending Contract Carrier Authority
T-3568, Sub 2 (8-8-94)

Cox, Donnie Dean - Order Amending Application
T-4011 (7-5-94)

Crawford Deliveries, Bernard Crawford, d/b/a - Order Amending Contract Carrier Authority
T-2290, Sub 4 (2-18-94)

Dunston's Delivery/Moving Service, Victor Wayne Dunston, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-4004 (8-4-94)

East Coast Transport Co., Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-342, Sub 12 (3-3-94)

Elite Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-4010 (8-23-94)

Harper Trucking Company, Inc. Order Amending Contract Carrier Authority
T-521, Sub 35 (6-23-94)

Kennedy Freight Lines, Inc. Order Amending Contract Carrier Authority
T-2567, Sub 3 (1-13-94)

M.A.K. Incorporated - Order Amending Application, Allowing Withdrawal of Protests, and Cancelling Hearing
T-3915 (1-27-94)

On Time Express, David V. Miller and James E. Arnder, Jr., d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3961 (4-26-94)

Pollard, Donald Myatt - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3819, Sub 1 (4-27-94)

Priority Transport Express, Inc. - Order Amending Common Carrier Authority
T-3927, Sub 1 (1-11-94)

Puryear Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2689, Sub 7 (5-4-94)

Sherman & Boddie, Inc. - Order Amending Contract Carrier Authority
T-1188, Sub 11 (3-21-94)

Thompson, Al Trucking, Inc. - Order Amending Application
T-3978 (5-27-94)

Tommy's Mobile Home Movers, Thomas D. Robertson, Jr., d/b/a - Order Amending Application, Allowing Withdrawal of Portest, and Cancelling Hearing
T-4031 (9-28-94)

APPLICATIONS DENIED/DISMISSED

AAA Reeds Moving Service, Alvin Reed, d/b/a - Recommended Order Denying Application
T-3951 (4-28-94)

C & W Mobile Home Movers, Paul A. Chapman and Ted White, III - Order Granting Intervention and Denying Request for Temporary Authority
T-4038 (9-7-94)

C & W Mobile Home Movers, Paul C. Chapman and Ted White, III, d/b/a Order Dismissing Application for Failure to show
T-4038 (10-4-94)
Party Reflections, Inc. Recommended Order Dismissing Application
T-3738 (1-8-93)

Puryear Transport, Inc. - Order Denying Motion for Judicial Notice
T-2689, Sub 7 (4-29-94)

The Moving Man, Vernon R. Mathis, d/b/a - Recommended Order Denying Application
T-3925 (4-29-94)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
ACME Transportation, Inc.	T-3931	5-6-94
Adkins Transfer, Inc.	T-3588, Sub 1	7-21-94
Bates Transportation Services, Inc.	T-4036, Sub 1	8-9-94
Bekins Moving & Storage of the Carolinas Co.	T-3862	4-21-94
Blue Ridge Courier Systems	T-3902, Sub 1	11-14-94
Corporate Moving Systems, Inc.	T-3712	1-25-93
Dicks, Terry Trucking Co., Inc.	T-4033	9-23-94
East Coast Transport Co., Inc.	T-342, Sub 12	7-14-94
Economy Movers, Allen Wainwright, d/b/a	T-4034	9-28-94
Hallmart Distributors, Inc.	T-3694, Sub 1	1-20-93
Hendrix, Jonathan C.	T-4039	9-13-94
Kearns Mobile Home Transport, Larry Kearns, d/b/a	T-4035	10-5-94
M & C Transportation, Inc.	T-4060	11-16-94
Matlab, Inc.	T-3898	6-13-94
Merritt Trucking Company, Inc.	T-2143, Sub 26	3-1-94
Puryear Tank Lines, Inc.	T-4012	8-31-94
Transpro LLC	T-4064	12-29-94

AUTHORITY GRANTED - COMMON CARRIER

ABF Freight System, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-1583, Sub 4 (2-21-94)

AJ's Express Courier, Jeffrey Francis Michetti and Christine Potts, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between Points and Places in Orange, Wake, Johnston, and Durham Counties
T-4013 (9-6-94)

Advanced Distribution Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 2, Heavy Commodities, Statewide
T-3953 (7-29-94)

Advantage Delivery Service, Gilbert F. Fuittard, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 15, Retail Store Delivery Service, Statewide
T-3993 (8-11-94)

Advantage Machinery Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 2, Heavy Commodities, Statewide
T-3877 (1-31-94)

Asset Relocation, Services, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Computers, Medical and Diagnostic Equipment, Copiers, Exhibits and Displays not Covered Under Group 18, Telephone and Switching Equipment, and Power Supply Units for Computers, Statewide
T-3970 (6-30-94)

Beasley, Mark - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide
T-3894, Sub 1 (9-21-94)

Beroth Oil Company - Recommended Order Granting Application, In Part, for Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, from Originating Terminals at Charlotte (Paw Creek) and Greensboro to Points in Alexander, Caldwell, Catawba, Davidson, Davie, Forsyth, Iredell, Rowan, Stokes, Surry, Wilkes, and Yadkin Counties
T-3964 (8-26-94)

Bud's Mobile Home Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Housing, Mobile Homes and Modular Homes, Statewide
T-3973 (7-11-94)

Burgess Mobile Home Movers, Ralph Aldene Burgess, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3980 (6-13-94)

Burgess Trucking Company, Incorporated - Order Granting Common Carrier Authority to Transport Group I, General Commodities, Statewide
T-3932 (1-21-94) Errata Order (3-24-94)

Byrd's Mobile Home Movers, James Byrd, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2920, Sub 2 (6-8-94)

C & M Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Modular Homes, Statewide
T-3984 (8-22-94)

CTL Distribution, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Liquid Commodities in Bulk, Except Asphalt, Gasoline, Kerosene, Fuel Oils, and Liquified Petroleum Gas; from Mecklenburg County to Points in North Carolina
T-3966 (6-9-94)

Cardinal Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4058 (12-13-94)

Carolina Courier Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, From Mecklenburg County to All Points in North Carolina
T-4037 (11-14-94)

Cason Builders Supply, Cason Companies, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Classes A & B Explosives and Commodities in Bulk, Statewide
T-2383, Sub 1 (5-4-94)

Charlotte Van & Storage Co., Inc. - Order Granting Common Carrier Authority to Transport Group 15, Retail Store Delivery Service, Statewide
T-931, Sub 4 (8-29-94)

City Haul, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4008 (8-3-94)

Corney Transportation, Bobby Ray Corney, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4027 (8-29-94)

Cox, Donnie Dean - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Sampson County to all Points in North Carolina
T-4011 (8-4-94)

Crisp Sales Company, Joseph G. Crisp, d/b/a - Recommended Order Granting Application for Common Carrier Authority to Transport Group 21, Mobile Homes, between Points in Brunswick, New Hanover, Pender and Columbus Counties
T-3943 (4-25-94) Errata Order (5-3-94)

D & I Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Robeson County to Points in North Carolina
T-2825, Sub 3 (9-23-94)

DJ's Trucking, Donald A. Jackson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3907 (2-2-94)

DRI Transportation, Donald R. Israel, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3758 (2-23-94)

D & W Trucking, Buddy Phillips, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3905 (2-21-94)

Dial's, Tony Mobile Home Moving, Tony Dial, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Scotland, Columbus, and Robeson Counties to all Points in North Carolina, and from all Points in North Carolina to Scotland, Columbus, and Robeson Counties
T-3333, Sub 1 (9-12-94)

Dale's Pick-Up & Delivery Service, Dale Owens, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3889 (2-7-94)

Davis, W. L. Mobile Home Movers, William L. Davis, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2254, Sub 6 (7-20-94)

Dougle Eagle Transport, James Curtis Tetterton and Susan Hope Radcliff, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Boats, Statewide
T-3949 (8-24-94)

DuBose Transportation Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 2, Heavy Commodities; and Group 10, Building Materials; Statewide
T-3914 (4-21-94)

Faircloth, Stephen Cooper - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide
T-3909 (3-16-94)

Faircloth, Tony Michael - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide
T-3910 (3-17-94)

Fox Brothers of Boone, Inc. - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-1208, Sub 2 (3-30-94)

G's Trucking, William Gary Lankas, Sr., d/b/a - Order Granting Common Carrier Authority to Transport Group 5, Solid Refrigerated Products, from Onslow County to Points in North Carolina, and from Points in North Carolina to Onslow County
T-4005 (6-30-94)

Galloway's Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3795 (3-7-94)

Gattis, Jerry Homes, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Scotland and Richmond Counties to all Points in North Carolina
T-3986 (8-2-94)

Georgia International Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3882 (4-4-94)

Haas, Keith Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3991 (7-29-94)

Hainey's, R. W. Mobile Home Movers, Richard Wayne Hainey, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places East of and Including the Counties of Robeson, Cumberland, Harnett, Wake, Durham, and Granville
T-3904 (4-13-94)

Independent Freightway, Inc. - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities, and Group 10, Building Materials, Statewide
T-2643, Sub 3 (3-31-94)

Inman Management, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3936 (3-31-94)

Iredell Milk Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Vegetable Oil in Bulk, Between all Points in North Carolina, Under Contract with C & T Refinery, Inc.
T-1647, Sub 14 (10-4-94)

Jack's Mobile Home Service, Jack T. Phillips, Sr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3981 (8-22-94)

K & P Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3924 (2-25-94)

Kilgore Courier Company, Jack A. Kilgore, d/b/a - Order Granting Common Carrier Athority to Transport Group 21, Water Samples, from Wake County to Lee, Richmond, Anson, Johnston, Wayne, Orange, Guilford, Granville, Vance, and Nash Counties and from these Counties Back to Wake County
T-4061 (12-9-94)

Lee, William E. & Sons Trucking Co., William Earl Lee, d/b/a Order Granting Common Carrier Authority to Transport Group 5, Solid Refrigerated products, from Duplin County to Points in North Carolina
T-3892 (1-26-94)

M.A.K. Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restriction: Transportation of Group 20, Motion Picture Film and Special Service, is not Authorized.)
T-3915 (5-11-94)

MCO Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2278, Sub 4 (3-7-94)

MCW Enterprises, Michael Charles Watson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Mobile Offices, Statewide
T-3968 (5-25-94)

M & D Manufactured Home Movers, George Michael Britt, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, Between Points in Robeson, Cumberland, Hoke, and Bladen Counties
T-3873 (1-27-94)

Mabe Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3945 (6-23-94)

Men On the Move, Rodrick Malcolm Hudgins, III and Nicholas Boyd Seymour, d/b/a - Order Granting Common Carrier Authority to Transport Group 15, Retail Store Delivery Service, and Group 18, Household Goods, Between Points in Buncombe and Henderson Counties
T-3771 (3-7-94)

Merchants Home Delivery Service, Inc. - Order Granting Common Carrier Authority to Transport Group 15, Retail Store Delivery Service, Statewide
T-1655, Sub 4 (5-17-94)

Merritt Trucking Company, Inc. - Recommended Order Granting Application, In Part, to Transport Group 21, Commodities in Bulk in Tank Trucks, Except Lime and Fly Ash, Statewide (NOTE: The authority granted herein, to the extent it duplicates any existing authority, shall not be construed as conveying more than one operating right.)
T-2143, Sub 26 (5-13-94)

Meyer, William B. Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3950, Sub 1 (8-19-94)

Mid-South Truck Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4006 (8-17-94)

Mobile Service Systems, Andrew Herman Lunsford and Michael Bruce Lunsford, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4001 (9-21-94)

Moody Trucking, Douglas Moody, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Chatham County to Points in North Carolina and from Points in North Carolina back to Chatham County
T-3972 (6-1-94)

Norman Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3952 (5-4-94)

On Time Express, David V. Miller and James E. Arnder, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Cabarrus County to Cleveland, Mecklenburg, Iredell, and Rowan Counties (Restriction: Transportation of Group 20, Motion Picture Film and Special Service, is not Authorized.)
T-3961 (6-30-94)

P & C Mobile Home Services, James Garry Clark and William Vernon Paul, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Richmond, Scotland, Robeson, Bladen, Columbus, Burnswick, and Pender Counties to all Points in North Carolina
T-3900 (3-31-94)

PFI Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3985 (8-17-94)

Paramount Motor Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3958 (6-2-94)

Pardue Enterprises, Phillip W. Pardue, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3959 (6-8-94)

Professional Forest Products, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4047 (10-31-94)

Pursuit Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3960 (6-8-94)

R. J. Mobile Home Transit, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in the Following Counties: Cumberland, Robeson, Harnett, Hoke, Sampson, Moore, Burnswick, Columbus, Bladen, and New Hanover
T-3827 (3-18-94)

R & T Delivery, Ralph David Byers, t/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4014 (8-29-94)

Rogers & Rogers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3820, Sub 1 (5-4-94)

Rouse, Oliver Franklin - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3999 (7-5-94)

Rudy's Truck & Trailer, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide
T-3975 (8-17-94)

S & H Mobile Home Transport, Jeff Stanley and Ricky Hewett, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Columbus, Wayne, Vance, Hoke, & Robeson Counties to Points in North Carolina, and from Points in North Carolina Back to these Counties
T-4028 (10-31-94)

Skyway Freight Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Orange and Durham Counties to all points in North Carolina, and from all points in North Carolina to Orange and Durham Counties
T-3939 (7-15-94)

Smith, Earl Trucking, Thomas Earl Smith, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3935 (4-13-94)

Southeastern Contract Carriers, Barry Laeron Wilburn, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3792 (7-27-94)

Southeastern Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, New and Used Mobile Homes, Statewide
T-4054 (12-9-94)

Southern Mobile Movers, Robert B. Hill and Joseph P. Flaherty, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3971 (6-21-94)

Specialized Transport Systems, Morris L. Hoyle, d/b/a - Recommended Order Granting Application for Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-4020 (10-28-94)

STAT Delivery Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between Points in Durham, Wake, Orange, Wilson, Nash, Guilford, Chatham, Harnett, and Alamance Counties (Restriction: Transportation of the Daily Distribution of Motion Picture Films, Theatrical Equipment, Advertising, and Supplies is not Authorized.)
T-3918 (7-8-94)

Stewart's Body Shop & Mobile Home Mover, James Hugh Stewart, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in Yancey, Mitchell, and Avery Counties
T-3996 (7-7-94)

Super Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between all Points in North Carolina
T-3992 (7-14-94)

T & M Mobile Home Transport, Larry P. Kearns and Timothy H. Norman, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-4035 (11-15-94)

TNT Holland Motor Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3944 (6-21-94)

Tank Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Fly Ash, Statewide
T-2686, Sub 2 (3-15-94)

Thompson, Al Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Cement, Fly Ash, Lime, and Petroleum and Petroleum Products, is not Authorized.)
T-3978 (7-1-94)

Thompson, Dale E. Hauling, Dale Edward Thompson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-4000 (7-14-94)

3KB Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Rockingham County to all Points in North Carolina, and from all Points in North Carolina to Rockingham County
T-3920 (3-10-94)

Tri-County Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from New Hanover County to Points in North Carolina
T-3850 (7-11-94)

Trinity Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3934 (3-16-94)

Truck Air of the Carolinas, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2996, Sub 3 (5-25-94)

Warren Trucking, Charles C. Warren, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3913 (2-3-94) Errata Order (2-14-94)

Watson Wrecker Service and Auto/Truck Repair, Willard Watson, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3957, Sub 1 (8-3-94)

Wilkes Trucking, George Steven Wilkes, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3979 (6-30-94)

Winslow Enterprises, Gary Wayne Winslow, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, from Mecklenburg, Cabarrus, and Union Counties to all Points in North Carolina
T-3864 (2-21-94)

Woodard, Dewey Mobile Home Moving, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3974 (7-5-94)

York Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-3947 (5-24-94)

AUTHORITY GRANTED - CONTRACT CARRIER

ARM Transport, Amy Crawford, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Enka, North Carolina, to Various Points in North Carolina and from Various Points in North Carolina Back to Enka, North Carolina, Under Contract with Southeastern Container, Inc.
T-3926 (3-28-94)

Ausley, Cecil T. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from its Plants located in Raleigh, Kinston, near Fayetteville, and Fuquay-Varina, North Carolina, to Points and Places within the State of North Carolina
T-1842, Sub 4 (2-7-94)

Ausley, Gerald B. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from its Plants located in Raleigh, Kinston, near Fayetteville, and Fuquay-Varina, North Carolina, to Points and Places within the State of North Carolina
T-3929 (2-7-94)

Bryant Industrial Contractors, Inc. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Statewide, Under Contract with Adams Products Company
T-4002 (6-21-94)

Clark Trucking, Inc. Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Honda Power Equipment Manufacturing, Inc., and Midwest Express, Inc.
T-4015 (9-12-94)

Craig, Stephen Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Hickory Vinyl, Inc., and Progressive Furniture, Inc.
T-3911 (2-10-94)

Elite Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Liquid Asphalt and Asphalt Cement, from Morehead City to Points and Places in North Carolina on and East of Interstate 95, Under Contract with Barrus Construction Company
T-4010 (12-20-94)

Gray's Trucking, Inc. Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, and Fuquay-Varina, North Carolina, to Points and Places within North Carolina
T-3923 (1-31-94)

Griffey, Eugene - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Asheville to all Points in North Carolina, Under Continuing Contract with Kinco Corporation
T-3860 (2-1-94)

Gupton, Donald Lee - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from its Plants Located in Raleigh, Kinston, near Fayetteville, and Fuquay-Varina, North Carolina, to Points and Places within the State of North Carolina
T-1843, Sub 5 (2-7-94)

HoltraChem, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Sodium Hydroxide, Hydrochloric Acid, and Sodium Hypochlorite, Statewide, Under Contract with HoltraChem Manufacturing Company.
T-4007 (8-31-94)

Horizon Tank Lines, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk and Chemicals, Statewide, Under Contract with Southchem, Inc.
T-3977 (8-4-94)

MAKO Transportation, Inc. Order Granting Contract Carrier Authority to Transport Group 21, Liquified Petroleum Gas, Statewide, Under Continuing Contract with Collier-Rose Fuels, Inc.
T-3513, Sub 5 (2-21-94)

Mark VII Transportation Co., Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract(s) with Stroh Brewery Company
T-3955 (6-8-94)

North State Transport, Paul W. Cecile, Steve Wall, and Ernest Horton, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Fly Ash, from Belews Creek, North Carolina, to Terrell, North Carolina, Under Contract with Monex Resources, Inc.
T-4048 (12-14-94)

Pollard, Donald Myatt - Order Granting Contract Carrier Authority to Transport Group 21, Bulk Cement, Bag Cement, and Bags of Mortar, from the Facilities of Blue Circle Cement, Inc., in Durham, North Carolina, to Adams Products Company Locations throughout North Carolina, Under Continuing Contract with Blue Circle Cement, Inc.
T-3819, Sub 1 (5-2-94)

Price, Warren Gene - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from its Plants located in Raleigh, Kinston, Near Fayetteville, and Fuquay-Varina, North Carolina, to Points and Places within the State of North Carolina
T-2436, Sub 4 (2-7-94)

Puryear Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing Contracts with Nello Teer Company; Apex Oil Company, Inc.; Barnhill Construction Co.; Blalock Asphalt Company; Blythe Industries, Inc.; Gelder and Associates; C. C. Mangum, Inc.; and S. T. Wooten Corporation
T-2689, Sub 7 (6-22-94)

Rollins Dedicated Carriage Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Tractor Supply Company
T-4052 (12-29-94)

Ryder Dedicated Logistics, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Southeastern Paper of Greensboro, Inc.
T-3781, Sub 7 (2-22-94)

Ryder Dedicated Logistics, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract(s) with Simmons Company
T-3781, Sub 8 (5-24-94)

Ryder Dedicated Logistics, Inc. Order Granting Contract Carrier Authority to Transport Group I, General Commodities, Statewide, Under Continuing Contract with Universal Forest Products, Inc.
T-3781, Sub 9 (6-23-94)

Ryder Dedicated Logistics, Inc. Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Lilly Industries, Inc.
T-3781, Sub 10 (9-28-94)

Schneider National Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Lexington and Shelby to all Points in North Carolina, and from all Points in North Carolina to Lexington and Shelby, Under Continuing Contract with PPG Industries, Inc.
T-3182, Sub 2 (1-14-94)

Schneider National Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Between Points in North Carolina, Under Continuing Contract with Baxter Healthcare Corporation
T-3182, Sub 3 (5-4-94)

Small Shipments, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with General Electric Company
T-4017, Sub 1 (9-13-94)

Sowers Jerry Don - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Metal Industries, Inc.
T-3987 (6-23-94)

Suttles Truck Leasing, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks; and Group 21, Chemicals, in Bulk, in Tank Trucks; Statewide, Under Continuing Contract with Borden, Inc.
T-3812, Sub 1 (11-4-94)

Von Louya, Terry - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Metal Industries, Inc.
T-3982 (6-21-94)

Wilborne, R. V. Trucking, Rufus V. Wilborne, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Sara Lee Knit Products
T-3940 (9-27-94)

Williams, L. C. Oil Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing Contract with Cary Oil Co., Inc.
T-2258, Sub 3 (9-16-94)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
A A A Moving and Storage, Phillip P. Latham, d/b/a T-3856, Sub 1 (9-2-94)	C-677	Good Cause
Abernethy Transfer & Storage Company, Inc. T-744, Sub 2 (11-3-94)	C-547	Good Cause
Barbour's Mobile Home Movers & Service, Perry Gene Barbour, d/b/a T-2404, Sub 4 (4-20-94)	C-1284	Good Cause

Bryant's Trucking, Hezekiah Bryant, Jr., d/b/a T-3755, Sub 1 (2-8-94)	C-2045	Good Cause
Bryant's Trailer Convoy, Ronald Clair King, d/b/a T-1337, Sub 5 (6-14-94)	C-903	Good Cause
Chestnut Enterprises Trucking, Wilmington Shipping Company, d/b/a T-2928, Sub 3 (2-21-94)	C-1601	Good Cause
Coastal Carrier, Richard S. Bunting, d/b/a T-3816, Sub 1 (7-12-94)	C-2064	Good Cause
Council's Mobile Movers, Inc. T-2770, Sub 1 (1-3-94)	C-971	Good Cause
Cummings Mobile Home Service, C. L. Cummings, d/b/a T-3253, Sub 1 (10-11-94)	C-1799	Good Cause
Cutler Trucking, Inc. T-3481, Sub 2 (4-20-94)	C-1902	Good Cause
Forbes Delivery Service, Inc. T-3664, Sub 2 (4-6-94)	C-1997	Good Cause
Georgia International Express, Inc. T-3882, Sub 1 (6-23-94)	C-2133	Good Cause
Griffin Transfer & Storage Company, Inc. T-864, Sub 6 (6-13-94)	C-649	Good Cause
Haley Transfer and Storage Company, Inc. T-999, Sub 3 (9-28-94)	C-726	Good Cause
Jiffy Express Company T-2595, Sub 1 (11-16-94)	C-1320	Good Cause
Lewis, J. W. Transport, Incorporated T-3013, Sub 1 (9-7-94)	C-1646	Good Cause
M & F Trucking, Inc. T-3833, Sub 1 (5-3-94)	C-2100	Good Cause
Mc Cauley Bros. Moving & Storage, Inc. T-1422, Sub 4 (6-1-94)	C-951	Good Cause
No-Name Movers, Inc. T-2601, Sub 3 (6-22-94)	C-601	Good Cause

Pope Transport Company E. J. Pope & Son, Inc., d/b/a T-2353, Sub 5 ((8-4-94)	C-1176	Good Cause
Southern Container Corporation T-2981, Sub 1 (8-31-94)	C-1636	Good Cause
Swann, A. D. Trucking Co., Inc. T-69, Sub 10 (6-23-94)	C-53	Good Cause
Taylor's Mobile Home Service, James D. Taylor, d/b/a T-2992, Sub 4 (7-12-94)	C-1958	Good Cause
Thomas Trucking Company, Steve R. Thomas, d/b/a. T-3227, Sub 5 (9-28-94)	C-1862	Good Cause

CERTIFICATES/PERMITS CANCELLED

Company and Certificate No.	Docket Number	Date
Adams, Bobby M. Mobile Home Moving, Bobby M. Adams, d/b/a (C-1901)	T-3411, Sub 1	9-14-94
Astro Courier Services, Inc. (P-595)	T-3359, Sub 2	2-14-94
Autofix Corporation (C-1763)	T-3201, Sub 2	7-7-94
Brendle Transport Inc. (P-504)	T-2538, Sub 2	8-26-94
Brown Mobile Home Movers, Alfred Wayne Brown, d/b/a (C-1183)	T-3989, Sub 1	12-27-94
Bryant's Trailer Convoy, Ronald Clair King, d/b/a (C-903)	T-1337, Sub 6	10-19-94
Brytran, Inc. (C-242)	T-2923, Sub 2	3-9-94
Burton Lines, Inc. (CP-122)	T-226, Sub 13	2-9-94
Central Division, Inc. (C-1773)	T-3234, Sub 2	3-7-94
Chapel Hill Maintenance, Chapel Hill Grounds Maintenance, Inc. (C-2078)	T-3801, Sub 1	3-9-94
Gilbert Transfer Company (P-68)	T-703, Sub 9	2-7-94
Goldsboro Trucking Company (C-1506)	T-3600, Sub 1	9-7-94
L & L Transport, Leroy T. Viars, d/b/a (P-715)	T-3797, Sub 2	11-4-94
Ladd Transportation, Inc. (P-573)	T-3001, Sub 2	4-12-94
Lanier Express, Incorporated (P-687)	T-3649, Sub 1	11-2-94
Lorraine Transporters, Patrick's Trailer & Camper Sales, Inc. (C-1160)	T-2086, Sub 3	9-14-94
Men On the Move, Rodrick Malcolm Hudgins, III and Nicholas Boyd Seymour, d/b/a (C-2127)	T-3771, Sub 1	4-12-94
Newton's Mobile Home Delivery & Service, Cecil Newton, d/b/a (C-1978)	T-3447, Sub 2	4-12-94
Package Pickup Service, Inc. (C-1649)	T-3023, Sub 2	9-2-94
Petroleum Transport Company, Inc. (CP-126)	T-36, Sub 13	9-21-94
Piedmont Paper Stock Chesapeake Corporation, d/b/a (P-378)	T-2112, Sub 4	3-4-94

Pipe Line Haulers, Inc. (P-94)	T-802, Sub 4	2-28-94
Pro Express, Inc. (C-2098)	T-3874, Sub 1	6-21-94
REE Trucking, Inc. (P-579)	T-3065, Sub 1	8-2-94
Redwing Carriers, Inc. (C-912)	T-1308, Sub 7	11-28-94
Reuse Technology, Inc. (P-629)	T-3352, Sub 1	2-14-94
Ridgeway Mobile Home Transporters, Inc. (C-1438)	T-2707, Sub 2	11-30-94
Road, Inc. (CP-99)	T-3962, Sub 1	6-23-94
Rountree Movers, Daniel Thomas Rountree, d/b/a (P-563)	T-2963, Sub 1	1-26-94
Seanor Trucking Company, Edward L. Seanor, d/b/a (P-717)	T-3876, Sub 1	4-6-94
Searcy Trucking, Claude David Searcy, d/b/a (C-1995)	T-3582, Sub 3	5-23-94
Superior Delivery Service, Inc. (P-472)	T-2440, Sub 1	4-12-94
UPS Truck Leasing, Inc. (P-688)	T-3706, Sub 1	1-21-94
Wade Transportation Company, Inc. (P-626)	T-3608, Sub 1	11-28-94
Wallace Cockerham Towing, Inc. (C-933)	T-1385	1-6-94
West Brothers Transfer & Storage, Hauling & Storage Division, Inc. (CP-16)	T-2085, Sub 8	6-2-94
Williamson Mobile Home Transit, Harold Wayne Williamson, d/b/a (C-1109)	T-2015, Sub 2	7-22-94
Woodard, Dewey Mobile Home Moving, Inc. (C-2162)	T-3974, Sub 1	12-5-94

A 1 Moving & Storage, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-643 - Termination of Liability Insurance Coverage
T-871, Sub 13 (1-19-94)

B & J Mobile Home Parts and Service, Lewis Gordon Powell, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-993 - Termination of Cargo Insurance Coverage
T-3492, Sub 1 (10-4-94)

Butch's Mobile Home Service, Butch Howell, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1945 - Termination of Cargo Insurance Coverage
T-3589, Sub 2 (5-16-94)

Cloninger, C. F. Trucking, C. F. Cloninger, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1519 - Termination of Liability Insurance Coverage
T-2802, Sub 7 (3-7-94)

Dairy Leasing Service, Inc. Recommended Order Cancelling Operating Authority Permit No. P-289 - Termination of Liability Insurance Coverage
T-1840, Sub 6 (7-11-94)

Decato Bros., Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1110 - Termination of Liability Insurance Coverage
T-2084, Sub 3 (10-4-94)

Foremost Freight, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-2063 - Termination of Liability Insurance Coverage
T-3799, Sub 1 (10-27-94)

Four Friends Mobile Home Moving Service, Dean L. Baker and Robert Keith Wilson, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-2014 - Termination of Liability Insurance Coverage
T-3705, Sub 1 (3-7-94)

Gallimore, D. P. & Sons, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-999 - Termination of Liability Insurance Coverage
T-1565, Sub 4 (3-17-94)

Hilley Transport Company, Timothy J. Hilley, d/b/a - Recommended Order Cancelling Operating Authority Permit No. P-608 - Termination of Liability Insurance Coverage
T-3249, Sub 5 (9-6-94)

Johnson Transport, David Paul Johnson, d/b/a - Recommended Order Cancelling Operating Authority Certificate no. C-2056 - Termination of Liability Insurance Coverage
T-3782, Sub 3 (11-8-94)

L.T.D.I., Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-2094 - Termination of Liability Insurance Coverage
T-3851, Sub 1 (10-4-94)

MCW Enterprises, Michael Charles Watson, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-2142 - Termination of Cargo Insurance Coverage
T-3968, Sub 1 (11-28-94)

Parker, Sherwood - Recommended Order Cancelling Operating Authority Certificate No. C-1934 - Termination of Liability Insurance Coverage
T-3499, Sub 1 (10-27-94)

Paxton Freight Lines, Harold F. Paxton, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1983 - Termination of Liability Insurance Coverage
T-3524, Sub 1 (4-15-94)

Road, Inc. Recommended Order Cancelling Operating Authority Certificate/Permit No. CP-99 - Termination of Cargo Insurance Coverage
T-3962, Sub 2 (10-27-94)

Su-Ann Trucking Co., Otha L. Stroud, d/b/a - Recommended Order Cancelling Operating Authority Permit No. P-615 - Termination of Liability Insurance Coverage
T-3159, Sub 1 (11-28-94)

RESCINDING AUTHORIZED SUSPENSION AND CANCELLED AUTHORITY

Company	Docket Number	Date
Decato Bros., Inc.	T-2084, Sub 3	10-25-94
MCW Enterprises, Michael Charles Watson, d/b/a	T-3968, Sub 1	12-6-94
Parker, Sherwood	T-3499, Sub 1	11-22-94
Paxton Freight Lines, Harold F. Paxton, d/b/a	T-3524, Sub 1	5-11-94
Pro Express, Inc.	T-3874, Sub 1	8-22-94
SAS Wrecker Service, Inc.	T-3000, Sub 5	8-5-94
Su-Ann Trucking Co., Otha L. Stroud, d/b/a	T-3159, Sub 1	12-19-94
Williamson Mobile Home Transit, Harold Wayne Williamson, d/b/a	T-2015, Sub 2	8-5-94

COMPLAINTS

Wendell Transport Corporation - Order Holding Motions in Abeyance in Complaint of North Carolina Intrastate Petroleum Rate Committee of the North Carolina Trucking Association, Inc.
T-1039, Sub 19 (1-7-93)

MERGER

Flash Courier Service of North Carolina, Inc. - Order Approving Merger with Flash/NC Acquisition Company, Inc., a Subsidiary of U. S. Delivery Systems, Inc.
T-3026, Sub 2 (10-17-94)

General Transport Systems, Inc. - Order Approving Merger with General Transport Systems, Inc., d/b/a General Transport Systems of Delaware, Inc., Holder of Certificate/Permit No. CP-108, with General Transport Systems, Inc., Being the Surviving Corporation
T-2875, Sub 4 (1-13-93)

Hico Transport, Inc. - Order Approving Stock Transfer and Merger of Southern Oil/Tidewater Fuels, Inc.
T-2876, Sub 5 (2-18-94)

PST Vans, Inc. - Order Approving Merger with Norton Enterprises, Inc., d/b/a PST Vans, Inc., Holder of Certificate No. C-2028
T-3741, Sub 1 (5-18-94)

NAME CHANGE/TRADE NAME

Boyd Bros. Transportation, Inc. - Order Approving Name Change from Boyd Brothers Transportation Company, Inc., Permit No. P-611
T-3228, Sub 1 (3-30-94)

Century Courier Systems - Order Approving Name Change from Blue Ridge Courier Systems
T-3902, Sub 2 (11-16-94)

Emerson Freight Systems, Inc. - Order Approving Name Change from Phillip M. Emerson, Certificate No. C-1433
T-2704, Sub 3 (4-12-94)

G W L Transport, Inc. - Order Approving Name Change from William A. Langley, d/b/a William Langley Trucking, Certificate No. C-1970
T-3516, Sub 2 (12-7-94)

Hardin, Charles L. Trucking, Inc. - Order Approving Name Change from Charles L. Hardin, II, d/b/a Industrial Aid Courier Service, Certificate No. C-1936
T-3941 (1-14-94)

Ivey's Towing & Transport, Inc. - Order Approving Name Change from Gary L. Ivey, d/b/a Ivey's Towing & Transport, Certificate No. C-1889
T-3379, Sub 1 (1-12-94)

John's Mobile Home Services, Inc. - Order Approving Name Change from John Jackson, d/b/a John's Mobile Home Service, Certificate No. C-1980
T-3436, Sub 1 (12-5-94)

Ledford's Mobile Home Service, Inc. - Order Approving Name Change from Jimmie Ledford, d/b/a Ledford's Mobile Home Service, Permit No. P-644
T-3314, Sub 2 (5-4-94)

O. T. Services, Inc. - Order Approving Name Change from Jerry E. Coats and Brenda B. Coats, d/b/a Oakridge Transport, Certificate No. C-1565
T-2885, Sub 1 (8-19-94)

Penske Dedicated Logistics Corp. - Order Approving Name Change from Electric Transport, Inc., Certificate/Permit No. CP-55
T-2103, Sub 8 (7-29-94)

Prestige Transportation, Grant M. LeRoux, III, d/b/a - Order Approving Name Change from Prestige Transportation, Michael C. Mascia and Grant M. LeRoux, III, d/b/a, Certificate No. C-2026
T-3727, Sub 1 (6-8-94)

RoseWay Transportation, Inc. - Order Approving Name Change from Morgan Trucking, Inc., Certificate/Permit No. CP-132
T-2166, Sub 9 (6-29-94)

Sig's Express, Inc. - Order Approving Name Change from Henry Allen Sigmon, d/b/a Sig's Express
T-3747, Sub 1 (10-19-94)

Spinco, Inc. - Order Approving Name Change from Golds, Inc., Certificate No. C-352
T-3990, Sub 1 (6-14-94)

T & M Mobile Home Transport, Timothy H. Norman, d/b/a - Order Approving Name Change from Larry P. Kearns and Timothy H. Norman, d/b/a T & M Mobile Home Transport
T-4035, Sub 1 (12-27-94)

Triple J. Hauling, Inc. - Order Approving Name Change from Robert H. Hooks, d/b/a Triple J Hauling, Certificate No. C-1797
T-3273, Sub 1 (2-4-94)

TRISM Specialized Carriers, Inc. - Order Approving Name Change from McGil Specialized Carriers, Inc., Certificate No. C-377
T-3965 (3-10-94)

RATES - MOTOR COMMON CARRIERS

Central Transport, Inc.- Recommended Order Allowing Rate Increase Published in Tariff NCUC No. 9
T-740, Sub 17 (8-11-94) Order Adopting Recommended Order (8-11-94)

Motor Common Carriers - Recommended Order Approving General Increase in Rates and Changes
T-825, Sub 327 (3-30-94) Order Allowing Recommended Order to Become Effective and Final (3-31-94)

SALES AND TRANSFER/CHANGE OF CONTROL

A-1 Moving and Storage, Inc. - Order Approving Transfer of Control by Stock Transfer from Virginia Hendren to Henry F. Thomas and John R. Wooten
T-871, Sub 14 (9-15-94)

A-1 Quality Moving Company, Swofford, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-723 from Elton C. Smith, Jr., d/b/a Elton C. Smith, Jr., Moving Company
T-3969 (4-15-94)

Brown Mobile Home Movers, Alfred Wayne Brown, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1183 from Carlton Ray Hall, d/b/a Hall's Mobile Home Movers
T-3989 (5-19-94)

Byers, Sam A. & Sons Moving Service, Inc. - Order Approving Sale and Transfer of Certificate No. C-750 from Samuel Augustus Byers
T-4030 (8-15-94)

Campbell's Transfer & Storage, Tommy Campbell, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1737 from Steven Wayne Campbell, d/b/a Campbell & Son Transfer & Storage
T-2471, Sub 5 (12-22-94)

Commercial Courier Express, Inc. - Order Approving Transfer of Control by Stock Transfer to Courier Dispatch Group, Inc., Certificate/Permit No. CP-75
T-1791, Sub 7 (8-17-94)

Copeland's Mobile Home Moving, Inc. - Order Approving Sale and Transfer of Certificate No. C-2029 from Miller's Mobile Home Moving, Inc.
T-3956 (3-17-94)

Emergency Express Freight and Courier Services, Kitty Hawk Express Air/Truckways, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1441 from C.J.S. Courier Service Plus, Inc.
T-4045 (9-15-94)

Golds, Inc. - Order Approving Sale and Transfer of Certificate No. C-352 from Spinco, Inc.
T-3990 (5-19-94)

Hilco Transport, Inc. Order Approving Sale and Transfer of Certificate No. C-1613 from Clark Transportation Service, Inc.
T-2876, Sub 6 (5-19-94)

Johnson's Mobile Home Services, Marvin Van Johnson and Hazel Ruth Johnson, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1030 from Marvin Malcolm Johnson, d/b/a Johnson's Mobile Home Services
T-1636, Sub 4 (4-15-94)

LaFayette Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-951 from McCauley Bros. Moving & Storage, Inc.
T-3997 (7-15-94)

Long Brothers of Summerfield, Inc. - Order Approving Sale and Transfer of Certificate No. C-1501 from Southern Oil/Tidewater Fuels, Inc.
T-3942 (2-17-94)

Meyer, William B., Inc. - Order Approving Sale and Transfer of Certificate No. C-654 from Advantage Moving and Storage Services, Inc.
T-3950 (3-17-94)

Movin' On Movers, Inc. - Order Approving Sale and Transfer of Certificate No. C-677 from Phillip P. Latham, d/b/a AAA Moving and Storage
T-3620, Sub 1 (9-15-94)

Pope Transport Company, E. J. Pope & Son, Inc., d/b/a - Order Approving Sale and Transfer of a Portion of Certification No. C-1176 from Neuse Transport, Incorporated
T-2353, Sub 5 (1-14-94)

Road, Inc. - Order Approving Sale and Transfer of Certificate/Permit No. CP-99 from East Carolina Cartage Company, Inc.
T-3962 (4-15-94)

Rush Petroleum Transport, Foe Trucking, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1066 from Rush Petroleum Transport, Inc.
T-3988 (5-19-94)

Small Shipments, Inc. Order Approving Sale and Transfer of A Portion of Certificate No. C-601 from No-Name Movers, Inc.
T-4017 (7-15-94)

Stott Oil Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-339 from Carolina Carriers, Inc.
T-4029 (8-15-94)

Stott Oil Company, Inc. - Order Rescinding Order Approving Sale and Transfer of Certificate No. C-339 from Carolina Carriers, Inc.
T-4029 (10-10-94)

Swift Transportation Co., Inc. - Order Approving Sale and Transfer of Certificate No. C-1968 from Missouri-Nebraska Express, Inc.
T-3545, Sub 1 (8-15-94)

Tri County Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-1342 from Joseph J. Afonso, d/b/a Tri State Moving & Storage, Tatum Gap Road & Highway 19-129
T-3919 (1-14-94)

Two Men and A Truck of North Carolina, Allen and Pirie, Inc., d/b/a - Recommended Order Approving Sale and Transfer of Certificate No. C-602 from B & W Local Moving, Incorporated
T-3397, Sub 1 (7-8-94)

Watson Wrecker Service and Auto/Truck Repair, Willard Watson, Jr., d/b/a - Order Approving Sale and Transfer of Certificate No. C-981 from Moses Lott Buffkin, d/b/a Jack's Mobile Home Service
T-3957 (3-17-94)

WestPoint Stevens, Inc. - Order Approving to Transfer Control by Stock Transfer and Merger of West Point-Pepperell, Inc., Holder of Certificate No. C-1947, into Valley Fashions Corp. and Subsequent Name Change of Valley Fashions Corp. to WestPoint Stevens, Inc.
T-3922; T-3928 (1-24-94)

RESCINDING SALE AND TRANSFER

Watson Wrecker Service and Auto/Truck Repair, Willard Watson, Jr., d/b/a - Order Rescinding Order Approving Sale and Transfer of Certificate No. C-981 from Moses Lott Buffkin, d/b/a Jack's Mobile Home Service, and Granting Authorized Suspension of Operations
T-3957 (4-20-94) Errata Order (4-25-94)

TARIFFS

American Messenger Services, Inc. Recommended Order Approving Tariff Filings
T-3148, Sub 4 (6-24-94) Order Allowing Recommended Order to Be Effective (6-24-94)

Gooden Moving, Clione S. Gooden, d/b/a - Order Approving Tariff Rates and Charges NUNC PRO TUNC
T-3621, Sub 1 (2-16-93)

North Carolina Trucking Association, Inc. - Recommended Order Vacating Order of Investigation and Allowing Tariff Filing to Become Effective as Scheduled
T-825, Sub 329 (5-27-94) Order Allowing Recommended Order to be Effective June 1, 1994 (5-27-94)

Southern Motor Carriers Rate Conference, Inc. - Order Granting Motion to Correct Tariff
T-825, Sub 328 (5-4-94)

Wendell Transport Corporation - Recommended Order Approving Tariff Filing of Proposed 4.5% Increase in Rates Applying on Petroleum and Petroleum Products, Scheduled to Become Effective May 1, 1994, on Gasoline and Light Fuels, and August 28, 1994, on LPG
T-1039, Sub 22 (4-29-94) Order Allowing Recommended Order to Become Effective (4-29-94)

MISCELLANEOUS

Brytran, Inc. - Order Reinstating Certificate and Granting Authorized Suspension of Operations
T-2923, Sub 1 (1-20-93)

National Freight, Inc. - Order Granting Request to Self-Insure
T-1717, Sub 3 (12-6-94)

RAILROADS

COMPLAINTS

Aberdeen Carolina & Western Railway - Order Denying Respondent's Motion to Withdraw as Counsel in Complaint of Ruth J. Andrews
R-74, Sub 1 (6-3-94)

MOBILE AGENCY AND NONAGENCY STATIONS

Norfolk Southern Railway Company - Order Granting Application on Permanent Basis to Discontinue Agency Operations at Statesville, North Carolina, and Place Statesville and Its Non-Agency Stations Under the Jurisdiction of Mobile Agency Route NC-5 Based at Hickory, North Carolina
R-4, Sub 153 (3-29-94)

Norfolk Southern Railway Company - Order Granting Application to Discontinue Agency Operations at Canton, and Place Canton Under the Jurisdiction of Mobile Agency Route NC-1, Transfer Mobile Agency Route NC-1 from Canton to Asheville, and Remove the Current Stations (Except Waynesville) from Mobile Agency Route NC-1 and Place Under the Jurisdiction of the Agency at Asheville
R-4, Sub 167 (3-8-94)

SIDE TRACKS AND TEAM TRACKS - Order Granting Petition/Authority to Retire and Remove Track

CSX TRANSPORTATION, INC.

Docket Number	Date	Track	Town
R-71, Sub 211	5-27-94	Track at Rama	Rama

NORFOLK SOUTHERN RAILWAY COMPANY

Docket Number	Date	Track	Town
R-4, Sub 168	9-6-94	Track No. 49-3 Milepost S-48.2	Newton

TELEPHONE

APPLICATIONS CANCELLED, TERMINATED, WITHDRAWN OR DENIED

Business Telecom, Inc. - Order Assessing Penalty and Withdrawing Cease and Desist Order (Commissioner Cobb dissents in part and concurs in part.)
P-165, Sub 17; P-405 (10-27-94)

Carolina Telephone and Telegraph Company - Order Denying Motion for Reconsideration
P-7, Sub 806 (8-2-94)

Concord Telephone Long Distance Company - Order Allowing Withdrawal of Application
P-295, Sub 4 (10-25-94)

Menuplanners, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-342 (4-20-94)

Military Communications Center, Inc. - Order Allowing Petition to Withdraw and Closing Docket
P-194, Sub 4 (10-3-94)

National Independent Carrier Exchange, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-351 (5-4-94)

North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Denying Expansion of Plan for Implementing the Triad Regional Calling Plan
P-55, Sub 942 (1-5-93)

Total Telecommunications, Inc. - Order Allowing Withdrawal of Application
P-376 (1-19-94)

World One Telecommunications, Inc. - Order Allowing Withdrawal
P-312 (1-20-94)

CERTIFICATES AMENDED

LCI International Telecom Corporation - Order Amending Certificate to Authority IntraLATA Service
P-386, Sub 3 (3-29-94)

CERTIFICATES

AMI Communications, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services Within the State of North Carolina
P-409 (11-14-94)

Advanced Management Services, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Service
P-391 (12-30-94)

American Roaming Network, U.S. Osiris Corporation, d/b/a Order Granting Certificate to Provide Intrastate Cellular Resell Services
P-343, Sub 1 (3-3-94)

Amerivision Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-354, (2-24-94)

Charlotte In-Touch, Inc. - Order Granting Certificate to Provide Intrastate Cellular Resell Services
P-392 (3-7-94)

Coast International, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunication Services
P-238, Sub 1 (6-9-94)

Equal Net Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-383 (7-8-94) Order Allowing Recommended Order to Become Final (7-12-94)

Great Lakes Telecommunications Corporation - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-377 (8-22-94) Order Allowing Recommended Order to Become Effective (8-30-94)

HCC Telemanagement, Hospitality Communications Corporation, d/b/a - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-403 (12-22-94)

Intellicall Operator Services, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services Within The State of North Carolina
P-390 (8-23-94) Order Allowing Recommended Order to Become Effective (8-30-94)

International Telemanagement Group, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services Within the State of North Carolina
P-393 (10-3-94)

Keystone Telecommunications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-352 (2-14-94) Order Allowing Recommended Order to Become Final (2-15-94)

MFS Intelenet of North Carolina, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services
P-396 (10-13-94)

Metracom Corporation - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunication Services within the State of North Carolina
P-384 (4-21-94) Order Allowing Recommended Order to Become Final (5-3-94)

National Accounts, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resale Telecommunications Services
P-346 (1-31-94) Order Allowing Recommended Order to Become Final (2-1-94)

Pace Long Distance, Pennsylvania Alternative Communications, Inc., d/b/a Recommended Order Granting Certificate to Provide Intrastate Interexchnage Telecommunications Services
P-407 (12-2-94) Order Allowing Recommended Order to Become Final (12-13-94)

Premier Billing Services, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-357 (7-13-94)

Premiere Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunication Services Within the State of North Carolina
P-380 (9-9-94) Order Allowing Recommended Order to Become Final (9-13-94)

PROCOM, Professional Communications Management Services, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-341 (2-10-94) Order Allowing Recommended Order to Become Final (2-15-94)

RCI Long Distance, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-400 (9-9-94) Order Allowing Recommended Order to Become Final (9-13-94)

RD&J Communications, Inc. - Order Granting Certificate to Provide Intrastate Long Distance Telecommunications Services
P-316 (7-25-94)

TeleData Services, Holley & Langley Investments, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate, IntraLATA and InterLATA Telecommunications Services on a Resale Basis
P-359 (1-31-94) Order Allowing Recommended Order to Become Final (2-1-94)

Tele-Trend Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resell Telecommunications Services
P-340 (7-8-94) Order Allowing Recommended Order to Become Final (7-12-94)

Telstar Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-355 (4-6-94) Order Allowing Recommended Order to Become Final (4-12-94)

Touch 1, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-356 (1-14-94) Order Allowing Recommended Order to Become Final (1-18-94)

U. S. Digital Network Limited Partnership - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resale Telecommunications Services
P-378 (5-13-94)

U. S. Long Distance, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-360 (8-31-94) Order Allowing Recommended Order to Become Final (9-13-94)

USX Consultants, Inc. - Recommended Order Granting Certificate to Provide Intrastate, Interexchange Telecommunications Services on a Resale Basis
P-387 (5-13-94) Order Allowing Recommended Order to Become Final (5-17-94)

UniDial Incorporated - Recommended Order Granting Certificate to Provide Intrastate, Interexchange Telecommunications Services on a Resale Basis
P-389 (8-10-94) Order Allowing Recommended Order to Become Final (8-16-94)

VarTec Telecom, Inc. - Recommended Order Granting Certificate to Provide Intrastate Resold Telecommunications Services
P-362 (2-8-94) Order Allowing Recommended Order to Become Final (2-15-94)

Voyager Networks, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunication Services within the State of North Carolina
P-361 (4-28-94) Order Allowing Recommended Order to Become Final (5-3-94)

Westinghouse Communications, Westinghouse Electric Corporation, d/b/a - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-422 (12-30-94) Order Allowing Recommended Order to Become Final (12-30-94)

World Call Telecommunications, West Coast Telecommunications, Inc. d/b/a - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-337 (9-19-94) Order Allowing Recommended Order to Become Final (9-27-94)

CERTIFICATES CANCELLED

Business Choice Network Order Affirming Previous Commission Order Canceling Operating Authority
P-254, Sub 2 (9-27-94)

Telecommunications Services of America, TSA Consultants, Inc., d/b/a - Order Cancelling Certificate
P-311, Sub I (3-29-94)

The Hogan Company, Inc. Order Cancelling Certificate and Closing Docket
P-293, Sub 2 (7-1-94)

Total Communications - Order Affirming Previous Commission Order Canceling Operating Authority
P-219, Sub 2 (11-29-94)

VNI Communications, Inc. Order Affirming Previous Commission Order Canceling Operating Authority
P-267, Sub 1 (11-29-94)

COMPLAINTS

BellSouth Advertising and Publishing Company and Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket in Complaint of Thomas Miller, d/b/a American Appliance Service
P-89, Sub 43 (5-3-94)

BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company - Order Tentatively Finding no Reasonable Grounds to Proceed and Providing Notice and Opportunity to Be Heard in Complaint of Pam Hanks
P-89, Sub 47 (12-21-94)

BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company Order Dismissing Complaint of MEBTEL, Inc., d/b/a MEBTEL Communications, and Closing Docket
P-55, Sub 996 (8-9-94)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Vincent K. Gilreath
P-7, Sub 800 (7-8-94)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint of Juli A. Stallings and Closing Docket
P-7, Sub 805 (8-3-94)

Carolina Telephone and Telegraph Company and Sprint Publishing & Advertising, Inc. - Order Allowing Withdrawal and Dismissing Complaint of Wanda Kay Thompson, d/b/a Wanda Kay's School of Dance, Inc.
P-89, Sub 46 (7-29-94)

Carolina Telephone and Telegraph Company and Sprint Publishing and Advertising, Inc. - Order Providing Notice and Opportunity to Be Heard in Complaint of Fayetteville Publishing Company
P-89, Sub 48 (8-19-94)

Carolina Telephone and Telegraph Company and Sprint Publishing and Advertising, Inc. - Order Finding no Reasonable Grounds to Proceed with Complaint Except as to Different Charges Between Sponsored and Nonsponsored Messages in Complaint of Fayetteville Publishing Company
P-89, Sub 48 (12-22-94)

Central Telephone Company - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Blake D. Lovette, President, Lovette Company, Inc.
P-10, Sub 471 (12-14-94)

Concord Telephone Company - Recommended Order Denying Complaint of Harold A. Thornton, d/b/a Xerographic Copy Center & Quick Print Group
P-16, Sub 174 (4-13-94)

GTE South - Order Keeping Docket Open for Six Months in Complaint of VoxNet Corporation
P-19, Sub 263 (4-5-94)

GTE South - Order Closing Docket in Complaint of VoxNet Corporation
P-19, Sub 263 (12-9-94)

GTE South - Order Closing Docket in Complaint of Phil Ferguson
P-19, Sub 265 (12-22-94)

IBA Telecom, Inc. - Order Closing Docket in Complaint of Cliff Hester
SC-622, Sub 1 (2-4-94)

North State Telephone Company - Order Closing Docket in Complaint of Mrs. Delia Miles
P-42, Sub 111 (3-1-94)

North State Telephone Company - Order Closing Docket in Complaint of Peggy Bodenhamer
P-42, Sub 110 (5-23-94)

North State Telephone Company - Order Keeping Docket Open for Six Months in Complaint of Clara L. Farlow
P-42, Sub 114 (3-4-94)

North State Telephone Company - Order Prohibiting Service Termination in Complaint of Communications Central, Inc.
P-42, Sub 116 (5-31-94)

Southern Bell Telephone and Telegraph Company - Order Finding No Reasonable Grounds to Investigate Complaint of Eric B. Phifer, and Closing Docket
P-55, Sub 992 (3-21-94)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Anthony J. Bailey
P-55, Sub 995 (12-13-94)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Company - Order Allowing Withdrawal and Substitution of Counsel in Complaint of Pam Hanks
P-89, Sub 47 (7-12-94)

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Lillington, Fayetteville, and Olivia Extended Area Service
P-7, Sub 781 (1-4-94)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Sampson County Extended Area Service
P-7, Sub 785 (3-9-94)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Four Oaks to Raleigh Extended Area Service
P-7, Sub 795 (2-23-94)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Topsail Island to Scotts Hills and Wilmington Extended Area Service
P-7, Sub 802 (5-18-94)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service and Splitting Exchange - Topsail Island to Scotts Hill and Wilmington Extended Area Service
P-7, Sub 802 (9-14-94)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Dare County Extended Area Service
P-7, Sub 803 (5-10-94)

Carolina Telephone and Telegraph Company - Order Amending Order Authorizing Polling - Dare County Extended Area Service
P-7, Sub 803 (6-29-94)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Dare County Extended Area Service
P-7, Sub 803 (10-21-94)

Carolina Telephone and Telegraph Company - Order Authorizing Poll - Princeton to Goldsboro InterLATA Extended Area Service
P-7, Sub 804 (6-7-94)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Princeton to Goldsboro Extended Area Service
P-7, Sub 804 (9-13-94)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Franklinton and Louisburg to Raleigh InterLATA Extended Area Service and Louisburg to Zebulon InterLATA Extended Area Service
P-7, Sub 809 (11-28-94)

Central Telephone Company - Order Authorizing Poll - Milton and Yanceyville to Roxboro Extended Area Service (Commissioner Cobb dissents. Commissioner Duncan did not participate in the decision-making.)
P-10, Sub 439 (6-8-94)

Central Telephone Company - Order Approving Extended Area Service - Milton and Yanceyville to Roxboro Extended Area Service
P-10, Sub 439 (9-13-94) Errata Order (9-20-94)

Central Telephone Company - Order Authorizing Poll Timberlake to Durham InterLATA Extended Area Service
P-10, Sub 468 (6-7-94)

Central Telephone Company - Order Approving Extended Area Service - Timberlake to Durham InterLATA Extended Area Service
P-10, Sub 468 (9-13-94)

Ellerbe Telephone Company - Order Authorizing Extended Area Service - Ellerbe to Hamlet Extended Area Service
P-21, Sub 56 (4-6-94)

GTE South - Order Authorizing Extended Area Service - Cherokee to Sylva Extended Area Service
P-19, sub 256 (4-6-94)

GTE South - Order Authorizing Polling - Cashiers to Highlands Extended Area Service
P-19, Sub 261 (4-5-94)

GTE South - Order Authorizing Extended Area Service - Cashiers to Highlands Extended Area Service
P-19, Sub 261 (6-22-94)

Lexington Telephone Company - Order Authorizing Rate for Denton Exchange - Denton and Thomasville to Lexington Extended Area Service
P-31, Sub 125 (7-13-94)

Lexington Telephone Company - Order Authorizing Extended Area Service - Denton and Thomasville to Lexington Extended Area Service (Commissioner Cobb dissents.)
P-31, Sub 125 (9-28-94) Errata Order (9-29-94)

Pineville Telephone Company - Order Authorizing Poll - Pineville to Matthews Extended Area Service
P-120, Sub 10 (3-9-94)

Pineville Telephone Company - Order Authorizing Extended Area Service - Pineville to Matthews Extended Area Service
P-120, Sub 10 (6-1-94)

Southern Bell Telephone and Telegraph Company Order Approving Extended Area Service - Smithfield and Selma to Raleigh Extended Area Service
P-55, Sub 986 (1-25-94)

Southern Bell Telephone and Telegraph Company - Order Approving Extended Area Service - Taylorsville to Hickory Extended Area Service
P-55, Sub 987 (1-12-94)

Southern Bell Telephone and Telegraph Company - Order Denying Polling - Fairmont Extended Area Service
P-55, Sub 988 (2-23-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Lenoir to Hickory Extended Area Service
P-55, Sub 989 (5-6-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Poll - Cooleemee, Ijames, and Mocksville to Winston Salem Extended Area Service (Commissioner Cobb dissents.)
P-55, Sub 991 (1-12-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Cooleemee, Ijames and Mocksville to Winston-Salem Extended Area Service
P-55, Sub 991 (5-6-94)

Southern Bell Telephone and Telegraph Company - Order Approving Polling - Acme to Lake Waccamaw Extended Area Service
P-55, Sub 994 (2-23-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Acme to Lake Waccamaw Extended Area Service
P-55, Sub 994 (6-7-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Participation of Winston-Salem Exchange Courtney, East Bend and Forbush to Winston-Salem Extended Area Service
P-55, Sub 997 (5-10-94)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Courtney, East Bend and Forbush to Winston-Salem Extended Area Service
P-55, Sub 997 (7-6-94)

NAME CHANGE

LCI International, LiTel Telecommunications Corporation, d/b/a - Order Approving Name Change to LCI International Telecom Corp.
P-386, Sub 4 (5-3-94)

MERGER

Advanced Telecommunications Corporation; LDDS of Carolina, Inc. - Order Approving Merger into and with LDDS Communications, Inc.
P-283, Sub 7; P-235, Sub 7 (3-24-94)

ALLTEL Carolina, Inc., Sandhill Telephone and Heins Telephone Company Order Approving Merger
P-118, Sub 75; P-53, Sub 64; P-26, Sub 111 (9-14-94)

GTE North Carolina, GTE South Incorporated and Contel of North Carolina, Inc., d/b/a - Order Approving Merger of Contel of North Carolina d/b/a GTE North Carolina into GTE South
P-19, Sub 258 (4-25-94)

Savannah Telco, Inc. - Order Approving Merger into Corporate Telemanagement Group, Inc.
P-252, Sub 6 (3-28-94)

Sprint Corporation and Centel Corporation Order Approving Merger of Sprint Corporation and Centel Corporation
P-10, Sub 455 (1-15-93)

SALES AND TRANSFER

Coast International, Inc. - Order Approving Sale of Assets from Convergent Communications, Inc.
P-238, Sub 2; P-276, Sub 1 (11-22-94)

Teledial America of North Carolina - Order Approving Sale of Assets of Teledial America of North Carolina and Transfer of Operating Certificate to LCI Telecom South, Inc.
P-266, Sub 5; P-382 (1-28-94)

Touch 1, Inc. - Order Approving Transfer of Control of Touch 1, Inc., to LDDS Communications, Inc.

Trans National Telephone, Inc., of North Carolina; Mid-Com Communications, Inc., of North Carolina - Order Approving Transfer of Customers and Discontinuance of Intrastate Service
P-344, Sub 1; P-308, Sub 6 (12-21-94)

WilTel, Inc. - Order Approving Transfer of Control of WilTel, Inc., to LDDS Communications, Inc.
P-286, Sub 3 (10-26-94)

SECURITIES

LCI International Telecom South, Inc. Order Approving Petition for Authority to Incur Certain Debt Obligations
P-382, Sub 1 (4-15-94)

LCI International Inc., and LCI International Telecom, Inc. - Order Approving Petition for Authority to Incur Certain Debt Obligations
P-386, Sub 1 (2-16-94)

Lexington Telephone Company - Order Approving Loan from Nationwide Life Insurance Company
P-31, Sub 127 (8-29-94)

Randolph Telephone Company, Inc., and Randolph Telephone Membership Corporation - Order Approving Sale of Capital Stock to RTMC
P-61; Sub 75 (9-23-94)

The Concord Telephone Company - Order Granting Authority to Issue Note
P-16, Sub 178 (7-22-94)

US FiberCom Network, Inc. - Order Approving Sale of Assets to Mid-Com Communications, Inc.
P-320, Sub 2; P-308, Sub 4 (8-24-94)

SPECIAL CERTIFICATES

Docket Number	Date	Company
SC-234, Sub 2	5-31-94	Edwards Equipment Company, Inc.
SC-756, Sub 1	6-27-94	Gateway Technologies, Inc.
SC-827, Sub 1	6-27-94	Watauga Telephone Company, Michael T. Varner, d/b/a
SC-876	1-18-94	C. Z. Independence, Inc.
SC-891	1-6-94	Ronald W. Bliss, d/b/a Allied Equipment Company
SC-892	1-6-94	R. Craig Gentry, d/b/a Maraig Communications
SC-893	1-6-94	Larry L. Rollans
SC-894	1-6-94	Amtel Communiactions Payphones, Inc.
SC-895	1-6-94	Tommie O. Arnold, Jr.
SC-896	1-18-94	Tallo-Gronback Sound, Inc., d/b/a TGS, Inc.
SC-897	1-18-94	U.S. Payphones, Inc.
SC-898	1-18-94	Robert C. Fleury
SC-898, Sub 1	5-9-94	Fleury Communications, Robert C. Fleury, d/b/a
SC-899	1-31-94	Carolina Sportsbar and Billiards, Inc.
SC-900	1-18-94	Earl R. Queen
SC-901	2-16-94	Edward P. Brigham
SC-902	1-31-94	David Liner
SC-903	1-31-94	Henderson County Public Schools

SC-904	2-16-94	Wallace Cox, d/b/a A & L Fashions
SC-905	2-16-94	Brian Shield, d/b/a Desktop Plus
SC-906	2-16-94	Thomas J. Hathway, d/ba Golden Receivers
SC-907	2-16-94	Barbara L. David, d/b/a Sandhills Telephone Systems
SC-908	2-16-94	Jerry Dicus
SC-909	2-16-94	Paul A. Mauger
SC-910	2-16-94	Carl J. Brown
SC-911	2-16-94	William L. Wallace
SC-912	2-16-94	B & B International, Inc.
SC-913	3-3-94	STY, Inc.
SC-914	3-3-94	Jerry's Tavern, Lynda B. Mason, d/b/a
SC-915	3-3-94	Surf Communications, Larry Hilker, d/b/a
SC-916	3-3-94	Patricia A. Marler
SC-917	3-3-94	Tony Manning
SC-918	3-15-94	Burlington Postal & Package Service, Inc.
SC-919	3-3-94	Max Pritchard
SC-920	3-15-94	Douglas W. Barber
SC-921	3-15-94	Interstate Coin Telephone Incorporated
SC-922	3-15-94	Barry K. Stubbs
SC-923	3-15-94	Ellison Laney, Jr.
SC-924	3-15-94	Ruth A. Stewart
SC-925	3-15-94	I-85 Chevron Quality Service, Inc.
SC-926	3-15-94	Vendormatic, Inc.
SC-927	3-15-94	Andrew & Denise Glasgow, d/ba Ad Glasgow Enterprises
SC-928	4-26-94	Paul A. Scoggins
SC-929	4-11-94	Sam Stevens
SC-930	4-11-94	Ocean Highway Opportunities, Wayne E. Coleman, d/b/a
SC-931	4-11-94	Cozell McQueen, Jr.
SC-932	4-11-94	Scarborough Farms, Inc.
SC-933	4-11-94	Shooters Pub, Inc.
SC-934	4-26-94	Telephone Service & Equipment Company, Howard Collins, d/b/a
SC-935	4-26-94	Anne W. Keck
SC-936	4-26-94	Alexander Communication Company, Willie L. Alexander, d/b/a
SC-937	4-26-94	Cherokee Payphone, Jerry Dicus, d/b/a
SC-938	4-26-94	Southport Cinemas, Inc.
SC-939	4-26-94	Richard Ashley Fleming
SC-940	5-9-94	Abdel Hakeem Saleh
SC-941	6-23-94	Georges H. Francis/Elias G. Francis, d/b/a HUP Communications
SC-942	5-9-94	Tele-Matic Corporation
SC-943	5-11-94	Frederick D. Surgeon
SC-944	5-11-94	Trussie Taylor
SC-945	5-19-94	Diamond Communication Services, Inc.
SC-946	5-31-94	Twinbook Resort, J. Carl Henry, d/b/a
SC-946, Sub 1	11-7-94	Twinbrook Resort, LLC
SC-947	5-31-94	Patricia Ewing Roy
SC-948	5-31-94	Russell H. Strange III

SC-949	5-19-94	Ventel, Inc.
SC-950	5-19-94	Christian Pay Phone & Communications, Clay H. Koontz, d/b/a
SC-951	5-31-94	M & L Communications, James A. Leviner, d/b/a
SC-952	6-27-94	Augustine Nkrumah, d/b/a CRR Communications
SC-953	6-27-94	Steve Terry Hamilton, d/b/a Hamilton's Telephone Services
SC-954	6-27-94	Mitchell Telecommunications, Earl H. Mitchell and Cheryl S. Mitchell, d/b/a
SC-955	6-27-94	James Calvin Faulkner
SC-956	6-27-94	Seawell Turner
SC-957	6-27-94	Gurmel Singh Thind
SC-958	6-27-94	Piedmont Public Fax, Inc.
SC-959	6-27-94	Jeff and Carol Childress
SC-960	6-27-94	Talleywhacker, Inc., Paul B. Talley, d/b/a
SC-961	7-12-94	Thomas L. Denski
SC-962	7-12-94	Jeremy S. Dillon, d/b/a E. T. King
SC-963	7-14-94	Samuel Ifeanyi Offor, d/b/a Inter-Net Telephone Company
SC-964	7-14-94	H. Elnathan Brown
SC-965	7-14-94	Philip M. Godwin
SC-966	7-14-94	Carl F. Hoffman III
SC-967	7-29-94	Phillip E. Jansen, d/b/a Ding-A-Ling Tele-Communications Company
SC-968	7-29-94	Troy A. Haugen
SC-969	7-20-94	Telecom, Inc.
SC-970	7-20-94	Brian Oliva, d/b/a B & L Communications
SC-971	7-29-94	James D. Wood
SC-972	7-29-94	Carl Spencer, d/b/a CS Communications
SC-973	8-9-94	Jack L. Hargett
SC-974	8-9-94	Sub Conscious Properties, Inc.
SC-975	8-9-94	Larry W. Self
SC-976	8-9-94	Honor Telcom Inc.
SC-977	8-22-94	Charles Vish
SC-978	8-22-94	T. Tod O'Briant
SC-979	8-22-94	The Word of Faith Fellowship
SC-980	8-22-94	Carrie L. Kleinjan
SC-981	8-22-94	Interstate Telecommunications, Inc.
SC-982	8-22-94	Margaret Casey
SC-983	8-22-94	Thomas N. James III
SC-984	8-22-94	The Flaming Star, Inc.
SC-985	9-6-94	Robert Longbrake
SC-986	9-6-94	William A. Moss and Russell S. Moss, Jr.
SC-987	9-6-94	Robert Collins, d/b/a Collins Enterprises
SC-988	9-6-94	Laura Lete, d/b/a Dollars & Cents Pay Phones
SC-989	9-6-94	Suburban Telephone Company
SC-990	9-6-94	Issam Hashem, d/b/a Triad Triangle Telecom
SC-991	9-19-94	Henry L. Ritchie
SC-992	9-19-94	Stuart Kilburn
SC-993	9-29-94	Dale B. Harris
SC-994	9-29-94	Albert Alan Schrimp, d/b/a TS Communications

SC-995	9-29-94	Calamari Enterprises, Inc., d/b/a Cafe Parizade
SC-996	9-29-94	North American Communications Corporation, d/b/a North American Communications of North Carolina, Incorporated
SC-997	9-29-94	Jambon's Grille & Smokehouse, LLC
SC-998	9-29-94	Henry A. Solomon
SC-999	9-29-94	Kamal F. Rizk
SC-1001	10-4-94	Ronnie Earl Williams, d/b/a Norhez Tele-Vend
SC-1002	10-4-94	James Stephen Lassiter, d/b/a VFT Phones
SC-1003	10-5-94	David I. Park
SC-1004	10-21-94	J & J Communique', John and Janet Hughes, d/b/a
SC-1005	10-21-94	Thomas M. Seymour
SC-1006	10-21-94	Plantation Laundry, Gail D. Miller, d/b/a
SC-1007	10-21-94	Staley and Debbie Green
SC-1008	10-21-94	Masteko Communications, Fonati Jonathan Koffa, d/b/a
SC-1009	10-21-94	James E. Halas
SC-1010	11-7-94	AAA Communications of Charlotte, Inc.
SC-1011	11-7-94	Robert "Bob" D. Duffy
SC-1012	11-7-94	Pleasant Ridge Communications, Inc.
SC-1013	11-7-94	Vernon and Pam Abrams
SC-1014	11-7-94	University of North Carolina at Charlotte
SC-1015	11-7-94	Politis Payphones, Louie Pete Politis, d/b/a
SC-1016	11-7-94	I. Randall Hall, Jr.
SC-1017	11-7-94	T&G Enterprises, Gary Dennis Marlow, d/b/a
SC-1018	11-10-94	Bruce D. Ellis and Ron W. Ellis, d/b/a Cuz Comm
SC-1019	11-7-94	Lanier Communication Services Company Danita Cox Lanier, d/b/a
SC-1020	11-7-94	N.C. Indian Cultural Center, Inc.
SC-1021	11-7-94	University Place Restaurant Edka, Inc., d/b/a
SC-1022	11-10-94	Robert Bohn, Jr./Alison A. Bohn, d/b/a Pro-Tel Communications
SC-1023	11-10-94	James A. Vansickle, Jr.
SC-1024	11-10-94	William Randolph Thomas
SC-1025	11-29-94	Todd R. Rihn, d/b/a Semper Fi Communications
SC-1026	11-29-94	Freddie R. Clouse, d/b/a Clouse Communications
SC-1027	11-29-94	Richard F. Brown, d/b/a RK Investments
SC-1028	11-29-94	Dick Durkin
SC-1029	11-29-94	Alan G. Ireland
SC-1030	12-12-94	Joseph R. Kuley
SC-1031	12-12-94	Minh Nguyen
SC-1032	12-12-94	Rodney O. Davis
SC-1033	12-12-94	Terry Blankinship and Brenda Blankinship Blankinship Enterprises, d/b/a Phoneworks
SC-1034	12-12-94	Theresa and Howard Terwilliger
SC-1035	12-12-94	Jeffrey A. Morgan
SC-1036	12-12-94	Jerry Montoya

SC-1037	12-20-94	Mark D. Blashaw, d/b/a Blayco Pay Phone
SC-1039	12-20-94	Thomas M. Apodaca
SC-1038	12-20-94	Joe K. Ellenburg
SC-1043	12-27-94	Suraj Co., Inc.
STS-31	5-9-94	Peace College of Raleigh, North Carolina
STS-33	9-20-94	Facilities Communications International

SPECIAL CERTIFICATES AMENDED, REVOKED, CANCELLED OR CLOSED

Docket No.	Date	Company
SC-100, Sub 1	7-25-94	Huffman Oil Company, Inc.
SC-136, Sub 1	10-21-94	Ronald L. O'Bryant
SC-194, Sub 1	11-10-94	Journigan's Food Stores, Inc.
SC-234, Sub 1	5-31-94	William B. Edwards
SC-236, Sub 1	7-25-94	Fast Brothers, Inc.
SC-385, Sub 1	10-21-94	McCrary Auto Service/Tom McCrary, Jr.
SC-455, Sub 1	9-2-94	Little Dan's
SC-484, Sub 3	1-25-94	Crosland-Erwin-Associates
SC-501, Sub 1	12-30-94	Jayantilal H. Patel
SC-502, Sub 2	4-11-94	Tuscola High School
SC-530, Sub 2	8-22-94	Petroleum World, Inc.
SC-531, Sub 2	8-22-94	Spartan Petroleum
SC-540, Sub 1	6-6-94	Wilbert H. Hill Contractors, Inc.
SC-598, Sub 1	4-20-94	Daniel Wakefield
SC-623, Sub 1	1-31-94	Mrs. Rosalie Byrd
SC-629, Sub 1	1-25-94	North Davie Junion High School
SC-664, Sub 1	8-17-94	William G. Davis, Jr.
SC-672, Sub 1	2-21-94	John T. Hayes
SC-676, Sub 1	5-20-94	Keith R. Bowman
SC-688, Sub 1	2-7-94	Darlene Hanford, d/b/a Gaycom
SC-695, Sub 1	7-8-94	Eastern Randolph High School
SC-697, Sub 1	3-1-94	George Maloomian
SC-734, Sub 1	1-25-94	Charlie McLean Lohr
SC-742, Sub 1	9-13-94	Wilson Pharmacy and Medical Supplies, Inc.
SC-749, Sub 1	8-4-94	Bill Gallis
SC-778, Sub 1	3-1-94	Ascom Communications, Inc.
SC-782, Sub 1	1-18-94	Bud P. Goodman
SC-806, Sub 1	10-21-94	Frederick L. White
SC-808, Sub 1	11-10-94	Kirby James Cooper
SC-809, Sub 1	2-21-94	Gene Blanton
SC-812, Sub 1	1-11-94	Steve Douglas Goode
SC-811, Sub 1	6-6-94	Villa Sorrento, Inc.
SC-818, Sub 1	9-30-94	Robert T. Taylor, d/b/a G T Vends
SC-822, Sub 1	12-12-94	Philip Christy, d/b/a CCT Christy's Coin-Op Telephones
SC-826, Sub 1	3-23-94	Dennis Gene Eshbaugh
SC-828, Sub 1	6-27-94	Kathryn T. Jeidy, d/b/a Telefax Opportunities
SC-829, Sub 1	3-23-94	Toby L. Faw
SC-831, Sub 1	10-21-94	Koon Hai Wang
SC-834, Sub 1	2-21-94	Z-Tech, Inc.

SC-850, Sub 1	1-11-94	Greensboro Golf Center
SC-852, Sub 1	3-15-94	Roy W. Gossett
SC-862, Sub 1	1-31-94	Lucas Cirtek Corporation
SC-869, Sub 1	5-19-94	Robert Dennis Lewis, d/b/a Sportspage Restaurant
SC-870, Sub 1	1-31-94	Earl E. Thompson
SC-875, Sub 1	8-17-94	Donald W. Parnell
SC-878, Sub 1	4-26-94	David Singleton
SC-879, Sub 1	4-11-94	Anthony Acevedo
SC-886, Sub 1	11-10-94	James W. Wood
SC-887, Sub 1	4-26-94	Mandy Singleton
SC-901, Sub 1	4-8-94	Edward P. Brigham
SC-925, Sub 1	7-25-94	I-85 Chevron Quality Service, Inc.
SC-912, Sub 1	10-21-94	B & B International, Inc.
SC-914, Sub 1	9-13-94	Jerry's Tavern, Lynda B. Mason, d/b/a
SC-931, Sub 1	12-12-94	Cozell McQueen, Jr.
SC-998, Sub 1	11-10-94	Henry A. Solomon

SPECIAL CERTIFICATES REINSTATED

Docket No.	Date	Company
SC-62, Sub 3	4-8-94	Pay Tel Communications, Inc.
SC-630, Sub 1	12-9-94	Craig Lunsford
SC-864, Sub 1	1-31-94	Coin Telephones, Inc.
SC-881, Sub 1	6-27-94	Sam's Mart, Inc.

TARIFFS

AT&T Communications of the Southern States, Inc. - Order Delaying Compliance Date to Eliminate the Day Save Rate Period for Its Message Telecommunications Service
P-140, Sub 34 (1-26-93)

AT&T Communications of the Southern States, Inc. - Order Allowing Tariff and Setting New Capped-Rates for Certain Services
P-140, Sub 39; P-100, Sub 72 (4-26-94)

AT&T Communications of the Southern States, Inc. - Order Suspending Tariff Pending Notice
P-140, Sub 40 (5-24-94)

AT&T Communications of the Southern States, Inc. - Order Allowing Tariff to Revise the Rates for Its Series 2000 and Foreign Exchange Private Line Services
P-140, Sub 41 (10-5-94)

Communications Gateway Network, Inc. - Order Suspending Tariff to Offer Debit Card Service and Requiring Response
P-317, Sub 3 (8-19-94)

Concord Telephone Company - Order Suspending Tariff in the Interim to Revise Its Metro Option Plan (Commissioners Charles H. Hughes and Laurence A. Cobb dissent.)
P-16, Sub 177 (3-23-94)

Concord Telephone Company - Order Deferring Tariff (Commissioners Hughes, Cobb, and Duncan dissent.)
P-16, Sub 177 (4-6-94)

Concord Telephone Company - Order Allowing Tariff Revisions
P-16, Sub 177 (5-20-94)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff to Restructure its Local Transport Access Charges for Interexchange Carriers to go into Effect
P-55, Sub 990 (2-24-94)

Southern Bell Telephone and Telegraph Company Order Allowing ISDN Tariff
P-55, Sub 999 (6-9-94)

MISCELLANEOUS

ALLTEL Carolina, Inc. - Order Accepting Contract Between Affiliates for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
P-118, Sub 76 (9-28-94)

Business Choice Network - Order Giving Notice of Intent to Cancel Operating Authority for Failure to Pay Public Utility Regulatory Fee
P-254, Sub 2 (8-16-94)

Carolina Telephone and Telegraph Company - Order Allowing Regrouping (Chairman Wells dissents.)
P-7, Sub 739 (10-12-94)

Carolina Telephone and Telegraph Company - Order Accepting Contract Between Affiliates for Filing and Permitting Operation and Thereunder Pursuant to G. S. 62-153
P-7, Sub 798 (8-31-94)

Central Telephone Company Order Authorizing Cost Study
P-10, Sub 468 (1-25-94)

ConQuest Long Distance Corporation - Order Tentatively Finding Conquest to be an Alternative Operator Service Subject to Dismissal
P-324, Sub 1 (10-11-94)

GTE South, Inc., and Contel of North Carolina, Inc., d/b/a GTE North Carolina - Order Accepting Affiliated Contract for Filing and Permitting Operation Thereunder Pursuant to G. S. 62-153
P-19, Sub 248 (6-30-94)

GTE South - Order Authorizing Discount Calling Plans (Commissioner Hughes did not participate.)
P-19, Sub 259 (9-19-94)

GTE South, Inc. - Order Accepting Affiliated Lease for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
P-19, Sub 266 (12-21-94)

GTE South Incorporated - Order Granting Authority to Amortize Certain Costs Associated with the Reacquisition of Long-Term Debt
P-19, Sub 267 (12-12-94)

Intelicom Corporation - Order to Cease and Desist
P-405 (5-11-94)

KAST Communications, Inc.; Intrastate Telecommunications Service Order Requiring Response
P-339; P-363 (9-27-94)

MCI Telecommunications Corporation - Order Authorizing IntraLATA Facilities-Based 10XXX-1+ Calling and Scheduling IntraLATA Access Charges Hearing
P-141, Sub 19; P-100, Sub 65; P-100, Sub 72 (2-9-94)

North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Declaring Triangle and Triad Calling Plans Permanent and Requiring Certain Modifications (Former Chairman John E. Thomas did not participate in this decision-making.)
P-55, Sub 952; P-55, Sub 942 (5-17-94)

Saluda Mountain Telephone Company; Barnardsville Telephone Company - Order Accepting Contract Between Affiliates for Filing and Permitting Operation Thereunder Pursuant To G.S. 62-153
P-76, Sub 36; P-75, Sub 45 (9-28-84)

Southern Bell Telephone and Telegraph Company - Order Extending Termination Date
P-55, Sub 952; P-55, Sub 942 (1-4-94)

Triangle J Council of Governments - Order Making Chapel Hill Border Plan Permanent
P-55, Sub 888 (12-22-94)

Triangle Telephone Company, Inc. - Order to Cease and Desist and to Show Cause
SC-172, Sub 3 (4-13-94)

Triangle Telephone Company, Inc. - Recommended Order to Cease and Desist and Require Fines and Penalties
SC-172, Sub 3 (8-24-94)

Triangle Telephone Company, Inc. - Order Allowing Fine to be Paid Over a Period of Time
SC-172, Sub 3 (10-4-94)

VarTec Telecom, Inc. - Order Requiring Response
P-362, Sub 1 (9-27-94)

WATER AND SEWER

ABANDONMENT

Brookside Water Company - Recommended Order Denying Application to Abandon Water Utility Service in Brookside Subdivision, Haywood County
W-330, Sub 7 (5-4-94)

Intech Utilities, Inc. - Recommended Order of Unauthorized Abandonment of Utility Service at Yates Mill Run Subdivision, Wake County
W-957, Sub 1 (2-2-94)

Skyland Drive Water Association, Jan Black, d/b/a - Recommended Order Denying Application for Abandonment to Discontinue Water Utility Service in Skyland Drive Subdivision, Gaston County
W-964, Sub 2 (5-4-94)

APPLICATIONS AMENDED

Holiday Island Property Owners Association - Order Amending Order of December 8, 1992
W-386, Sub 8 (1-19-93)

APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

Billingsley, John T. - Order Allowing Withdrawal of Application, Requiring Public Notice, Canceling Hearing, and Closing Docket
W-632, Sub 3 (5-9-94)

Bolick, Albert L. - Order Withdrawing Application of Closing Docket
W-430, Sub 2 (10-5-94)

Britley Utilities, Inc. - Order Denying Motion for Alternation in Bond Requirement
W-1051 (11-22-94)

Cape Fear Utilities, Inc., Quality Water Supplies, Inc., and Masonboro Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-279, Sub 26; W-225, Sub 22; W-623, Sub 4 (12-12-94)

Cape Fear Utilities, Inc., and Quality Water Supplies, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-279, Sub 27; W-225, Sub 23 (12-12-94)

Carolina Blythe Utility Company - Order Allowing Withdrawal of Application and Closing Docket
W-503, Sub 6 (7-20-94)

Carolina Water Service, Inc. of North Carolina - Order Allowing Withdrawal of Application, Canceling Hearing, Requiring Public Notice, and Closing Docket
W-354, Sub 136 (7-20-94)

Caw Caw Land Corporation - Order Withdrawing Application and Closing Docket
W-1047 (2-28-94)

Flat Mountain Estates Water System, Cleveland Enterprises Water System, Inc., d/b/a - Order Allowing Withdrawal of Application, Canceling Hearing, Requiring Public Notice, and Closing Docket
W-973, Sub 1 (7-14-94)

Honeycutt, Wayne M. - Order Withdrawing Application and Closing Docket
W-472, Sub 6 (5-19-94)

Hydraulics, Ltd. - Order Withdrawing Application and Closing Docket
W-218, Sub 93 (10-12-94)

Hydraulics, Ltd. - Order Allowing Withdrawal of Application, Cancelling Hearing and Requiring Notice
W-218, Sub 100 (11-14-94)

Mid South Water Systems, Inc. - Order Denying Motion for Reconsideration (Chairman Wells and Commissioner Duncan did not participate.)
W-720, Sub 100 (11-1-94)

Mid South Water Systems, Inc. - Order Granting Motion to Withdraw Appeal
W-720, Sub 100 (11-21-94)

Ocean Side Corporation Order Allowing Withdrawal of Application and Closing Docket
W-636, Sub 3 (5-2-94)

Pace Utilities Group, Inc. - Order Denying Motion for Reconsideration
W-1046 (4-8-94)

Ruff Water Company, Inc. - Order Withdrawing Application and Closing Docket
W-435, Sub 11 (3-9-94)

West Wilson Water Coporation - Order Allowing Withdrawal of Application and Closing Docket
W-781, Sub 21 (12-7-94)

CANCELLED OR REVOKED

Channel Side Corporation - Order Canceling Franchise for Providing Water Utility Service in Lockwood Folly Subdivision, Brunswick County, and Authorizing Release of Bond
W-939, Sub 2 (5-24-94)

Cook, L. V. Water Supply - Order Canceling Franchise for Providing Water Uitliy Service in Pine Point and Turner Lee Subdivisions, Stanly County
W-540, Sub 5 (5-18-94)

Harward's Realty & Insurance Company - Order Canceling Franchise for Providing Water Utility Service in Whispering Pines Subdivision, Cabarrus County
W-710, Sub 1 (2-1-94)

Lewis Water Systems - Order Canceling Franchise for Providing Water Utility Service in Crestwood Subdivision, Gaston County, and Closing Docket
W-288, Sub 6 (5-18-94)

Rose Hill Water Company - Order Canceling Franchise to Provide Water Utility Service in Westwood Mobile Home Park, Pitt County
W-677, Sub 3 (8-19-94)

Terres Bend Water System, John F. Swinson, t/a - Order Canceling Water Utility Franchise to Provide Water Utility Service in Terres Bend Subdivision, Cabarrus County
W-821, Sub 1 (8-3-94)

CERTIFICATES

Bradfield Farms Water Company - Order Granting Temporary Operating Authority for to Provide Water and Sewer Utility Service in Brandfield Farms Subdivision, Cabarrus and Mecklenburg Counties, Approving Interim Rates, Scheduling Hearing, Requiring Public Notice and Requiring Bond
W-1044 (1-27-94) Errata Order (2-3-94) Errata Order (1-28-94)

Carolina Water Service, Inc. of North Carolina - Order Canceling Hearing, Granting Certificate to Provide Sewer Utility Service in Eagle's of the Blue Mountain at Wolf Laurel Subdivision, Yancey County, Approving Rates, and Requiring Public Notice
W-354, Sub 132 (9-14-94)

Carolina Water Service, Inc. of North Carolina - Order Granting Certificate to Provide Water Utility Service to the National Forest Service at Black Mountain Campground, Yancey County, and Approving Rates
W-354, Sub 141 (8-24-94)

Cotesworth Down Utilities, Inc. - Recommended Order Granting Certificate to Furnish Water Utility Service in Cotesworth Down Subdivision, Wake County, and Approving Initial Rates
W-1039 (2-23-94)

Crooked Creek Utilities, C. C. Partners, Inc., d/b/a - Recommended Order Granting Certificate to Furnish Sewer Utility Service in Crooked Creek Subdivision, Wake County, and Setting Rates
W-1048 (9-26-94)

Duke Power Company - Order Granting Franchise to Furnish Water Utility Service to the New Cherokee Corporation Plant, the Cone Mills Haynes Plant, Weaver Plant, Yarn Plant, and a Narrow Corridor Along the Route of the Water Main Extension from Its Ruth-Rutherfordton-Spindale System to the Plants and Approving Rates
W-95, Sub 16 (1-6-94)

Heartwood Water, Spence Dickinson, d/b/a - Order Granting Franchise to Provide Water Utility Service for Heartwood Subdivision, Orange County, and Hydraulics, Ltd. to Furnish Water Utility Service in Heartwood Subdivision, Orange County, and Approving Rates
W-1050; W-218, Sub 101 (8-24-94)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Southgate Subdivision (Section XI), Johnston County, and Approving Rates
W-274, Sub 82 (2-17-94)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Wood Spring Subdivision, Wake County, and Approving Rates
W-274, Sub 85 (5-12-94)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Oaklyn Subdivision, Wake County, and Approving Rates
W-274, Sub 86 (4-28-94)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Garrett Ridge Subdivision, Franklin County, and Approving Rates
W-274, Sub 89 (6-28-94)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Eagle Creek Subdivision, Wake County, and Approving Rates
W-274, Sub 90 (10-21-94) Order Correcting Schedule of Rates (12-7-94)

Piedmont Construction & Water Company, Inc. - Order Granting Franchise to Furnish Water utility Service in Jacob's View Subdivision, Catawba County, and Approving Rates
W-262, Sub 48 (11-10-94)

Piedmont Construction & Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Ipswich Bay Subdivision, Catawba County, and Approving Rates
W-262, Sub 51 (12-14-94)

Turner Farms Water - Order Granting Franchise to Furnish Water Utility Service in MIddle Creek Mobile Home Park, Wake County, and Approving Rates
W-687, Sub 5 (4-28-94)

Twin Creeks Utilities, D & S Properties, d/b/a - Recommended Order Granting Water Utility Franchise in Twin Creeks Subdivision, Buncombe County, and Approving Rates
W-1035 (1-26-94)

Whispering Pines Village, John D. Hook, d/b/a - Recommended Order Granting Franchise to Provide Water and Sewer utility Service in Whispering Pines Village Mobile Home Park, Cumberland County, and Approving Rates
W-1042 (3-2-94)

COMPLAINTS

Carolina Water Service, Inc. of North Carolina - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of Sugar Mountain Resort, Inc.
W-354, Sub 116 (3-8-94)

Carolina Water Service, Inc. - Order Accepting Settlement in Complaint of Juanita Hansen, and Closing Docket
W-354, Sub 135 (8-24-94)

Carolina Water Service, Inc. of North Carolina - Corrected Order Keeping Docket Open for Six Months in Complaint of Robert Morra
W-354, Sub 138 (8-26-94)

Carolina Water Service, Inc. of North Carolina Order Keeping Docket Open for Six Months in Complaint of Robert Morra
W-354, Sub 138 (8-16-94)

Crosby Water and Sewer, Inc. - Recommended Consent Order in Complaint of numerous Customers in River Lake Circle (see Official Copy of Order in Chief Clerk's Office for List of Customers)
W-885, Sub 2 (9-16-94)

Fisher Utilities, Inc. - Recommended Order in Complaint of Jimmie Pennell
W-365, Sub 32 (2-15-94)

Heater Utilities - Order Canceling Hearing in Complaint of Westminster Homes, Inc., and Closing Docket
W-274, Sub 83 (5-12-94)

Heater Utilities - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Mark Stephen Ellis
W-274, Sub 84 (3-3-94)

Hudson-Cole Development Corp. - Order Keeping Docket Open for Six Months in Complaint of Cole Park Plaza Associates Limited Partnership
W-875, Sub 5 (4-25-94)

Hudson-Cole Development Corp. - Order Accepting Settlement of Complaint and Closing Docket in Complaint of Cole Park Plaza Associates Limited Partnership
W-875, Sub 5 (12-1-94)

Hudson-Cole Development Corporation - Order Allowing Complainant to Amend Complaint of Grey B. Moody and Bradley K. Moody
W-875, Sub 6 (5-6-94)

Hunter Water Company - Order Canceling Hearing in Complaint of Roy Burdette, and Consolidating Dockets
W-534, Sub 3; W-218, Sub 92 (5-24-94)

Lagrange Water Company - Order Closing Docket in Complaint of Albert E. Nichols
W-200, Sub 29 (10-27-94)

Mercer Environmental Corporation - Recommended Order Dismissing Complaint of Travis Wilmoth, d/b/a Wilmoth Rentals
W-198, Sub 31 (12-9-94)

Mid South Water Systems, Inc. - Order Dismissing Complaint of Mark J. King and Closing Docket
W-720, Sub 140 (8-3-94)

Mid South Water Systems - Order Keeping Docket Open for Six Months in Complaint of Andrew V. Petkash and Larry A. Pardue
W-720, Sub 142 (8-16-94)

Mid South Water Systems - Corrected Order Keeping Docket Open for Six Months in Complaint of Andrew V. Petkash, and Larry A. Pardue President, The Villages of Wexford Homeowners Association, Inc.
W-720, Sub 142 (8-26-94)

North Topsail Water and Sewer Company - Order Closing Docket in Complaint of Mrs. Judith Brinkley
W-754, Sub 16 (5-2-94)

River Run Utilities, Inc. - Order Accepting Settlement in Complaint of NationsBank of North Carolina, and Closing Docket
W-853, Sub 4 (5-25-94)

Ross, Sanford E. - Order Requiring Report by July 15, 1994, and Compliance by August 26, 1994, in Complaint of Teresa Lehman
W-618, Sub 2; W-618, Sub 3; W-618, Sub 4 (6-13-94)

Scotsdale Water & Sewer, Inc. - Order Closing Docket in Complaint of William Curtis Phillips
W-883, Sub 20 (4-27-94)

Transylvania Utilities, Inc. - Order Withdrawing Complaint of Leon P. Sobolewski, and Closing Docket
W-1012, Sub 1 (3-28-94)

DISCONTINUANCE OF SERVICE AND DISCONNECTIONS

Hidden Valley Campground Estates and Campground Water Systems - Order Authorizing Disconnection of Service for Nonpayment of Water Utility Bills
W-915, Sub 1 (2-9-93)

Intech Utilities, Inc. - Order Authorizing Disconnection of Water Service for Nonpayment of Sewer Bills at Yates Mill Run Subdivision, Wake County
W-957, Sub 1 (4-8-94)

Lynn Drive Water System - Interim Order Requiring Public Notice to Discontinue Water Utility Service in Lynn Drive Subdivision, Cabarrus County
W-1052 (11-4-94)

Mid South Water Systems, Inc. - Order Authorizing Discontinuance of Service in Olde Creek Subdivision, Mecklenburg County, and Requiring Notice to Customers
W-720, Sub 135 (6-21-94)

Mid South Water Systems, Inc. - Order Authorizing Discontinuance of Service in Rock Bridge Heights Subdivision, Catawba County, and Requiring Notice to Customers
W-720, Sub 137 (6-28-94)

Mid South Water Systems, Inc. - Order Authorizing Discontinuance of Water Service in White Rock Subdivision, Cleveland County, and Requiring Notice to Customers
W-720, Sub 141 (7-19-94)

North State Utilities, Inc. - Order Authorizing Disconnection of Water Service for Nonpayment of Sewer Bills
W-848, Sub 16 (4-6-94)

Piedmont Construction & Water Company, Inc. - Recommended Order Authorizing Discontinuation of Utility Service Serving Pinebrook Park Subdivision, Catawba County, and Requiring Public Notice
W-262, Sub 50 (10-14-94)

River Run Utilities, Inc. - Recommended Order Denying Authority to Discontinue Service
W-853, Sub 3; W-1043 (3-16-94)

EMERGENCY OPERATOR

Bradfield Farms Utility Company - Order Releasing Crosland As Emergency Operator, Granting Britley Temporary Operating Authority, and Setting Time for Implementation of EPA Surcharges
W-1026; W-1046; W-1051 (11-22-94)

Intech Utilities, Inc. - Order Aproving Emergency Operator for Yates Mill Run Subdivision, Wake County
W-957, Sub 1 (1-20-94)

Mobile Hill Estates Water System, Scotsdale Water and Sewer, Inc. - Order of the Commission Staff and the Public Staff for Emergency Operator
W-224, Sub 9 (8-23-94)

North State Utilities, Inc. - Order Authorizing Disconnection of Water Service for Nonpayment of Sewer Bills and Continuing Monthly Sewer Rate of $85.00 Per Customer in the Oakcroft Subdivision
W-848, Sub 16 (5-4-94)

North State Utilities, Inc. - Order Authorizing Emergency Operator to Salvage Equipment at Sutton Estates Subdivision
W-848, Sub 16 (10-18-94)

North State Utilities, Inc. - Order Discharging Emergency Operator at Sutton Estates Subdivision
W-848, Sub 16 (10-31-94)

Tri-South Construction Company - Recommended Order Appointing Emergency Operator and Approving Interim Provisional Water Utility Rates
W-849, Sub 2 (11-15-94)

NAME CHANGE

John T. Billingsley - Order Approving Partnership Name Change from W. D. & John T. Billingsley
W-632, Sub 2 (2-18-94)

RATES

Alpha Utilities, Inc. - Recommended Order Granting Partial Increase in Rates for Water Utility Service in All Its Service Areas in North Carolina
W-862, Sub 14 (2-23-94)

Brightwater Water Department, Inc. - Order Granting Rate Increase for Water Utility Service in Brightwater Subdivision, Henderson County, Approving Tariff Revision, and Requiring Public Notice
W-151, Sub 7 (7-19-94)

Brookwood Water Corporation - Recommended Order Approving Partial Increase in Rates for Providing Water Utility Service in All Its Service Areas in North Carolina
W-177, Sub 38 (5-9-94) Order Allowing Recommended Order to Become Effective (5-9-94)

CWB Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Utility Service for All Its Customers in Onslow County
W-852, Sub 2 (2-9-94)

CWS Systems, Inc. - Recommended Order Granting Partial Increase for Water Utility Service in Forest Hills Subdivision, Jackson County
W-778, Sub 21 (4-29-94) Order Approving Recommended Order (4-29-94)

Carolina Water Service, Inc. of North Carolina - Order Approving Surcharge/Refund for Water and Sewer Utility Service in All of Its Service Areas in North Carolina, and Closing Docket
W-354, Sub 111 (8-26-94)

Carolina Water Service, Inc. of North Carolina - Order Adjusting Rates for Water and Sewer Utility Service in All of Its Service Areas in North Carolina and Requiring Public Notice
W-354, Sub 111; W-354, Sub 128 (10-14-94)

Carolina Water Service, Inc. of North Carolina - Order on Reconsideration for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina (Chairman Wells did not participate in this decision. Commissioner Cobb dissents in part. Commissioner Cobb voted to affirm the Commission Order entered on this docket on June 10, 1994. Commissioner Duncan concurs in part and dissents in part by separate opinion. Commissioner Ralph Hunt joins in Commissioner Duncan's concurring and dissenting opinion.)
W-354, Sub 128 (9-21-94)

Carolina Water Service, Inc. of North Carolina - Interlocutory Order Granting Interim Rates Subject to Refund for Providing Sewer Utility Service in Eagles Nest I and II and Blue Mountain Club Phases of the Blue Mountain at Wolf Laurel Subdivision, Yancey County
W-354, Sub 132 (8-18-94)

Chimney Rock Water Works - Recommended Order Allowing Partial Rate Increase for Providing Water Utility Service in Chimney Rock Subdivision, Rutherford County
W-102, Sub 11 (4-7-94)

Greenfield Heights Development Corporation - Recommended Order Granting Partial Rate Increase for Water Utility Service in Greenfield Heights Subdivision, Craven County
W-205, Sub 1 (2-18-94)

HIPOA Water and Sewer, Holiday Island Property Owner Association, d/b/a - Recommended Order Approving Rate Increase for Water and Sewer Utility Service in Holiday Island, Perquimans County
W-386, Sub 10 (6-17-94) Further Recommended Order Approving Rate Increase (7-18-94) Errata Order (7-21-94)

Hydrologic, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Utility Service in Mountain Valley Subdivision, Henderson County
W-988, Sub 6 (11-21-94)

Hydrologic, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Buffalo Meadows Subdivision, Ashe County
W-988, Sub 7 (12-1-94)

Hydrologic, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Utility Service in Hunter's Glen Subdivision, Henderson County
W-988, Sub 8 (12-7-94)

Hydrologic, Inc. - Order Granting Partial Rate Increase for Water Utility Service in Kirk Glen Subdivision, Buncombe County
W-988, Sub 9 (11-18-94)

Mauney, William K., Jr. - Recommended Order Granting Rate Increase for Water Utility Service in Berryhill-Holiday-Westwood Mobile Home Parks, Mecklenburg County, and Requiring Public Notice
W-560, Sub 2 (4-28-94) Order Adopting Recommended Order (4-28-94)

Nags Head Village Service Company - Recommended Order Granting Partial Increase in Rates for Sewer Utility Service in Nags Head Village Subdivision, Dare County
W-882, Sub 2 (4-8-94) Order Adopting Recommended Order (4-8-94)

North State Utilities, Inc. - Order Approving Reduced Connection Charge for Heater Utilities, Inc., in the North State Systems
W-848, Sub 16 (2-2-94)

North State Utilities, Inc. - Order Approving Rate Revision
W-848, Sub 16 (2-23-94)

North State Utilities, Inc. - Order Rescinding Rate Revision in the Oakcroft Subdivision
W-848, Sub 16 (3-10-94)

North State Utilities, Inc. - Order Approving Rate for Harrco Utility Corporation to Pump Invididual Step and Septic Tanks
W-848, Sub 16 (5-11-94)

Poplar Terrace Mobile Home Park, Charley Williams, d/b/a - Recommended Order Granting Increase in Rates for Water and Sewer Utility Service in Poplar Terrace Mobile Home Park, Buncombe County
W-775, Sub 2 (5-9-94)

Sapphire Lakes Utility Company - Recommended Order Approving Rate Increase for Water and Sewer Utility Service in Sapphire Lakes Subdivision, Transylvania County
W-941, Sub 2 (6-16-94)

Skyland Drive Water Association, Jan Black, d/b/a - Order Allowing Amendment to Application for Authority to Increase Rates for Water Utility Service, and for a Surcharge to cover Cost of EPA Mandated Testing in Skyland Drive Subdivision, Gaston County, and Requiring Public Notice
W-964, Sub 3 (9-30-94)

Skyland Drive Water Association, Jan Black, d/b/a Recommended Order Granting Rate Increase for Water Utility Service, and for a Surchage to cover Costs of Mandated Testing in Skyland Drive Subdivision, Gaston County
W-964, Sub 3 (11-17-94)

Turner Farms Water - Order Approving Tap on Fee for Future Customers In All Its Service Areas, Wake County
W-687, Sub 6 (6-10-94)

Turner, T. H. Farms Corporation Recommended Order Granting Partial Rate Increase for Water Utility Service in all Its Service Areas, Wake County
W-687, Sub 8 (12-16-94) Order Allowing Recommended Order to Become Effective (12-21-94)

Viking Utilities Corporation, Inc. - Recommended Order Authorizing Partial Rate Increase for Sewer Utility Service in All Its Service Areas in Onslow County
W-740, Sub 6 (2-22-94)

Woodlake Water and Sewer Company, Inc. - Recommended Order Approving Partial Increase in Rates
W-1029 (8-10-94) Order Amending Recommended Order of August 10, 1994 (8-22-94)

SALES AND TRANSFERS

Bellview Water System, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Bellview Subdivision, Cleveland County, to the Cleveland County Sanitary District (new owner exempt from regulation)
W-684, Sub 1 (11-8-94)

C & L Utilities, Inc. - Order Approving Transfer of Water Utility Systems in Prince George Estates, Creekstone Estates, and Brickstone Estates Subdivisions, New Hanover County, to New Hanover County (Owner Exempt from Regulation), and Requiring Public Notice
W-535, Sub 12 (1-26-94)

Coastal Carolina Utilities, Inc. - Order Approving Transfer of Ownership of its Water and Sewer Utility Systems, New Hanover County, to New Hanover County (Owner Exempt from Regulation), Requiring Customer Notice, and Scheduling Hearing
W-917, Sub 4 (12-27-94)

Elk River Utilities, Inc. - Order Canceling Hearing, Approving Transfer of Franchise to Provide Water and Sewer Utility Service in Elk River Development, Avery County, and Rates, and Requiring Customer Notice
W-1058 (12-21-94)

Flanders Filters, Inc. - Recommended Order Granting Transfer to Provide Water Utility Service to Flanders Filters and Shad Bend Subdivision, Beaufort County, to the City of Washington (Owner Exempt From Regulation)
W-542, Sub 3 (1-14-94) Order Adopting Recommended Order (1-14-94)

G & F Utilities, G & F Construction, Inc., d/b/a - Order Approving Transfer Ownership of its Sewer Utility System, New Hanover County, to New Hanover County (Owner Exempt from Regulation), Requiring Customer Notice, and Scheduling Hearing
W-940, Sub 1 (12-27-94)

Heater Utilities, Inc. - Order Granting Transfer Franchise to Provide Water Utility Service in Stephanie Woods, Heather Downs, Kenwood Meadows, Southern Oaks and Weekend Retreat Subdivisions, Johnston and Wake Counties, from Johnston-Wake Utilities, Inc., and Approving Rates
W-274, Sub 81 (4-7-94)

Heater Utilities, Inc. - Recommended Order Approving Transfer to Provide Water Utility Service in The Olde Mills Lake Subdivision, Wake County, from Owens-Grantham Ventures
W-274, Sub 88 (9-28-94)

Hudson-Cole Development Corporation - Order Granting Transfer to Hudson-Cole Water and Sewer Company and Approving Rates
W-875, Sub 4 (3-4-94)

Hydraulics, Ltd. - Recommended Order Approving Transfers to Provide Water Utility Service in Parkwood and Huntwood Subdivisions, Mecklenburg County, from Hunter Water Company, and Partial Rate Increase and Requiring Public Notice
W-218, Sub 92 (8-5-94)

Hydraulics, Ltd. - Recommended Order Granting Transfer to Provide Water Utility Service in Valleydale Subdivision, Gaston County, from Valleydale Water Company and Partial Rate Increase
W-218, Sub 94 (7-29-94)

Hydraulics, Ltd. - Order Approving Transfer of the Water Utility Systems in Suburban Acres and Apple Hill Acres Subdivisions, Cleveland County, to Cleveland County Sanitary District (Owner Exempt from Regulation), Canceling Franchises and Scheduling Hearing on Gain on Sale Issue
W-218, Sub 96 (8-12-94)

Hydraulics, Ltd. - Recommended Order Granting Transfer of Franchise to Provide Water Utility Service in Hickory Creek Subdivision, Gaston County, from Hickory Creek Developers, Inc., and Partial Rate Increase
W-218, Sub 97 (10-31-94)

LaGrange Waterworks Corporation - Order Approving Transfer of Franchise Providing Water Utility Service in Lake Rim Estates, Oak Meado, Whitaker Park Subdivision, and Sunset Park Mobile Home Park, Cumberland County, from Sunset Park Utilities, Inc., and Approving Rates
W-200, Sub 26 (1-20-94)

LaGrange Waterworks Corporation Order Approving Transfer of a Portion of the Water Utility Service Area in the Eureka Springs Section of the Braxton Hills Water System, Cumberland County, to the Public Works Commission of the City of Fayetteville (Owner Exempt from Regulation)
W-200, Sub 28 (4-14-94) Errata Order (5-11-94)

The Marmarose Company - Order Granting Transfer of Water Utility Service in MarMann Terrace Subdivision, Craven County, to the City of Havelock (Owner Exempt from Regulation)
W-865, Sub 1 (2-9-94)

Westgate Utilities Company, Inc. Order Approving Transfer of Water Utility Service in Westgate Estates Subdivision, Wake County, to the City of Raleigh (Owner Exempt from Regulation, and Requiring Customer Notice
W-239, Sub 3 (8-31-94)

SECURITIES

Baywood Water, Inc. - Order Approving Irrevocable Letter of Credit and Releasing Cash Bond
W-1018 (11-15-94)

Bradfield Farms Water Company - Order Approving Revised Surety Bond
W-1044 (8-3-94)

Britley Utilities, Inc. - Order Requiring Completion of Bonding Requirement to Provide Water and Sewer Utility Service in the Britley Subdivision, Cabarrus County
W-1051 (12-7-94)

Carolina Blythe Utility Company - Order Requiring Bond and Approving Irrevocable Letter of Credit
W-503, Sub 5 (6-30-94)

Carolina Water Service, Inc. - Order Denying Request to Release Bond
W-354, Sub 74 (10-17-94)

Carolina Water Service, Inc. - Order Denying Request to Release Bond
W-354, Sub 74; W-354, Sub 87 (10-25-94)

Crooked Creek Utilities, C. C. Partners, Inc., d/b/a - Order Requiring Bond
W-1048 (12-2-94)

Heater Utilities, Inc. - Order Authorizing Release of Bond
W-274, Sub 81 (9-13-94)

Hydraulics, Ltd. - Order Approving Application for Approval of Irrevocable Letter of Credit as Security for Bonds
W-218, Sub 98 (9-6-94)

Hydraulics, Ltd. - Order Aprpoving Irrevocable Letter of Credit and Releasing Cash Bonds (Commissioner Duncan dissents.)
W-218, Sub 98 (12-1-94)

Mid South Water Systems, Inc. - Order Transferring Bond
W-720, Sub 110 (5-9-94)

North State Utilties, Inc. - Order Authorizing Release of Bond Proceeds
W-848, Sub 16 (6-16-94)

Pace Utilities Group, Inc. - Order Holding Approval of Bond in Abeyance
W-1046, (5-20-94)

Pine Island Utilities, Turnpike Properties, Inc., d/b/a - Order Approving Irrevocable Letter of Credit and Releasing Cash Bonds
W-999 (12-22-94)

White Springs Water System, Inc. - Order Authorizing Release of Bond
W-1023 (11-10-94)

TARIFFS

Alpha Utilities, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently-Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-862, Sub 18 (3-17-94)

Anderson Creek Homes Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-724, Sub 3 (5-11-94)

Baywood Water, Inc. - Order Approving Tariff Revision to Increase Rates for Water utility Services Due to Increase Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-1018, Sub 1 (8-4-94)

Billingsley, John T. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and to Change Its Billing Frequency to Monthly
W-632, Sub 4 (5-18-94)

CWS Systems, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-778, Sub 22 (4-19-94)

CWS Systems, Inc. - Order Approving Tariff Revision for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-778, Sub 23 (6-13-94)

Corriher Water Service, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Services Due to Increase Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-233, Sub 16 (4-19-94)

Cregg Bess, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-281, Sub 10 (8-19-94) Errata Order (8-24-94)

Davis, Roy A. and Virginia B. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-631, Sub 3 (5-27-94)

Dogwood Knolls Water Company, R. Wiley Smith, d/b/a - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-792, Sub 5 (11-30-94)

Falls, Ralph L. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-268, Sub 8 (9-22-94)

Farm Water Works - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increase Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-844, Sub 2 (4-20-94)

Glynnwood Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Sevice Due to Increased Expenses Related to Recently Emplemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-1032, Sub 1 (5-18-94)

Goss Utility Company - Order Approving Tariff Revision to Increase Rates for Water Utility ServiceDue to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Hart Water System, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Services Due to Increase Expenses Related to Recently Implemented APA Mandated Testing Requirements
W-739, Sub 3 (4-20-94)

Heater Utilities, Inc. - Order Amending Tariff to Include a Sewer Treatment Plant Capacity Charge for Areas Contiguous to Hawthrone Phases I and III, and Woodvalley Phase XI
W-274, Sub 87 (6-22-94)

Honeycutt, Wayne M. Water Systems - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Huffman, H. C. Water Systems, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Hydraulics, Ltd. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
W-218, Sub 95 (4-14-94)

Kings Grant Water Company - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-250, Sub 9 (1-12-94)

LaGrange Waterworks Corporation - Order Approving Tariff Revision for Water Utility Service Adding a Service Surcharge Due to Increased Expenses Related to Rcently Implemented EPA Mandated Testing Requirements
W-200, Sub 27 (3-25-94) Errata Order (4-4-94)

Laurel Woods Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-694, Sub 1 (3-25-94)

Laurel Woods Water System - Order Approving Tariff Revision to Decrease Rates for Water Utility Service Due to Revised Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-694, Sub 3 (10-26-94)

Lee, Ira D. and Associates, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented CPA Mandated Testing Requirements
W-876, Sub 3 (9-23-94) Errata Order (9-27-94)

Lewis Water Company, Inc. - Order Approving Tariff Revision to Increase Rates for Water Uitlity Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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W-198, Sub 29 (7-6-94) Errata Order (7-7-94)

Mercer Envornmental Corporation - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Water Purchased from Onslow County
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Mid South Water Systems, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Mobile Hill Estates Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
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Mountain Point Utilities, Inc. - Order Approving Tariff Revision to Increase Rates for Water Uitlity Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Pineview Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Poplar Terrace Mobile Home Park, Charlie Williams, d/b/a - Order Approving Tariff Revision to Increase Rates for Water and Sewer Utility Service Due to Increased Expenses Related to Purchased Water and Sewer Services, Buncombe County
W-775, Sub 3 (9-14-94)

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Rayco Utilities, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Rolling Springs Water Company, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Scotsdale Water & Sewer, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
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Surry Water Company, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
W-314, Sub 30 (2-24-94)

Turner Farms Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements and DEHNR Operating Permit Fees
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Viewmont Acres, Gladys B. Haynes and George W. Smith, d/b/a - Order Approving Tariff Revisions to Amend Its Tariff to Increase Rates for Increased Purchased Water Costs
W-856, Sub 2 (8-24-94)

Watercrest Estates - Order Approving Tariff Revision to Increase Rates for Water and Sewer Utility Service for Increased Cost of Bulk Water and Sewage Treatment and New Testing Costs in Watercrest Estates Mobile Home Park, Iredell County
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