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JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

REPORT TO THE 1991 GENERAL ASSEMBLY OF NORTH CAROLINA SECOND REGULAR SESSION 1992

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North Carolina General Assembly

Joint Legislative Utility Review Committee

State Legislative Building

Raleigh 27611

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June 25, 1992

TO THE MEMBERS OF THE 1992 GENERAL ASSEMBLY:

Pursuant to Chapter 120, Article 12A of the North Carolina General Statutes, and Chapter 598 of the 1991 Session Laws, the Joint Legislative Utility Review Committee herewith submits its report to the 1991 General Assembly, Second Regular Session 1992.

Sen. Joseph E. Johnson
Senate Cochairman

Rep. George W. Miller, Jr.
House Cochairman

JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

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STAFF

Mr. Steven J. Rose Legal Counsel to the Committee	Ms. Blanche E. Critcher Clerk to the Committee

TABLE OF CONTENTS

INTRODUCTION

The Joint Legislative Utility Review Committee is a permanent Committee of the General Assembly, as provided in Article 12A of Chapter 120 of the General Statutes. The Committee consists of six members, three each from the Senate and the House. The House members are appointed by the Speaker of the House and the Senate members are appointed by the President of the Senate. (Beginning January 1, 1993, the Senate appointments will be by the President Pro Tempore of the Senate.) Members must be sitting members of the General Assembly. They serve at the pleasure of the appointing officer.

The general purpose of the Committee is to evaluate the actions of the State Utilities Commission and the Public Staff, and to analyze the operations of the utility companies operating in North Carolina. The Committee also stays abreast of regulatory changes relating to utilities at the federal level, and technical changes affecting utilities. The Committee is authorized to make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties of the Committee (G.S. 120-70.3(7)).

The stated powers and purposes of the Committee include the undertaking of specific studies as may be requested by the President of the Senate (after January 1, 1993 by the President

Pro Tempore of the Senate), the Speaker of the House, the Legislative Research Commission, or either House of the General Assembly (G.S. 120-70.3(8)).

During the 1991 Session of the General Assembly, Chapter 598 of the 1991 Session Laws was passed (House Bill 1039). (Appendix A.) Section 9 of this Act requires the Committee to study the matter of gas cost adjustment for natural gas local distribution companies. The Committee is required to report its findings and recommendations to the 1992 Regular Session of the 1991 General Assembly.

This report of the Joint Legislative Utility Review Committee is made in response to the specific request of the General Assembly contained in Chapter 598 of the 1991 Session Laws, and as part of the Committee's general and ongoing obligation to provide information and recommendations to the General Assembly relating to public utilities.

GAS COST ADJUSTMENT PROCEEDINGS

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends that no legislative action be taken at this time regarding gas cost adjustment proceedings for natural gas utilities because the rules governing such proceedings have only just been enacted by the Utilities Commission. The Committee will continue to monitor this issue closely for at least another 18 months. If the Committee determines that legislation is needed in the future, it will make a recommendation to the General Assembly.

Background

House Bill 1039 (Chapter 598 of the 1991 Session Laws) made significant changes in the statutes dealing with the regulation of natural gas in North Carolina. One part of the bill was designed to promote natural gas expansion and added G.S. 62-158, which allows the Utilities Commission to establish expansion funds to be used to provide natural gas in unserved areas where it would be economically unfeasible to provide this service. The other major component of the bill repealed G.S. 62-133(f), which allowed the local distribution companies (LDCs) to adjust the price charged for natural gas based upon changes in the wholesale cost of gas, and enacted G.S. 62-133.4 which provides for gas

cost adjustment proceedings in which the LDCs may change their rates from time to time in order to track changes in the cost of gas supply and transportation. The new statute also provides for an annual review by the Utilities Commission of the prudently incurred costs related to the acquisition of natural gas, and for an adjustment, up or down, for over-recovery or under-recovery of these costs by the LDC.

The repeal of G.S. 62-133(f) and the enactment of G.S. 62-133.4 reflects the changes which have taken place in the natural gas industry. Previously, the interstate pipeline companies were the supplies and transporters of natural gas to the LDCs. Now, the LDCs buy most of their gas directly from producers and the pipeline companies are primarily transporters.

G.S. 62-158(e) provides that the meaning of "costs" shall be defined by the Utilities Commission and may include all costs related to the purchase and transportation of natural gas.

The Utilities Commission instituted a rulemaking proceeding in August 1991, and thereafter the parties involved reached consensus on many aspects of the definition of gas costs. Virtually all charges and fees related to purchase, storage, and transportation of the gas supply would be subject to gas cost adjustment proceedings. Controversy arose over the treatment of additional pipeline capacity and storage costs. These are the costs of purchasing additional pipeline capacity and storage from

the transporters and wholesale suppliers beyond that which was accounted for in the utility's last general rate case. The question was whether or not these costs should be recovered in a general rate case or in the more abbreviated gas cost adjustment proceedings.

The final order of the Utilities Commission issued February 17, 1992 (Appendix B) and modified April 9, 1992 (Appendix C), allows the utilities to recover 100 percent of their prudently incurred additional capacity and storage costs through the use of the gas cost adjustment proceedings.

The Committee heard extensive testimony on the subject of gas cost adjustments at its meetings on October 16, 1991 and May 15, 1992. The Committee felt that due to the short period of time which had elapsed since the final order of the Commission was adopted, it would be prudent to allow the gas cost adjustment statute to operate through at least one full annual cycle for each LDC before discussing any possible amendments to the statute. The Committee is particularly interested in whether or not the allowance of 100 percent of the additional storage and capacity costs in the gas cost adjustment proceedings will help promote expansion of natural gas service in North Carolina. The Committee has been most interested in the subject of providing natural gas service to the many unserved areas in the state and it has been suggested in testimony before the Committee, and

before the Utilities Commission, that allowing 100 percent recovery of additional pipeline capacity and storage costs would help promote expansion, while allowing less than 100 percent recovery would stifle it.

The statement of the Utilities Commission before the Committee on May 15, 1992 is attached. (Appendix D.) It contains an excellent discussion of the controversy surrounding recovery of additional pipeline capacity and storage costs, as well as a discussion of the Commission's reasons for its order.

JOINT MUNICIPAL ELECTRIC POWER AND ENERGY ACT AMENDMENTS

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends that Chapter 159B of the General Statutes, the Joint Municipal Electric Power and Energy Act, be amended to expand the authority of joint agencies in order to allow them to actively assist municipalities and joint municipal assistance agencies in the development and implementation of projects related to integrated resource planning and development, and construction and operation of supply-side and demand-side programs, as well as other activities which would aid in the conservation of electricity by customers of municipal suppliers of electricity. The proposed legislation is appended to this report (Appendix E).

Background

As part of its statutory oversight authority, the Joint Legislative Utility Review Committee reviewed alternative energy programs, conservation programs, and future electrical generating capacity. This extensive review was covered in two meetings which took place November 8, 1991 and December 13, 1991. The Committee heard from the Utilities Commission, the Public Staff, the Energy Division, the Alternative Energy Cooperation, the Conservation Council of North Carolina, the Southern

Environmental Law Center, Carolina Power and Light Company, North Carolina Power Company, ElectriCities, the North Carolina Electric Membership Corporation, and Empire Power Company (an independent power producer). During the course of these discussions, the representatives of ElectriCities told the Committee that the joint agencies authorized under Chapter 159B felt that their authority to assist the joint municipal agencies and municipalities in programs which would lead to a reduction in the need for future power plant construction was limited by the language of Chapter 159B. Joint agencies, as originally conceived, exist to develop, supply and transmit power to municipalities. When Chapter 159B was originally drafted, terms such as "demand-side management" and "integrated resource planning" were unheard of. Now, however, such programs are an important component of ensuring an adequate and economical future supply of energy, and the investor-owned electric utilities are actively involved in such programs.

The Committee instructed the representatives of ElectriCities to work with Committee Counsel to create a draft of legislation which could be brought back to the Committee for its consideration at a future date.

At its meeting on May 15, 1992, the Committee considered the draft legislation. The Committee instructed its Counsel to make certain changes in the draft presented to the Committee and, with

those changes, endorsed the bill which appears in this report (Appendix E).

OTHER ACTIVITIES OF THE COMMITTEE

Since the Committee's last report, on May 26, 1990, the Committee has met a total of 11 times. The Committee's activities have included the following:

1. It has helped devise legislation controlling the siting of high voltage electric transmission lines.
2. It has reviewed the reports filed by the natural gas local distribution companies on the status of expansion of natural gas service in North Carolina, together with the reports of the Utilities Commission and the Public Staff, all of which are required by G.S. 62-36A, and has explored with the LDCs, the Utilities Commission, and the Public Staff ways to promote expansion of local natural gas service.
3. It has received reports on and discussed the status and expansion of interstate natural gas transmission lines in North Carolina.
4. It has, as requested by the General Assembly, discussed gas cost adjustment proceedings (see that section of this report).
5. It has reviewed alternative energy programs, conservation programs, and future generating capacity (see that section of this report discussing the

amendments to the Joint Municipal Electric Power and Energy Act).

6. It has received a report from the Utilities Commission on the Commission's regulation of private water and sewer companies.

7. It has received reports concerning the rulemaking proceedings of the Utilities Commission with regard to the gas expansion fund authorized by House Bill 1039 in the 1991 Legislative Session.

8. It has received reports on and has discussed extended area telephone service (EAS).

9. It has received a report on the operation of the Secretary of State's Business License Information Office.

10. It has received a report on, and visited, Duke Power Company's Bad Creek Pumped Storage Facility.

APPENDIX

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION
RATIFIED BILL

CHAPTER 598
HOUSE BILL 1039

AN ACT TO FACILITATE THE CONSTRUCTION OF FACILITIES IN AND THE EXTENSION OF NATURAL GAS SERVICE TO UNSERVED AREAS AND TO REVISE THE PROCEDURES FOR GAS COST ADJUSTMENTS FOR NATURAL GAS LOCAL DISTRIBUTION COMPANIES.

Whereas, the 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

Whereas, the reports of the utilities, the Commission and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

Whereas, the 1991 General Assembly finds it necessary and in the public interest to authorize special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

Whereas, the 1991 General Assembly further finds that the expansion of natural gas service benefits all customers in all customer classes of a local distribution company so that all customers should pay a fair and reasonably proportionate share of the cost of expanding natural gas service; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 is amended by adding a new subdivision to read:

"(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of an expansion fund for each natural gas local distribution company to be administered under the supervision of the North Carolina Utilities Commission."

Sec. 2. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-158. Natural Gas Expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may, after a hearing, order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company

to construct. The fund shall be supervised and administered by the Commission. Any applicable taxes shall be paid out of the fund.

(b) Sources of funding for a natural gas local distribution company's expansion fund may, pursuant to the order of the Commission, after hearing, include:

(1) Refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant to refund orders or requirements of the Federal Energy Regulatory Commission;

(2) Expansion surcharges by the local distribution company charged to customers purchasing natural gas or transportation services throughout that company's franchised territory; provided, however, in determining the amount of any surcharge the Commission shall take into account the prices of alternative sources of energy and the need to remain competitive with those alternative sources, and the need to maintain just and reasonable rates for natural gas and transportation services for all customers served by the company; provided further that the expansion surcharge shall not be greater than fifteen cents (15¢) per dekatherm; and

(3) Other sources of funding approved by the Commission.

(c) The application of all such funds to expansion projects shall be pursuant to the order of the Commission. The Commission shall ensure that all projects to which expansion funds are applied are consistent with the intent of this section and G.S. 62-2(9). In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company to construct. In no event shall the Commission authorize a distribution from the fund of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission may require the company to remit to the expansion fund or to customers appropriate portions of the distributions from the fund related to the project, and the Commission may order such funds to be returned with interest in a reasonable amount to be determined by the Commission. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(d) The Commission, after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the operation of any expansion funds in conjunction with the reports required under G.S. 62-36A."

Sec. 3. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158."

Sec. 4. G.S. 105-116(c) reads as rewritten:

"(c) Gas ~~Surcharges.~~ Special Charges. Gross receipts of a natural gas company do not include ~~special~~ the following:

(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the

North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

(2) Natural gas expansion surcharges imposed under G.S. 62-158."

Sec. 5. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e). Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article."

Sec. 6. G.S. 158-7.1(b)(5) reads as rewritten:

"(5) A county or city may ~~extend~~ construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned."

Sec. 7. G.S. 62-133(f) is repealed; provided, however, that the repeal of G.S. 62-133(f) shall not affect the right of any natural gas local distribution company to recover any costs previously approved by the Commission.

Sec. 8. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

(a) Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation may be determined under this section rather than under G.S. 62-133(b), (c), or (d).

(b) From time to time, as changes in the cost of natural gas require, each natural gas local distribution company may apply to the Commission for permission to change its rates to track changes in the cost of natural gas supply and transportation. The Commission may, without a hearing, issue an order allowing such rate changes to become effective simultaneously with the effective date of the change in the cost of natural gas or at any other time ordered by the Commission. If the Commission has not issued an order under this subsection within 120 days after the application, the utility may place the requested rate adjustment into effect. If the rate adjustment is finally determined to be excessive or is denied, the utility shall make refund of any excess, plus interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the Commission. Any rate adjustment under this subsection is subject to review under subsection (c) of this section.

(c) Each natural gas local distribution company shall submit to the Commission information and data for an historical 12-month test period concerning the utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period. If those prudently incurred costs are greater or less than the recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any over-recovery by credit to bill or through a decrement in its rates and shall permit the utility to recover any deficiency through an increment in its rates.

(d) Nothing in this section prohibits the Commission from investigating and changing unreasonable rates as authorized by this Chapter, nor does it prohibit the Commission from disallowing the recovery of any gas costs not prudently incurred by a utility.

(e) As used in this section, the word 'cost' or 'costs' shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system."

Sec. 9. The Joint Legislative Utility Review Committee shall study the matter of gas cost adjustment for natural gas local distribution companies, including whether any changes in legislation are needed, and shall report its findings, together with any recommendations it may have, including recommendations for the enactment of legislation, to the 1992 Regular Session of the 1991 General Assembly.

Sec. 10. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

Sec. 11. This act is effective upon ratification, but the enactment of Sections 7 and 8 of this bill shall not have any effect on any matter presently before any court.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

2-19-92

DOCKET NO. G-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On July 8, 1991, the General Assembly of North Carolina enacted Chapter 598 of the 1991 Sessions Laws. Sections 7 and 8 of the legislation repealed G. S. 62-133(f) and added a new statute, G.S. 62-133.4, which authorizes gas cost adjustment proceedings for natural gas local distribution companies. The new statute authorizes rate changes to track changes in the cost of natural gas supply and transportation and provides for annual hearings to compare and true-up costs recovered from each natural gas local distribution company's customers with the company's prudently incurred costs. The new statute provides that the costs subject to such proceedings "shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system."

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

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

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

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

The settlement conference was held on November 14, 1991. Thereafter, on November 19, 1991, a Report of Settlement Conference was filed with the Commission. The parties were able to resolve many of their differences and to identify the eight issues that remained in dispute. A proposed rule, subject to change upon resolution of the issues in dispute, was provided along with the report. The parties agreed that no evidentiary hearing was necessary and that

the docket should proceed by affording all parties an opportunity to file further written comments and to argue their positions before the Commission.

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

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

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

The LDCs advocate the recovery of such capacity and storage costs and state that such recovery is consistent with the policy of the state which encourages the LDCs to add new customers and to acquire new gas supplies for those new customers. The LDCs point out that the inclusion of additional capacity and storage costs will permit them to reduce their cost of gas by purchasing gas incrementally as needed and will permit them to negotiate the best possible deal for new gas supplies. Further, the LDCs assert that such inclusion will not cause them to earn "excess" returns because the added margins generated by the added capacity will be needed to offset new investment in gas plant incurred to serve new customers.

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

The Commission has carefully considered the comments of the parties and the oral argument relating to this issue. The Commission recognizes that the purchase of added capacity or storage will increase the throughput capability of the LDCs allowing the sale and transportation of additional volumes thereby resulting in additional margins. However, the Commission is not persuaded that this will automatically result in "excess" returns due to increased expenses and the new investment in plant to be incurred to serve new customers. The Commission is concerned about the flexibility needed by the LDCs in negotiating the purchase of additional gas supplies and purchasing gas incrementally as needed. However, at the same time, the Commission is mindful that the LDCs proposal may create a mismatch of revenues to expenses in the rate structure.

In an attempt to balance the interests of the LDCs and the ratepayers, the Commission concludes that the LDCs should be allowed to recover 50% of those costs incurred for additional capacity and storage added subsequent to a general rate case proceeding. In allowing 50% of such costs to be included in the rates charged by the LDCs, the Commission further concludes that in addition to the filing of information and data required pursuant to Section (k)(6)(c) of Rule R1-17, each LDC shall file information relating to, among other things, the maximum allowable amount of volumes to be sold and/or transported pursuant to the capacity or storage addition, the volumes actually sold and/or transported pursuant to the capacity or storage addition, whether or not such capacity or storage addition was necessary to supply customers in previously unserved areas or areas to which service has or will be extended with expansion funds pursuant to G.S. 62-158, and total cost on a per dekatherm basis of such additional capacity and storage. The Commission reserves the right to reexamine this issue in light of future developments and the information to be reported by the LDCs.

In the most recent general rate cases for the State's three largest LDCs, the Commission allowed the recovery of costs incurred for additional capacity and storage on a provisional basis pending implementation of G.S. 62-133.4. The Commission further provided that any monies so collected associated with additional pipeline capacity and storage shall be placed in a deferred account pending further Order of the Commission. Consistent with the conclusion herein regarding the recovery of such costs, the Commission shall require that the LDCs file with the Commission a plan for refunding 50% of the costs of additional capacity and storage added subsequent to its most recent general rate case proceeding for which recovery was provided on a provisional basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In its original comments herein, the Public Staff recommended the following standard of prudence: whether management decisions were made in a reasonable manner and at an appropriate time on the basis of what was reasonably known or reasonably should have been known at that time? In their reply comments, the LDCs agreed that it is appropriate that they act in a timely and reasonable manner and that they be judged on the basis of what was reasonably known or reasonably should have been known at the time a decision was made. The Commission agrees. Given this standard, and in the absence of fraud or misrepresentation, it would seem inappropriate to challenge future costs of a decision that has already been found prudent simply because circumstances change after the decision was made. However, once again, the Commission finds it unnecessary to decide such issues in the present rulemaking proceeding. The prudence standard will evolve as specific issues arise in future proceedings.

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

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

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

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

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

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

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

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

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

The Commission recognizes the inherent disadvantages of spreading underrecoveries and overrecoveries on a volumetric basis due to changes in usage in future periods and customer movement; however, the Commission is not persuaded that a departure from this practice is warranted due to the administrative difficulties involved in a direct refund mechanism. Accordingly, the Commission concludes that the practice of increments and decrements being implemented on a flat per dekatherm basis should be continued.

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

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

The Commission previously authorized provisional tariffs implementing G.S. 62-133.4 in the context of the most recent general rate cases of the State's three largest LDCs. Provisional tariffs were approved for Piedmont by Order Granting Partial Rate Increase of July 22, 1991, in Docket No. G-9, Sub 309; for Public Service by Order Granting Partial Rate Increase of November 1, 1991, in Docket No. G-5, Sub 280; and for NCNG by Order Granting Partial Rate Increase dated December 6, 1991, in Docket No. G-21, Sub 293. These tariffs were made subject to modification upon adoption of a rule in the present docket. In the most recent general rate case of North Carolina Gas Service, Docket No. G-3, Sub 167, the Commission continued fixed gas cost true-up provisions previously approved pursuant to G.S. 62-133(f). All of these tariffs are now superseded by

the provisions of G.S. 62-133.4 and Commission Rule R1-17(k), and the utilities must file new tariffs consistent with the present Order. Further, any company which has collected monies on a provisional basis, pursuant to authorization in its most recent general rate case proceeding, associated with additional pipeline capacity and storage for which recovery was provided for on a provisional basis shall file with the Commission a plan for refunding 50% of the amounts so recovered.

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

IT IS, THEREFORE, ORDERED as follows:

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

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

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

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

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

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

(SEAL)

Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R1-17

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

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

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

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

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

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

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

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

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

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

(3) **Rate Adjustments Under these Procedures.**

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

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

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

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

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

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

*Established by the Commission in the last general rate case

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

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

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

(a) **Demand Charges and Storage Charges.** On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate schedules and (b) the LDC's actual Demand Charges and Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges. Increments and decrements for Demand Charges

and Storage Charges flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case.

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

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

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

(5) **Other.**

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

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

(c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days of such filing the Commission or the Public Staff notifies the LDC that the computations may not be in compliance; provided, however, that if the Commission or the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by the LDC to provide the additional information.

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

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

(6) **Annual Review.**

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

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

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

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

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

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

testimony and exhibits of witnesses the intervenor intends to offer at the hearing.

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

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On February 17, 1992, the Commission issued its Order Adopting Commission Rule R1-17(k) in this docket. By that Order, the Commission discussed eight issues that were in dispute among the parties and, having decided those disputes, adopted a Rule implementing G.S. 62-133.4.

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

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

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

Piedmont filed a Reply on March 10, 1992.

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

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

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

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

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

In its February 17, 1992 Order, the Commission, after considering the comments of the parties and the oral argument relating to this issue, concluded that the LDCs should be allowed to recover 50% of those costs incurred for additional capacity and storage added subsequent to a general rate case proceeding. The Commission further concluded that each LDC should file additional information regarding capacity or storage additions and to what extent any such capacity or storage addition was necessary to supply customers in previously unserved areas or areas to which service has or will be extended with expansion funds pursuant to G.S. 62-158. The Commission further provided that it reserved the right to reexamine this issue in light of future developments and the information reported by the LDCs.

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

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

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

After carefully considering the arguments of the parties in this docket, the filings made in this docket and the record as a whole, the Commission deems it appropriate to reconsider the issue of the recovery of additional capacity and storage costs. Upon reconsideration, the Commission concludes that it is appropriate to allow recovery by the LDCs pursuant to G.S. 62-133.4 of 100% of their prudently incurred costs for additional capacity and storage added subsequent to a general rate case proceeding. In so concluding, the Commission is persuaded that such recovery is more consistent with the intent of Chapter 598

of the 1991 Session Laws and will not serve to discourage the LDCs from obtaining needed additional volumes of gas to facilitate the expansion of natural gas service in North Carolina. Furthermore, the Commission is of the opinion that its conclusion herein will serve to increase the flexibility needed by the LDCs in negotiating the purchase of additional gas supplies and purchasing gas incrementally as needed. Also, as stated in our earlier Order, the Commission is not persuaded that the recovery of additional capacity and storage costs will automatically result in excess returns due to increased expenses and the new investment in plant to be incurred to serve new customers. However, the Commission will carefully monitor the impact of this decision and, should it determine that further action is required, such action will be undertaken in a manner which the Commission considers to be appropriate.

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

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

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

IT IS, THEREFORE, ORDERED as follows:

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

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

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

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of April 1992.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

(SEAL)

Rule R1-17

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

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

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

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

(b) "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including but not limited to all commodity/gas charges, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges, take-and-pay charges, storage charges, service fees and transportation charges, and any other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.

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

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

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

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

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

(3) Rate Adjustments Under these Procedures.

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

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

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

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

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

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

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

= Increase (Decrease) Per Unit

*Established by the Commission in the last general rate case

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

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

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

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

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

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

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

(5) **Other.**

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

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

(c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days of such filing the Commission or the Public Staff notifies the LDC that the computations may not be in compliance; provided, however, that if the Commission or

the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by the LDC to provide the additional information.

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

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

(6) **Annual Review.**

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

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

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

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

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

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

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

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

STATEMENT OF THE NORTH CAROLINA UTILITIES COMMISSION
BEFORE THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE
May 15, 1992

On July 8, 1991, the General Assembly enacted Chapter 598 of the 1991 Session Laws. This legislation added two important statutes dealing with the regulation of the natural gas industry in North Carolina. We are here today to report on one of these statutes, G.S. 62-133.4.

G.S. 62-133.4 provides for gas cost adjustment proceedings for natural gas utilities and an annual review of the utilities' prudently-incurred gas cost. These are simplified procedures whereby LDCs may change their rates from time to time in order to track changes in the cost of natural gas supply and transportation without the time and expense of a general rate case. The old statute dealing with this subject, which was repealed, only allowed adjustments to track the "wholesale" cost of natural gas. The old statute was enacted when the LDCs purchased all of their natural gas from interstate pipelines, but it was not well suited to the new "open access" structure of the natural gas industry. The new statute gives the Commission much broader authority to track changes in the cost of natural gas supply and transportation.

G.S. 62-133.4 provides for the Utilities Commission to decide exactly which costs should be subject to the gas cost adjustment procedures. In August 1991 the Commission instituted a rulemaking proceeding to implement the statute. Pending the adoption of a

rule, the Commission approved interim procedures so the LDCs could begin to track their costs. The parties to our rulemaking proceeding reached consensus upon a broad definition of gas costs. Virtually all charges and fees related to the purchase, storage and transportation of gas supply are subject to gas cost adjustment proceedings. However, the parties disagreed on the treatment of additional pipeline capacity and storage costs. This issue provoked controversy when this Committee was considering the new statute, and it remained controversial before the Commission.

Note that we are not talking about additional commodity gas supplies or a price change in existing services. We are only talking about the cost of purchasing additional pipeline capacity and storage from wholesale suppliers beyond the level of capacity and storage reflected in the utility's last general rate case. When a natural gas utility purchases additional pipeline capacity and storage, it is able to make more sales. Some parties argued that the cost of additional capacity and storage should only be put into rates through a general rate case where the increase in revenues, as well as the increase in cost, can be considered. The utilities argued that including the cost of additional capacity and storage in gas cost adjustment proceedings would help them to obtain needed additional volumes of gas to facilitate the expansion of natural gas service in the State.

The Commission originally issued an Order allowing the LDCs to recover 50% of the cost of additional capacity and storage through

gas cost adjustment proceedings. However, upon reconsideration, the Commission issued an Order allowing the utilities to recover 100% of their prudently-incurred cost of additional capacity and storage through gas cost adjustment proceedings. The Commission felt that such recovery is consistent with the intent of the new statute and will not serve to discourage utilities from obtaining needed additional volumes of gas to facilitate the expansion of natural gas service in the State. The Commission imposed special reporting requirements designed to enable us to determine whether our decision will promote the expansion of natural gas service into previously unserved areas of the State, and the Commission will carefully monitor the impact of our decision.

Chapter 598 of the 1991 Session Laws provides for this Committee to study the matter of gas cost adjustments, including whether any changes in legislation are needed, and to report its findings and recommendations to the 1992 Regular Session of the 1991 General Assembly. The Commission believes that the new statute is well suited to the natural gas industry today, and we do not have any suggestions for changes in the legislation at this time.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

DRS9674*-RLZX(5.12)

Short Title: Jt. Agency Authority. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE JOINT AGENCIES TO PROVIDE AID AND ASSISTANCE TO MUNICIPALITIES AND JOINT MUNICIPAL ASSISTANCE AGENCIES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-2 reads as rewritten:

"**§ 159B-2. Legislative findings and purposes.**

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their

respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants.

In addition to the authority granted municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities by Article 2 of this Chapter and the other powers granted in said Article 2, and in addition and supplemental to powers otherwise conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable for the State of North Carolina to authorize municipalities to form joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, and to empower joint agencies authorized herein to provide aid and assistance to municipalities or joint municipal assistance agencies in the construction, ownership, maintenance, expansion, and operation of electric systems, ~~and in such other ways~~ in addition to such other powers as hereinafter provided to joint municipal assistance agencies and joint agencies. In order to provide maximum economies and efficiencies to municipalities and the consuming public in the generation and transmission of electric power and energy contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more municipalities, as requested, with respect to the construction, ownership, maintenance, expansion and operation of their electric systems; and that the joint agencies authorized herein be empowered to act as provided in Article 2 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more municipalities or joint municipal assistance agencies, in each case as requested, with respect to the

construction, ownership, maintenance, expansion, and operation of such municipalities' electric systems."

Sec. 2. G.S. 159B-11 reads as rewritten:

"**§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.**

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined:

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards.

(9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous

to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;

(11) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, or of the United States;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or otherwise an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(15) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, corporations and others;

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; ~~and~~

(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to the same, to its members and other customers in such amounts, with such characteristics, for

such periods of time and under such terms and conditions as the board of commissioners of the joint agency shall determine;

(19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the construction, ownership, maintenance, expansion, and operation of their electric systems and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers and responsibilities granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and functions; which term 'provide aid and assistance' shall be liberally construed; and

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency therein.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;

(2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;

(3) The estimated useful life of such project;

(4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;

(5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be

conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible."

Sec. 3. G.S. 159B-12 reads as rewritten:

"**§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a joint agency.**

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy for its present or future requirements, including the capacity and output of one of more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation. Notwithstanding the provisions of any law to the contrary, including, but not limited to, the provisions of Section 159B-44(13), any contract between a joint agency and a municipality or a joint municipal assistance agency (or between a municipality and a joint municipal assistance agency) to provide aid and assistance, and any contract providing for payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) or by any joint municipal assistance agency to any joint agency for the provision of aid and assistance, may extend for a period not exceeding 30 years. Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project, or of any contracts with respect to the purchase or disposition of power and energy and

services and facilities related to the utilization of power and energy, or of any contracts with a municipality or joint municipal assistance agency to provide aid and assistance, shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided.

Payments by a municipality under any contract for the purchase of capacity, output, or power or energy or services and facilities related to the utilization of power and energy, from a joint agency, and payments by any municipality directly to any joint agency (or indirectly to any joint agency through a joint municipal assistance agency) under any contract or contracts to provide aid and assistance, shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Payments by any joint municipal assistance agency to any joint agency under any contract or contracts to provide aid and assistance shall be made solely from the sources specified in such contract or contracts and no other, and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint municipal assistance agency or upon any of its income, receipts, or revenues, except such sources so specified, or upon any property of any municipality with which the joint municipal assistance agency contracts or upon any of such municipality's income, receipts, or revenues except the revenues of such municipality's electric system. A joint municipal assistance agency shall be obligated to fix, charge and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide revenues adequate to meet its obligations under such contract.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from

operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency."

Sec. 4. G.S. 159B-17(c) reads as rewritten:

"(c) Any pledge of revenues, securities or other moneys made by a ~~municipality or~~ municipality, joint agency or joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the ~~municipality or~~ municipality, joint agency or joint municipal assistance agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the ~~municipality or~~ municipality, joint agency or joint municipal assistance agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge of revenues, securities or other moneys is created need not be filed or recorded in any manner."

Sec. 5. Beginning January 1, 1994, and annually thereafter, each joint agency operating under the authority of Chapter 159B of the General Statutes shall file a report with the Joint Legislative Utility Review Committee describing the activities of the joint agency carried out pursuant to the authority granted by this act. The report shall cover the preceding calendar year. Each joint agency shall file such additional reports as the Joint Legislative Utility Review Committee shall request.

Sec. 6. This act is effective upon ratification.

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