JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

REPORT TO THE 1993-94 GENERAL ASSEMBLY OF NORTH CAROLINA 1994

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December 9, 1994

TO THE MEMBERS OF THE 1993-94 GENERAL ASSEMBLY:

Pursuant to Chapter 120, Article 12A of the North Carolina General Statutes, and Chapter 129 of the 1991 Session Laws, the Joint Legislative Utility Review Committee herewith submits its report to the General Assembly.

Sen. Joseph E. Johnson
Senate Cochairman

Rep. George W. Miller, Jr.
House Cochairman

JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

MEMBERS

Sen. Joseph E. Johnson
Cochairman

Rep. George W. Miller, Jr.
Cochairman

Sen. David Hoyle

Rep. David T. Flaherty, Jr.

Sen. Paul S. Smith

Rep. Erin J. Kuczmarski

(Senator Mary P. Seymour and Representative Judy F. Hunt also served on the Committee during the period covered in this report.)

STAFF

Mr. Steven J. Rose
Legal Counsel to the Committee

Ms. Jacquelyn Hamby
Clerk to the Committee

(Ms. Blanche Critcher also served as Clerk to the Committee during the period covered in this report.)

TABLE OF CONTENTS

D. Report of the North Carolina Utilities Commission to the Joint Legislative Utility Review Committee Regarding Fuel Charge Adjustment Proceedings For Electric Utilities.

E. Memorandum to the Members of the Joint Legislative Utility Review Committee from Committee Counsel Steven Rose Regarding Fuel Charge Proceedings for Electric Utilities.

F. Draft legislation entitled AN ACT TO PROVIDE AN EXPEDITED PROCEDURE FOR CREATION OF COUNTY WATER AND SEWER DISTRICTS AFTER FAILURE OF LOW PRESSURE PIPE SEWER SYSTEMS. TO CLARIFY THE POWERS OF COUNTY WATER AND SEWER DISTRICTS, AND CONCERNING THE APPLICATION DATES FOR CLEAN WATER BOND LOANS AND GRANTS, ASRECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

G. Letter from the Utilities Commission to Senator Joseph E. Johnson and Representative George W. Miller, Jr. dated December 3, 1993 regarding appointing emergency operators for the North State sewer systems.

H. Recommendations Concerning Private Sewer Systems.

I. Draft Report North State Utilities Issues Solutions and Management Team.

J. Proposal of Representative Erin Kuczmarski, dated May 13, 1994, to Solve Immediate Problems of Subdivisions Served by North State Utilities.

K. Draft legislation entitled, AN ACT TO EXEMPT FROM REGISTRATION AND THE MOTOR FUEL TAX VEHICLES REGISTERED IN ANOTHER STATE AND OPERATED TEMPORARILY IN THIS STATE BY A UTILITY PROVIDER OR ITS CONTRACTOR FOR THE PURPOSE OF RESTORATION OF UTILITY SERVICES IN AN EMERGENCY OUTAGE.

L. Draft legislation entitled, AN ACT TO CHANGE THE TIME BY WHICH THE NORTH CAROLINA UTILITIES COMMISSION AND THE PUBLIC STAFF PROVIDE BIENNIAL NATURAL GAS SERVICE REPORTS TO THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE. AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

M. Statement of Commissioner Laurence A. Cobb on behalf of the North Carolina Utilities Commission before the Joint Legislative Utility Review Committee, dated May 13, 1994.

N. Presentation to the Joint Legislative Utility Review Committee of the Public Staff's 1994 Expansion Report, dated May 20, 1994.

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 of Representatives. The House members are appointed by the Speaker of the House. The Senate members are appointed 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. A Senate cochairman and a House cochairman are designated by the respective 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, judicial decisions, 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 undertaking specific studies as may be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly (G.S. 120-70.3(8)).

Chapter 129 of the Session Laws of 1991 requires this Committee to make a biennial report to the General Assembly concerning fuel charge adjustments for electric utilities (Appendix A). The Legislative Research Commission requested the Committee to study regulatory treatment of the gain on sale of water and sewer facilities, and the operation of municipal electric utility systems (Appendix B and C).

This report of the Joint Legislative Utility Review Committee is made in response to the statutory requirement referred to in the preceding paragraph, the specific request of the Legislative Research Commission, and as part of the Committee's general and ongoing obligation to provide information and recommendations to the General Assembly relating to public utilities.

FUEL CHARGE ADJUSTMENTS FOR ELECTRIC UTILITIES

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends that the fuel charge adjustment statute be left as it is presently written in G.S. 62-133.2, subject to future recommendations of the committee as required by law.

Background

The 1991 General Assembly extended the sunset date for G.S. 62-133.2 from July 1, 1991 to July 1, 1997. (Chapter 129 of the 1991 Session Laws.) G.S. 162-133.2 governs fuel charge adjustments for electric utilities. In extending the sunset date, the General Assembly required the Utilities Commission to provide a biennial report to the Joint Legislative Utility Review Committee summarizing the proceeding conducted pursuant to G.S. 62-133.2 during the preceding two years, together with a recommendation as to whether that section should be continued, repealed, or amended. This Committee, in turn, is required to report to the General Assembly on a biennial basis in the following even numbered years. This Committee's report is to contain the information provided by the Utilities Committee together with this Committee's recommendations to the General Assembly.

As required by the statute, the Utilities Commission issued its report regarding fuel charge adjustment proceedings and transmitted it to this Committee on July 22, 1993. That report is incorporated in this Committee's report (Appendix D). On December 15, 1993, this Committee reviewed the report of the Utilities Commission, heard from interested parties, and formulated its recommendation to the General Assembly.

At that meeting, the Committee Counsel, Steven Rose, gave a brief review of the history of fuel charge proceedings for electric utilities in North Carolina (Appendix E). His report also contained a review of the differences in the two components which are

part of the fuel charge proceedings of electric utilities, the fuel charge adjustment component and the "true-up." The former is a prospective adjustment to the electric utility's rates to take into account changes in the cost of fuel since the last general rate case. The latter is a retroactive adjustment which allows under-recovered fuel costs to be recovered by the utility and over-recovered fuel costs to be recovered by the customers. The adjustments are made on an annual basis without the necessity of a general rate case.

The Utilities Commission report was presented by Chairman John E. Thomas. Chairman Thomas reviewed the six fuel charge proceedings conducted during the preceding two years and testified that the Utilities Commission recommends the statute be continued in its present form with no amendments.

Mr. Robert Gruber, Executive Director of the Public Staff, addressed the Committee and said that the Public Staff concurs with the Utilities Commissions's recommendation that the statute be continued in its present form. Mr. Gruber stated that at the present time the system is working well.

Mr. Robert W. Kaylor addressed the Committee on behalf of Carolina Power & Light Company, Duke Power Company, and North Carolina Power. The three major electric utilities support the retention of the statute in its present form.

After a discussion by the Committee, the recommendation set out above was adopted by the Committee.

PROBLEMS ASSOCIATED WITH MULTIPLE CONNECTION NONMUNICIPAL SEWER SYSTEMS

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the legislation set out in Appendix F. In recommending the enacting of this legislation, the Committee wishes to state that the proposed legislation is intended only to alleviate certain critical situations demanding immediate action. The broader question of how the situation discussed below was allowed to happen, and what must be done to prevent it from happening in the future, is still before the Committee and upon further review of the subject the Committee may have additional recommendations to make to the General Assembly.

Explanation of Proposed Legislation

The proposed legislation is intended to allow county water and sewer districts to be created more expeditiously and less expensively where critical situations involving low pressure pipe sewer systems exist. It allows for the orderly annexation of those districts by the cities providing the actual sewer service when annexation is warranted, and it allows for an expedited procedure for the application by water and sewer districts for certain funds available under Chapter 159G of the General Statutes, the North Carolina Clean Water Revolving Loan and Grant Act of 1987.

Section 1 of the bill adds a new subsection to G.S. 162A-86. The new subsection applies to the formation of county water and sewer districts where the purpose is to alleviate a serious public health hazard caused by the failure of a low pressure pipe sewer system. It reduces the number of advertisements for the public hearing from three advertisements to one, and allows the advertisement to include notification for more than one such district.

Section 2 of the bill amends G.S. 162A-87(b) to allow a single resolution to cover the creation of more than one district, to reduce the requirement for advertising the resolution from two insertions to one, and it reduces the time in which the creation of a district may be challenged from thirty days after publication of the resolution to twenty-one days.

Section 3 of the bill adds a new G.S. 162A-87.1 which clarifies that the boundaries of a water and sewer district may exclude areas contained solely within the external boundaries of the district, and the district may include noncontiguous portions provided the separation does not exceed one mile. The purpose of this provision is to allow the districts to be tailored to include only the property within a subdivision which is being served by the low pressure pipe system. Thus, people with ordinary septic systems which are not malfunctioning will not be included within the district.

Section 4 of the bill amends G.S. 162A-87.2 by adding a new subsection (b) which is applicable only to districts created to alleviate low pressure pipe system emergencies. It allows a contract between the district and the city actually providing the service to the district to provide for the eventual abolition of the district in the event the city takes over the providing of sewer service directly to the affected properties. In that event, the property of the district is conveyed to the city. The city would also take over any outstanding debt and acquire the right to collect previously implemented assessments. This section also creates a new subsection (c) which contains similar provisions but is applicable to the situation where the district has contracted with a private company for the operation of the district. In this situation, the private company would be required to be certified as a public utility in order to take over the system directly. Finally, this section adds a new subsection (d) which requires that a resolution abolishing any water and sewer district must be filed with the Secretary of State.

Section 5 of the bill adds a new G.S. 162A-88.1 which specifically authorizes any county water and sewer district to contract with a private entity for the operation of the district.

Section 6 of the bill amends G.S. 160A-36, which is applicable to annexation by cities of less than 5,000 population. The new language only applies to water and sewer districts created to alleviate low pressure pipe sewer system emergencies, and it allows the entire district to be annexed even though there may be some parts which are not contiguous to the municipality. Furthermore, the requirement that the area to be annexed be developed for urban purposes is altered for those special water and sewer districts. They may be less than 60% urban developed, provided this has been set out in a contract between the municipality and the district and the municipality is to operate the sewer system. However, this special category is applicable only if the municipality is annexing the entire territory of the district in one proceeding. This statute is further amended to allow the annexation boundaries to be the boundaries of the county water and sewer district being annexed.

Section 7 of the bill amends G.S. 160A-48 by adding the same provisions as Section 6 of the bill, but applicable to cities of 5,000 or more population.

Section 8 of the bill amends G.S. 159G-10 to allow for special procedures for applications for wastewater funds under the Clean Water Revolving Loan and Grant Act where the State Health Director has certified that there is a public health hazard due to the failure of a low pressure pipe sewer system. Specifically, in that situation, the Environmental Management Commission may establish a special period for consideration of such applications. Ordinarily they are considered during two specific semi-annual periods. This subsection also permits the Environmental Management Commission to adopt temporary rules for the processing of such emergency applications and to adjust the priorities for such loans and grants as required by the

emergency situation. In these emergency situations, an environmental assessment is not required to be made with the application for the funds provided the project is not considered a major project as defined in G.S. 113A-9(6) (the Environmental Policy Act).

The act is effective upon ratification, however, the provisions of the act relating to the Clean Water funds are only effective with respect to applications for grants and loans received on or before December 31, 1994.

Background

The Joint Legislative Utility Review Committee began its inquiry into the problems associated with multiple connection non-municipal sewer systems in December, 1993. The problem was called to the attention of the Committee by Committee member Representative Kuczmarski and by the North Carolina Utilities Commission and Public Staff which wrote to the Committee and requested such an investigation (Appendix G). The immediate problem which prompted this inquiry was the failure of low pressure pipe sewer systems operated by a public utility, North State Utilities. Because of the inability of North State Utilities to continue to operate its systems, the Utilities Commission, on September 1, 1993, appointed an emergency operator for all of the North State systems. The Commission, through its emergency operator, determined that the estimated cost to repair the systems exceeded $1 million. Since North State was apparently insolvent, this would mean that the homeowners serviced by North State would be assessed for these repairs. (This covered only the systems taken over by Harrco.) Although the cost per homeowner would vary with the subdivision, the average was approximately $3,750 per home. There was a serious question as to how long these systems would continue to function, even after the repairs were made.

The Committee first considered this matter at its meeting on January 19, 1994. She outlined the background of this extensive problem, in particular the fact that the

systems were poorly maintained and had been allowed to deteriorate to the point that wastewater was surfacing in pools above the ground. At this time, the estimate for repair of these low pressure sewer systems was well over $1 million. This was to be assessed against the homeowners since the operator was no longer in business. Representative Kuczmarski reviewed the five and ½ months she had spent working on the problem and pointed out that she had received very few definitive answers as to how this state of affairs came to be. In particular, it was difficult to ascertain where the final responsibility for the situation should rest. She felt that the State agency responsible to protect the citizens had failed them. It was her hope that the plight of these homeowners could be successfully resolved and that the measures necessary to protect the public from similar occurrences could be taken.

Steven Rose, Committee Counsel, gave a further briefing to the Committee. He informed the Committee that by way of preparation for this meeting, three staff level meetings were held in December and January, with Representative Kuczmarski in attendance as well has Ms. Sherri Evans-Stanton, an attorney in the Research Division Staff who specializes in environmental matters. Also attending were staff members from the Division of Environmental Management, the Division of Environmental Health, the Utilities Commission, the Public Staff, and the Attorney General.

The Chairman of the Utilities Commission, John E. Thomas, addressed the Committee and outlined the history of the emergency involving North State Utilities and the actions the Utilities Commission had taken. The bond which had been put up by North State, in the amount of $20,000 had been forfeited. It was obvious that this would be woefully insufficient to address the problems which had occurred. On September 1, 1993, the Utilities Commission had appointed an emergency operator for the system. The emergency operator had the responsibility of operating the systems as best they could be operated, and preparing schedules of the improvements needed to

bring the systems into compliance with the rules of the Division of Environmental Health and the Wake, Durham, Orange, and Mecklenburg County Health Departments. At that time, the Commission was in the process of holding hearings to determine what repairs should be made and the extent of the assessments necessary.

It is important to note the distinction between the areas of regulation of the Utilities Commission and the Divisions of the Department of Environment, Health, and Natural Resources. The Utilities Commission is responsible for the issuance of the certificate allowing the company to operate as a public utility, and for the rates and services of the company. It has no control over the environmental aspects and the technical operations of these sewage plants. This is the responsibility of Divisions of DEHNR.

From the remarks of Commissioner Charles Hughes, and Mr. Donald Hoover, the Chief Accountant of the Utilities Commission, it became apparent that part of the problem was that the usual method for recovery of funds for future maintenance and renovation, through depreciation of assets, was not available to North State Utilities since they had no real investment in the physical plants. Those had been paid for by the developers of the subdivisions and then turned over to North State Utilities to operate. This is an unusual situation in public utilities regulation. The rate making statutes do not provide for the recovery of funds for future maintenance. In most instances this is never necessary.

Mr. Richard K. Rowe, Director of the Division of Environmental Health, addressed the Committee and provided a presentation demonstrating the design and installation of low pressure pipe systems. Mr. Rowe's testimony indicated that part of the confusion arose because prior to July, 1992, low pressure pipe sewer systems were permitted by the Division of Environmental Management. After that time, the responsibility was shifted to the Division of Environmental Health. Most of these

systems were issued permits prior to July, 1992. The same situation existed for the ongoing enforcement of the rules governing the operation of these systems, and the inspection to ensure property maintenance. Low pressure pipe sewer systems are quite complicated and are high maintenance operations. Mr. Rowe indicated that the Division of Environmental Health was in the process of assembling the maintenance inspection records, many of which were with the local health departments where the systems are located.

Mr. Rowe testified that he felt that additional oversight by the Utilities Commission would be an appropriate way to strengthen the protection of consumers of the services of these systems.

It was revealed by Mr. Rowe's testimony that homeowners involved were never put on notice that the systems were failing. It was the practice of the Divisions responsible to work directly with the owner and operator of the system. Thus, when problems were found, the notification was made to the operator of the system with the expectation that corrections would be made and if they were not made, action was taken against the owner and operator of the system. It also was revealed that DEH did not communicate with the Utilities Commission in order to notify them that there was a significant problem with these systems.

Mr. Harlan Britt, Deputy Director of the Division of Environmental Management gave a history of the permitting process for these subsurface of the systems. Senator Johnson asked Mr. Britt to let Secretary Howes know that the Committee would like to have his personal input and any suggestions that he might have towards solving the problem and that this should happen as soon as possible because we were approaching the 1994 Session where something might be able to be done.

The Committee also heard from homeowners from various subdivisions serviced by North State Utilities. They raised questions about the responsibility of the developers,

the responsibility of the regulators, the responsibility of the realtors, and of the installer of the system. They expressed frustration at the fact that as potential buyers they were not told that an experimental sewer system was being used.

Senator Johnson, on behalf of the Committee, expressed the Committee's desire to continue to work on this issue and to act as expeditiously as possible to give these people some relief.

The Committee addressed the matter again at its meeting on February 7, 1994. As requested by the Committee, Secretary Jonathan B. Howes, of the Department of Environment, Health and Natural Resources addressed the Committee. Secretary Howes said that his Department was conducting an internal examination of the North State matter and is trying to find funds to provide some immediate relief to the homeowners. Each of the ten subdivisions involved was being individually studied. Secretary Howes said that it would be necessary to know the history of each site to determine who and why it was permitted, and to determine whether it was a systematic problem that resulted in the permitting of faulty systems. He reminded the Committee that at all time it remained the duty of North State and its contractors to design, construct, and operate a proper system. His Department would make appropriate recommendations for administrative and statutory changes upon the completion of its examination.

In discussing possible sources of funding for the repairs, he suggested the possibility of the Clean Water Bond Fund, the Emergency Contingency Fund from the Council of State, and the Community Development Black Grant Funds available through the Department of Commerce. Secretary Howes said that DEHNR would work with the local governments involved to see if funds could be obtained from the particular funds mentioned. He also noted that the last ½ cent of local sales tax money is earmarked for water and sewer use at the discretion of the local governments.

Committee Counsel Mr. Rose raised the question of whether an action under Chapter 75 of the General Statutes, which governs unfair trade practices, could be persued against the developers of these subdivisions. Mr. Jim Gulick of the Attorney General's office replied that this was conceivable.

The Committee then heard from Mr. Robert Gruber, Executive Director of the Public Staff. He reviewed the history of the application for an issuance of the franchises to North State Utilities. According to the testimony given to the Utilities Commission, North State Utilities appeared to be a highly qualified company. North State developed and applied for the rates it would charge its rate payers, these were approved by the Utilities Commission. There was no experience-based evidence available regarding the quest of operation of the low pressure pipe system at the time these rates were approved. From the stand point
of the construction and day to day operation of these systems, the Public Staff relied on the permitting process of the Division of Environmental Management.

At the time of Mr. Gruber's testimony, the total estimated repair costs for nine of the eleven systems involved was $1,012,412. This would be borne by a total of 270 customers.

Mr. Gruber concluded that the principle lesson the Public Staff had drawn from this experience was the need for faster and more complete communication and coordination among the agencies regulating the low pressure pipe and other sewer system. It is possible that the harmful impact on the customers of North State could have been reduced if the Utilities Commission and Public Staff had been made aware of the problems earlier. He also felt that it was likely that much higher bond requests would be made if systems of this sort are sough to be franchised in the future.

Mr. Gruber also said that a thorough investigation of the financial dealings of, engineering practices, and operational practices of North State Utilities was underway.

The Public Staff had also hired an engineering firm to review the repairs necessary for these systems.

At this meeting, the committee heard from the Wake County Health Department, represented by Leah Devlin, the Director, and Everette Lynn, the soil scientist with the Wake County Health Department who had done most of the Wake County inspections. Ms. Devlin, upon being questions by Representative Kuczmarski maintained that her department had no authority over the enforcement of the rules. The inspection reports were turned over to the Division of Environmental Management and it was their responsibility to take enforcement action. Dr. Devlin felt that since the authority for permitting and inspection had been transferred to the Division of Environmental Health, and because the county health department was under the same public health guidelines, the mechanisms to prevent the problems from happening again are in place. Mr. Rowe, of the Division of Environmental Health, testified again. He indicated that there are approximately 900 multiple connection private sewer systems operating in the state. Mr. Miller raised the question of whether some sort of escrow account should be established from the fees collected from these systems in order to be sure that maintenance and repair funds are available when necessary. He stressed that it should be a requirement that the financial stability of an applicant be studied before issuing a permit.

Mr. Rowe, in response to a question by Senator Johnson, said that the possibility of local county water and sewer systems acquiring these private systems would be a possible solution to some of the problems.

Mr. Harlan Britt, of the Division of Environmental Management, testified again. He said that DEHNR is still in the process of trying to find out what happened to North State and will do what is necessary to help the affected homeowners.

Sherri Evans-Stanton, an attorney with the Research Division who specializes in environmental matters reported to the Committee on the research she had done regarding possible federal funding for the homeowners. Ms. Evans-Stanton said that the Community Block Development Grant Funds might not be available because many of the counties involved do not have 51% low income residents. The Clean Water Bond Funds might be a problem because temporary rules are in the process of being proposed and money would not be available until September or October of 1994, with an application and hearing process to follow.

The Committee once again heard from residents of some of the affected subdivisions.

Representative Kuczmarski distributed copies of some possible recommendations concerning private sewer systems with the idea that committee members could review them and discuss them at the next meeting (Appendix H).

Senator Johnson requested the Department of Environment, Health and Natural Resources to report on the applicability of funding methods in writing to Committee Counsel by February 11, 1994.

The Committee took this matter up again at its meeting on April 22, 1994.

Mr. Harlan Britt testified again. He presented a report on the status of North State Utilities. He reported that Secretary Howes has appointed two committees to investigate the issues surrounding this problem. One is a Solutions and Management Committee and the other is a What Happened at North State.

Ms. Linda Sewall, Deputy Director, Environmental Health Division, is the Chair of the Solutions and Management Alternatives Team. She supplied a copy of the draft report of the team (Appendix I). The team focused on three major issues: (1) potential technical solutions (2) financing alternatives (3) long term solutions to avoid similar problems in the future.

Representative Miller directed a question to Mr. Britt. He wanted to know who is at fault in state government. Mr. Britt replied that his division has not reached a conclusion as to who is at fault but, a report is to be submitted on June 15.

Robert Bennink, General Counsel for the Utilities Commission, reported that the Commission is in the process of looking at alternatives to repairing the low pressure sewer systems. Some of these alternatives would involving connecting to various nearby municipal sewer systems. Others might connect to nearby package treatment plants. In the case of Wake County, the county would have to amend its water and wastewater policy to authorize county involvement in solving the problems faced by the affected homeowners.

Representative Miller questioned Mr. Bennink about the estimated assessments that might be made against some of the affected homeowners. Mr. Bennink said that for some people it could amount to as much as $5,000 per customer.

Mr. Gruber, Executive Director of the Public Staff, expressed the concern that unless some alternative sources of funds are developed soon, the cost of repairing the systems or attaching them to other treatment systems will fall primarily on the individual customers of North State. Repairs were being deferred at that time while the most cost effective alternatives were sought.

Ms. Wanda Bryant, Senior Deputy Attorney General in the Citizens Rights Division address the committee and reported that the Attorney General's office is investigating the North State situation to assure that the parties responsible for the situation are held accountable. Ms. Bryant did report, however, that the Attorney General's Office, as required by law, was representing the Department of Environment, Health and Natural Resources before the Industrial Commission on several tort claims growing out of citizen complaints about the Piney Mountain subdivision.

Representative Miller said that he intended, with the direction of the Committee, to write to the Attorney General expressing concern about the delay in taking positive legal action. Representative Miller said it appeared that more attention was being given to defending the state agencies that may have had a responsibility in the issue than to protecting the public. He further said that a special work session of the Committee would be held in order that some firm recommendations could be drafted for presentation to the General Assembly during the Short Session. Representative Kuczmarski also noted her disappointment with the actions of the various state agencies. In response to a question by Representative Kuczmarski, Mr. Britt pointed out that Clean Water Bond Grant monies are only available to units of government and not to private individuals. This poses a serious problem for assisting the affected homeowners since they are not part of a unit of local government, other than the county in which they lie.

The Committee again heard from homeowners representing various subdivisions. They all expressed the hope that some resolution could be found soon.

At the next committee meeting on May 13, 1994, Representative Kuczmarski presented a proposal which was designed to address the immediate problems of the North State customers. She made it clear that the proposal does not address the long term problems encountered with the failure of North State systems or any other systems. That is something the Committee would have to continue to work on for the long session. Representative Kuczmarski's proposal, suggests that the county commissioners create water and sewer districts to serve the involved subdivisions. These would qualify as units of local government able to apply for monies available through the Clean Water Bond and Loan Act. The proposal, attached to this report as Appendix J, was formally adopted by the Committee. Senator Johnson stated that the Committee would meet again before the beginning of the 1994 Session and, by that

time, legislation necessary to implement the proposal would be presented to the Committee.

At the Committee meeting on May 20, 1994, Representative Kuczmarski presented legislation designed to implement the proposal adopted by the Committee at its May 13, 1994 meeting. The Committee adopted the legislative proposal which is recommended in this report.

REGISTRATION EXEMPTION FOR EMERGENCY UTILITY VEHICLES

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of legislation set out in Appendix K.

Explanation of Proposed Legislation

The proposed legislation allows vehicles registered in another state and operated temporarily within this state by a utility provider or its contractor for the purpose of restoration of utility services in an emergency outage, to be operated without being registered in this state and without paying motor fuel tax.

Background

At its meeting of February 7, 1994, the Committee took up the problem which existed because North Carolina statutes make it mandatory for vehicles with a gross weight of over 26,000 pounds to be registered in the state prior to being operated in the state. The only exception, absent the proposed legislation, is a waiver granted when the Governor issues an Order declaring a state of emergency.

In testimony before the Committee, it was pointed out that when power outages occur near North Carolina's borders with other states, there are often service vehicles registered in those other states which are closer to the outage and able to reach it faster. However, they are prevented from rendering this service because of the permitting requirement. The proposed legislation makes it possible for the closest service vehicle to render assistance in making repairs in the event of an emergency outage.

At its meeting on February 7, 1994, the Committee recommended the adoption of the proposed legislation.

CHANGE IN G.S. 62-36A EXTENDING THE TIME IN WHICH THE UTILITIES COMMISSION AND PUBLIC STAFF PROVIDE BIENNIAL NATURAL GAS SERVICE REPORTS TO THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the legislation set out in Appendix L.

Explanation of Proposed Legislation

G.S. 62-36A provides that the Utilities Commission will require each franchise natural gas local distribution company to file regular reports with the Commission detailing plans for providing natural gas service in areas of the company's franchise territory in which such service is not available. These report must be filed at least every two years. In turn, the Commission and the Public Staff must, within 120 days after all local distribution companies have filed their reports, independently provide analyses and summaries of those reports, together with status reports of natural gas service in the State, to the Joint Legislative Review Committee. The proposed legislation extends the time within which the Commission and the Public Staff must make their reports to the Joint Legislative Review Committee from 120 days to 180 days.

Background

In its May, 1994 gas expansion report to the Committee, the Utilities Commission recommended that the reporting time imposed on the Commission and the Public Staff be extended from 120 days to 180 days so that the Commission and Public Staff will have additional time to conduct their investigations into the local distribution company reports. The Commission stated to the Committee, at the Committee's meeting on

May 13, 1994, that if the proposed legislation passed, the Commission intended to require the local distribution companies to provide their biennial update reports earlier than they do now, thus allowing the Commission and Public Staff to continue to report to the Joint Legislative Utility Committee on or about May 1.

At the meeting on May 13, 1994, the Committee voted unanimously to endorse the proposed legislation.

BIENNIAL NATURAL GAS SERVICE REPORTS FOR 1994

As outlined in the previous section of this report, G.S. 62-36A requires biennial reports by the natural gas local distribution companies to the Utilities Commission, and requires the Utilities Commission and the Public Staff to analyze and summarize those reports for the Joint Legislative Utility Review Committee. As required by the statute, both the Utilities Commission and the Public Staff provided these written reports the the Committee in May, 1994. On May 13, 1994, Commissioner Laurence A. Cobb presented the Commission's report at a meeting of the Committee. His statement to the Committee, which summarizes the Commission's report with regard to each natural gas local distribution company, is provided in Appendix M. On may 20, 1994, the Public Staff report was presented to the Committee by Gisele Rankin, member of the legal staff. Her presentation is found in Appendix N.

The Committee is not recommending any specific action by the legislature relative to those reports. However, the Committee continues to follow this matter closely.

OTHER ACTIVITIES OF THE COMMITTEE

The activities of the Committee from the last report to the General Assembly through May 20, 1994, included consideration of the following items:

(1) The activities of municipally operated electric and gas utilities.

(2) An update on activities of the North Carolina Utilities Commission not otherwise covered in this report.

(3) An update on activities of the Public Staff not otherwise covered in this report.

(4) Periodic report related to expanding the availability of natural gas in North Carolina.

(5) A report on the expansion of interstate natural gas pipelines in North Carolina.

(6) Discussion of local exchange telephone competition (a review in anticipation of a thorough discussion of this subject matter after the close of the 1994 Legislative Session).

(7) Six meetings held jointly with the Joint Select Committee on Low-Level Radioactive Waste.

APPENDIX

H.B. 407 **CHAPTER 129**

AN ACT TO CONTINUE PERIODIC REVIEW OF ELECTRIC UTILITY FUEL COSTS.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 677 of the 1987 Session Laws, as amended by Section 1 of Chapter 15 of the 1989 Session Laws is repealed.

Sec. 2. G.S. 62-133.2 is repealed effective July 1, 1997.

Sec. 3. On July 1, 1993 and every two years thereafter, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended. The Joint Legislative Utility Review Committee shall report to the General Assembly beginning with the 1994 Regular Session and every two years thereafter which report shall contain the information provided by the Utilities Commission and the Committee's recommendation whether G.S. 62-133.2 should be continued, repealed, or amended.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

January 6, 1994

The Honorable Joe Johnson, Cochair
Joint Legislative Utility Review Committee
P.O. Box 31507
Raleigh, North Carolina 27622

Dear Senator Johnson:

The Studies Act of 1993, House Bill 1319, as you may know, passed both chambers of the General Assembly but was not ratified. It will be signed upon the convening of the 1994 Session.

We note that Part VIII of House Bill 1319 would direct the Joint Utility Review Committee to study recent rulings by the Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities and municipal electric utility systems. We call your attention to this provision and ask that you undertake that task.

We request that if you are prepared to make an interim report (with findings and recommendations including legislation) for submission to the 1993 General Assembly, you submit it to the Legislative Research Commission Cochairmen not later than Friday, April 29, 1994. The final report should be made not later than Friday, January 6, 1995, in the same manner.

We appreciate the service that you and the Joint Legislative Utility Review Committee provide to the people of North Carolina, and extend to you our best wishes.

Yours truly,

Rep. Daniel T. Blue, Jr.

Sen. Marc Basnight

Cochairmen
Legislative Research Commission

cc: Representative George Miller
Senator Beverly Perdue
Steve Rose
94S-SF-016

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

January 6, 1994

The Honorable George Miller, Cochair
Joint Legislative Utility Review Committee
P.O. Box 451
Durham, North Carolina 27702

Dear Representative Miller:

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We note that Part VIII of House Bill 1319 would direct the Joint Utility Review Committee to study recent rulings by the Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities and municipal electric utility systems. We call your attention to this provision and ask that you undertake that task.

We request that if you are prepared to make an interim report (with findings and recommendations including legislation) for submission to the 1993 General Assembly, you submit it to the Legislative Research Commission Cochairmen not later than Friday, April 29, 1994. The final report should be made not later than Friday, January 6, 1995, in the same manner.

We appreciate the service that you and the Joint Legislative Utility Review Committee provide to the people of North Carolina, and extend to you our best wishes.

Yours truly,

Rep. Daniel T. Blue, Jr.

Sen. Marc Basnight

Cochairmen
Legislative Research Commission

cc: Senator Joe Johnson
Senator Beverly Perdue
Steve Rose
94S-SF-016A

REPORT OF THE NORTH CAROLINA UTILITIES COMMISSION

TO

THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

REGARDING

FUEL CHARGE ADJUSTMENT PROCEEDINGS FOR ELECTRIC UTILITIES

(PURSUANT TO G.S. 62-133.2)

JULY 1993

State of North Carolina
Utilities Commission

Post Office Box 29510
Raleigh, N.C. 27626-0510

July 22, 1993

Senator Joseph E. Johnson, Co-Chairman
Representative George W. Miller, Jr., Co-Chairman
Joint Legislative Utility Review Committee
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Johnson and Representative Miller:

The Utilities Commission hereby presents its 1993 report to the Joint Legislative Utility Review Committee regarding fuel charge adjustment proceedings for electric utilities.

This report is being provided pursuant to the provisions of Chapter 129 of the 1991 Session Laws. This legislation requires the Utilities Commission to provide biennial reports summarizing the procedures conducted pursuant to G.S. 62-133.2, the statute providing for fuel charge adjustments for electric utilities, and recommending whether this statute should be continued, repealed, or amended. In our report, the Commission summarizes the six proceedings conducted under this statute during the preceding two years and recommends that the statute be continued in its present form with no amendments.

Respectfully submitted,

John Thomas

John E. Thomas
Chairman

JET/beo

cc: Senator Mary P. Seymour
Senator Paul S. Smith
Representative David T. Flaherty, Jr.
Representative Judy Hunt

430 North Salisbury Street Raleigh, North Carolina 27611
Telephone No.: (919)733-4249
Facsimile No.: (919)733-7300

INTRODUCTION

This report is being provided to the Joint Legislative Utility Review Committee pursuant to the provisions of Chapter 129 of the 1991 Session Laws. This legislation requires the Utilities Commission to provide biennial reports summarizing the procedures conducted pursuant to G.S. 62-133.2, the statute providing for fuel charge adjustments for electric utilities, and recommending whether this statute should be continued, repealed, or amended. The Joint Legislative Utility Review Committee is to provide its own recommendations to the General Assembly beginning with the 1994 Regular Session.

G.S. 62-133.2 provides for two types of rate adjustments: fuel charge adjustments and "true-ups." They both take place in the context of a single hearing, but they are separate and distinct, and it is important to distinguish them. A fuel charge adjustment is a prospective adjustment to the fuel cost component of electric rates (the fuel factor) designed to account for changes in the cost of fuel and the fuel component of purchased power as set in the company's last general rate case (the base fuel factor). A fuel charge adjustment is based on pro forma data and utilizes a historical test period. The test period data is used as a guide to what fuel costs will be in the future. No matter how carefully a fuel charge adjustment is set, it will never perfectly match the fuel costs that the utility actually incurs in the future, and that is why a "true-up" is allowed. The "true-up" looks at data to determine whether the reasonable fuel expenses prudently incurred by the utility were more or less than what had been provided for in the rates collected during that period. A "true-up" is an adjustment to rates by which underrecovered fuel costs are collected by the utility or overrecovered fuel costs are returned to customers. The "true-up" adjustment is referred to as an experience modification factor or EMF rider.

Fuel charge adjustments first began in North Carolina during the 1970s when the price of fuel was escalating rapidly as a result of the Arab Oil Embargo. The Utilities Commission first used its discretionary ratemaking power to establish formulas under which fuel charge factors were added to customers' bills monthly based upon ongoing changes in the cost of fuel. This procedure was challenged in court and was upheld by the Supreme Court in 1976. Meanwhile, in 1975 the General Assembly amended G.S. 62-134 in order to provide a statutory basis for fuel charge adjustment proceedings. In 1982, based upon the recommendation of the Utility Review Committee (the predecessor of the Joint Legislative Utility Review Committee), the General Assembly repealed the fuel charge adjustment provisions of G.S. 62-134 and enacted the immediate predecessor of the present fuel charge adjustment statute, G.S. 62-133.2. Under this statute, fuel charge adjustment proceedings are held once each year for each electric utility that generates electricity by fossil or nuclear fuel to determine whether the fuel component of electric rates should be adjusted up or down to reflect actual changes in the utility's cost of fuel and the fuel cost component of the utility's purchased power.

"True-ups" were first introduced in 1985. In a fuel charge adjustment proceeding for Carolina Power & Light Company (CP&L), the Utilities Commission added an "experience modification factor" to rates in order to allow CP&L to recover a portion of its previously underrecovered fuel expenses. This Order was

challenged in court, and in 1987 the Court of Appeals held that G.S. 62-133.2, as then written, did not authorize such a "true-up". However, on July 24, 1987, the General Assembly amended G.S. 62-133.2 in order to provide explicitly for "true-ups."

By this same 1987 legislation, the General Assembly provided for repeal of the entire statute in two years, on July 1, 1989. In 1989, the General Assembly extended the sunset date until July 1, 1991. In 1991, the General Assembly again extended the sunset date, this time for six years until July 1, 1997. This legislation, Chapter 129 of the 1991 Sessions Laws, also provided for the Utilities Commission to report every two years to the Joint Legislative Utility Review Committee "summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended." This is the first such report.

SUMMARY OF FUEL CHARGE ADJUSTMENT PROCEEDINGS

Before summarizing the individual proceedings conducted pursuant to G.S. 62-133.2 during the preceding two years, the Commission will provide a brief background on the way the statute is administered.

The statute applies to Duke Power Company (Duke), Carolina Power & Light Company, and Virginia Electric and Power Company, d/b/a North Carolina Power. The Commission, following lengthy rulemaking proceedings, adopted Commission Rule R8-55 to implement the statute. A copy of this Rule is attached to this report as Appendix A. The rule establishes a date certain for each company's annual fuel charge adjustment hearing. The hearing for Duke is held the first Tuesday of May each year, the hearing for CP&L is held the first Tuesday of August each year, and the hearing for North Carolina Power is held on the second Tuesday of November each year. If, as happened once during the preceding two years, a company has a general rate case hearing scheduled close to the date for its annual fuel charge adjustment hearing, the two hearings may be consolidated. However, the issues in the fuel charge adjustment proceeding will be decided separately from the issues in the general rate case. Rule R8-55 establishes a test period for each company that is uniform from year to year. The test period for Duke is the calendar year, the test period for CP&L is the 12-month period ending March 31, and the test period for North Carolina Power is the 12-month period ending June 30.

The burden of proof is on the utility to show that its fuel expenses were reasonable and were prudently incurred. Although fuel charge adjustments were originally prompted by fluctuating fuel prices resulting from the Arab Oil Embargo, today the main reason why fuel expenses fluctuate is the availability of nuclear generating units. The cost of nuclear fuel is far less than the cost of coal and other fossil fuels, and the level of total fuel expense is therefore largely dependent upon how well a utility's nuclear power plants operate. Thus, the capacity factors for nuclear plants are important considerations in fuel charge adjustment proceedings. Appropriate nuclear capacity factors are crucial both in setting rates for the future and also in determining the "true-up." Only "reasonable fuel expenses prudently incurred" are trued-up, and the Commission uses nuclear capacity factors as indications of management efficiency and prudency. Rule R8-55(i) provides:

The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant or (b) an average systemwide nuclear capacity factor, based on a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

We will now summarize the six fuel charge adjustment proceedings conducted during the preceding two years.

1. CP&L - Docket No. E-2, Sub 603

In this fuel adjustment proceeding, which was conducted on August 6, 1991, and which related to the 12-month test period ended March 31, 1991, the Commission, by Order issued on September 12, 1991, approved a fuel factor of 1.330¢[1] per kWh. This factor was 0.054¢ per kWh higher than the base fuel factor of 1.276¢ per kWh approved in CP&L's last general rate case. In approving such fuel factor, the Commission utilized a normalized nuclear capacity factor of 66.1%. The total North Carolina jurisdictional fuel expense resulting from this fuel factor was approximately $340.5 million.

During the test period, CP&L had overcollected its fuel expense by $2.8 million. Such overcollection plus interest at 10% was required to be refunded to customers over a 12-month period by the EMF rider.

The Commission further concluded that CP&L's operation of its base load nuclear and fossil plants was reasonable and prudent during the test period.

The result of the Commission's decision in this proceeding was a net rate reduction of approximately $7.9 million or 31¢ per month for a typical residential customer using 1,000 kWh per month.

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[1] This and all subsequent fuel factors exclude gross receipts tax.

2. CP&L - Docket No. E-2, Sub 622

CP&L's most recent fuel charge adjustment proceeding was held on August 4, 1992, and encompassed the 12-month test period ended March 31, 1992. In this proceeding, the Commission approved by Order issued on September 11, 1992, a fuel factor of 1.409¢ per kWh. Such factor was 0.133¢ per kWh higher than the base fuel factor set in CP&L's last general rate case proceeding. The Commission utilized a nuclear capacity factor of 62.55% in this proceeding and the total North Carolina jurisdictional fuel expense resulting from use of this fuel factor was approximately $376.8 million.

During the test period, CP&L had overcollected its fuel expense by $17.9 million. Such overcollection plus interest at 10% was required to be refunded over a 12-month period by the EMF. CP&L had calculated interest on the overcollection at both 8% and 10% interest rates and agreed to use the interest rate approved in the then pending Duke fuel proceeding which was later determined to be 10%.

Based upon the evidence presented, the Commission concluded that the operation of the Company's base load nuclear and fossil plants was reasonable and prudent during the test period.

The result of the Commission's decision in this proceeding was a net rate increase of approximately $3.4 million or 13¢ per month for a typical residential customer using 1,000 kWh per month.

3. Duke - Docket No. E-7, Sub 501

In this fuel adjustment proceeding, which related to Duke's 12-month test period ended December 31, 1991, the Commission held a hearing on May 5, 1992, and issued an Order on June 23, 1992, approving a fuel factor of 1.1025¢ per kWh. Such factor reflects that the Company's adjusted test period jurisdictional fuel expense level was $458.9 million. This approved fuel factor represents an incremental decrease of 0.0007¢ per kWh to the 1.1032¢ per kWh base fuel factor approved in the Company's last general rate case proceeding. The Company's base fuel factor was established by Order issued on November 12, 1991.

In making its determination of the appropriate fuel factor, the Commission utilized a system normalized nuclear capacity factor of 72.0% as recommended by the Company and the Public Staff. Further, among the other elements included in the overall calculation of the appropriate fuel factor, the Company and the Public Staff were in agreement, except with regard to fossil fuel prices. The Public Staff updated the fossil fuel prices to include March 1992 burn prices and the Commission agreed with this update.

During the 12-month test period ended December 31, 1991, Duke had an overcollection of its jurisdictional fuel expense in the amount of $59.4 million. Such overcollection plus interest calculated at a rate of 10% was required by the Commission to be refunded to Duke's customer's through an EMF decrement rate rider over a 12-month period.

Duke and the Public Staff agreed on the amount of the fuel expense overcollection but disagreed on the rate of interest to apply to such overcollection. Specifically, Duke proposed 8% and the Public Staff recommended 10%. The Commission approved a 10% interest rate and stated the following conclusions:

> "Since 1981, when G.S. 62-130(e) was enacted, the Commission has consistently used 10% to calculate interest on utility refunds. During that period, interest rates have moved up and down and have generally been much higher than they are today. The Commission has specified use of a 10% rate notwithstanding the general level of interest rates in the economy on the theory that 10% provides for adequate compensation to ratepayers over the long term considering the fact that a policy of tracking the general level of interest rates in the economy would lead to the denial of fair compensation to ratepayers when those interest rates exceed the statutory cap of 10%."

Further, the Commission concluded that Duke's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

The result of the Commission's decision in this proceeding was a net rate reduction of approximately $28.7 million on an annual basis or 69¢ per month for a typical residential customer using 1,000 kWh per month.

4. Duke - Docket No. E-7, Sub 517

In this fuel adjustment proceeding, which related to Duke's 12-month test period ended December 31, 1992, the Commission held a hearing on May 4, 1993, and issued an Order on June 18, 1993, approving a fuel factor of 1.0981¢ per kWh. Such factor reflects that the Company's adjusted test period total North Carolina fuel expense level was $468.6 million. This approved fuel factor represents an incremental decrease of 0.0051¢ per kWh to the base fuel factor set in Duke's last general rate case proceeding.

In making its determination of the appropriate fuel factor, the Commission utilized a system normalized nuclear capacity factor of 75.0% as recommended by the Company and the Public Staff. Further, the Company and the Public Staff were also in agreement on all the other elements included in the overall calculation of the appropriate fuel factor and the Commission concurred with them.

During the 12-month test period ended December 31, 1992, Duke had an overcollection of its jurisdictional fuel expense in the amount of $41.5 million. Such overcollection plus interest calculated at a rate of 10%.was required by the Commission to be refunded to Duke's customers through an EMF decrement rate rider over a 12-month period.

Duke and the Public Staff agreed on the amount of the fuel expense overcollection but disagreed on the rate of interest to apply to such overcollection. Again, Duke proposed 8% and the Public Staff recommended 10%. The Commission approved a 10% interest rate and supported its decision with the same conclusions as those reached in Duke's preceding fuel charge adjustment.

Those conclusions are set out in the above summary of Duke's Docket No. E-7, Sub 501 proceeding.

Further, the Commission concluded that Duke's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

The result of the Commission's decision in this proceeding was a net rate increase of approximately $21.2 million on an annual basis or 50¢ per month for a typical residential customer using 1,000 kWh per month.

5. North Carolina Power - Docket No. E-22, Sub 329

The test period for North Carolina Power's 1991 annual fuel cost review was the 12-month period ending June 30, 1991. The 1991 hearing was held in November, and the Commission issued its Order on December 28, 1991. The instant proceeding was noncontroversial.

The Commission's Order of December 28, 1991, approved an incremental increase of 0.001¢ per kWh to the 1.165¢ per kWh base fuel cost approved in the Company's last general rate case proceeding. The Company's base fuel cost was established by Order issued on February 14, 1991.

In developing the foregoing level of base fuel cost, the Commission employed a nuclear capacity factor of 66.69%. Based on the pro forma test period level of kWh sales, North Carolina Power's jurisdictional fuel cost found reasonable for purposes of this proceeding was $28.7 million.

In its Order of December 28, 1991, the Commission found and concluded that North Carolina Power's fuel and power purchasing practices during the test period were reasonable and prudent.

Actual jurisdictional fuel revenues for the test period exceeded actual fuel expenses by $34,000. North Carolina Power was required to refund that overcollection of fuel costs to its customers with interest at the rate of 10% per annum.

The overall impact of the Commission's decision resulted in a monthly rate increase of $1.67 over rates previously in effect for a typical residential customer using 1,000 kWh of electricity per month.

6. North Carolina Power - Docket No. E-22, Sub 335

North Carolina Power's 1992 annual fuel cost review hearing was held in conjunction with hearings on a general rate increase request filed by the Company on July 31, 1992. Those hearings were held in January 1993.

The test period utilized for the fuel cost review was the 12-month period ending June 30, 1992. There was no disagreement between the parties as to the proper level of fuel cost to be used for purposes of this proceeding.

The Commission issued its Order establishing the approved level of fuel cost in this docket on February 26, 1993. That Order established a new base fuel

factor of 1.091¢ per kWh. Such base fuel factor, which is currently in effect, is 0.075¢ per kWh lower than the level of fuel cost previously in effect.

In developing the foregoing level of base fuel cost, the Commission employed a nuclear capacity factor of 69.24%. Based on the pro forma test period level of kWh sales, North Carolina Power's jurisdictional fuel cost found reasonable for purposes of this proceeding was $28.7 million.

During that test year, the Company overrecovered its actual jurisdictional fuel costs by $1.3 million. The Commission required that that overcollection be refunded to customers with interest at the rate of 10% per annum.

The Commission in this proceeding found the Company's fuel and power purchasing practices to be reasonable.

The overall impact of the Commission's decision concerning fuel cost, in this docket, resulted in a monthly rate decrease of $1.35 over rates previously in effect for a typical residential customer using 1,000 kWh of electricity per month.

RECOMMENDATIONS

In three previous reports to the Joint Legislative Utility Review Committee between 1984 and 1988, the members of the North Carolina Utilities Commission concluded that there was not as immediate a need or justification for electric utility fuel charge adjustments as there had been in the past since fuel costs had become more stable and since electric utilities had taken to filing general rate cases on at least an annual basis, thus obviating the need for fuel charge adjustment proceedings up to that time. However, the Commission further concluded that there remained a need and justification for having a fuel charge adjustment statute and procedure in place since fuel costs are volatile and could fluctuate in the future and since electric utilities might return to the practice of filing general rate cases less frequently.

Since January 1, 1988, Duke, CP&L, and North Carolina Power have collectively filed only four requests for general rate increases. CP&L was last granted a general rate increase by the Utilities Commission in August 1988, while Duke and North Carolina Power were last granted general rate increases in February 1991, and February 1993, respectively. None of these three companies presently has an application for a general rate increase pending before the Commission; nor have these companies notified the Commission of any intent to file general rate cases in the near future. That being the case, the Commission continues to believe that G.S. 62-133.2 which requires the Commission to conduct an annual fuel charge adjustment proceeding for Duke, CP&L, and North Carolina Power should be continued. The fuel charge adjustment statute provides the Commission with an efficient, fair, and effective means of making annual adjustments to the level of reasonable and prudently incurred fuel costs included in electric utility rates in order to minimize the under- or overrecovery of such costs. Likewise, the Commission continues to believe that the "true-up" provision of G.S. 62-133.2 is an integral part of the statute which contributes significantly to the overall efficiency, fairness, and effectiveness of its operation. This provision operates to refund overcollections of fuel costs to

customers and provides for recovery of undercollections of fuel costs from customers when the Commission determines such fuel costs to be reasonable and prudently incurred. For these reasons, the Commission recommends that G.S. 62-133.2 be continued. We recommend no amendments to the statute.

RULE R8-55. Annual hearings to review changes in the cost of fuel and the fuel component of purchased power.

(a) For each utility generating electric power by means of fossil and/or nuclear fuel for the purpose of furnishing North Carolina retail electric service, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.2(b) in order to review changes in the cost of fuel and the fuel component of purchased power. The annual fuel charge adjustment hearing for Duke Power Company will be scheduled for the first Tuesday of May each year; for Carolina Power & Light Company, the annual hearing will be scheduled for the first Tuesday of August each year; and, for Virginia Electric and Power Company, d/b/a North Carolina Power, the annual hearing will be scheduled for the second Tuesday of November each year.

(b) The test periods for the hearings to be held pursuant to paragraph (a) above will be uniform over time. The test period for Duke Power Company will be the calendar year; for Carolina Power & Light Company, the test period will be the 12-month period ending March 31; and, for North Carolina Power, the test period will be the 12-month period ending June 30.

(c) The general methodology and procedures to be used in establishing fuel costs, including the fuel cost component of purchased power, shall be as follows:

(1) Fuel costs will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case, except that capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, adjusted to reflect unique, inherent characteristics of the utility including but not limited to plants 2 years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent 5-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors. A fuel cost rider will then be determined based upon the difference between the fuel costs thus established and the base fuel cost component of the rates established in the utility's most recent general rate case. The foregoing normalization requirement assumes that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

(2) The fuel cost as described above will be further modified through use of an experience modification factor (EMF) rider. The EMF rider will reflect the difference between reasonable and prudently incurred fuel cost and the fuel related revenues that

were actually realized during the test period under the fuel cost components of rates then in effect.

(3) The fuel cost rider and the EMF rider as described hereinabove will be charged as an increment or decrement to the base fuel cost component of rates established in the utility's previous general rate case.

(4) The EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings; provided, however, that such carry-through provision will not relieve the Commission of its responsibility to determine the reasonableness of fuel costs, other than that being collected through operation of the EMF rider, in any intervening general rate case proceeding.

(5) Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(d) Each electric utility, as a minimum, shall submit to the Commission for purposes of investigation and hearing the information and data in the form and detail as set forth below:

(1) Actual test period kWh sales, fuel related revenues, and fuel related expenses for the utility's total system and for its North Carolina retail operations.

(2) Test period kWh sales normalized for weather, customer growth and usage. Said normalized kWh sales shall be for the utility's total system and for its North Carolina retail operations. The methodology used for such normalization shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case.

(3) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission in the utility's last general rate case, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc. In the event that said methodology is inconsistent with the normalization methodology set forth in paragraph (c)(1) above, additional pro forma calculations shall be presented incorporating the normalization methodology reflected in paragraph (c)(1).

(4) Cost of fuel corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel was derived. The cost of fuel shall be based on end-of-period unit fuel prices incurred during the test period,

although the Commission may consider other fuel prices if test period fuel prices are demonstrated to be nonrepresentative on an on-going basis. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.

(5) The monthly fuel report and the monthly base load power plant performance report for the last month in the test period and any information required by NCUC Rules R8-52 and R8-53 for the test period which has not already been filed with the Commission. Further, such information for the complete 12-month test period shall be provided by the company to any intervenor upon request.

(6) All workpapers supporting the calculations, adjustments and normalizations described above.

(7) The nuclear capacity rating(s) in the last rate case and the rating(s) proposed in this proceeding. If they differ, supporting justification for the change in nuclear capacity rating(s) since the last rate case.

(e) Each utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed herein, and any changes in rates proposed by the respondent (if any), at least 60 days prior to the hearing. Nothing in this rule shall be construed to require the respondent utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the respondent utility in this proceeding.

(f) The respondent utility 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. 62-133.2(b) and setting forth the time and place of the hearing.

(g) Persons having an interest in said hearing 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.

(h) The Public Staff and other intervenors shall file direct testimony and exhibits of expert 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 expert witnesses the intervenor intends to offer at the hearing.

(i) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant or (b) an average systemwide nuclear capacity factor, based upon a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

(j) The hearing will generally be held in the Hearing Room of the Commission at its offices in Raleigh, North Carolina.

(k) If the Commission has not issued an order pursuant to G.S. 62-133.2 within 120 days after the date the respondent utility has filed any proposed changes in its rates and charges in this proceeding based solely on the cost of fuel and the fuel component of purchased power, then said utility may place such proposed changes into effect. If such changes in the rates and charges are finally determined to be excessive, said utility shall refund any excess plus interest to its customers in a manner directed by the Commission.

(l) Each company shall follow deferred accounting with respect to the difference between actual reasonable and prudently incurred fuel costs, including the fuel cost component of purchased power, and fuel related revenues realized under rates in effect.

North Carolina General Assembly

Joint Legislative Utility Review Committee

State Legislative Building

Raleigh 27611

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December 15, 1993

MEMORANDUM

TO: Members of the Committee

FROM: Steven Rose, Committee Counsel

RE: Fuel Charge Proceedings for Electric Utilities

The 1991 General Assembly extended the sunset date for G.S. 62-133.2 from July 1, 1991 to July 1, 1997. (Chapter 129 of the 1991 Session Laws.) G.S. 62-133.2 governs fuel charge proceedings for electric utilities.

In extending the sunset date to July 1, 1997, the General Assembly required the Utilities Commission to provide a biennial report to the Joint Legislative Utility Review Committee summarizing the proceedings conducted pursuant to G.S. 62-133.2 during the preceding two years, and recommending whether that section should be continued, repealed, or amended. The first report was due, and was filed with this Committee, in July 1993. This Committee, in turn, is required to report to the General Assembly on a biennial basis in the following even numbered years. This Committee's report is to contain the information provided by the Utilities Commission and this Committee's recommendations regarding G.S. 62-133.2.

There are two components in G.S. 62-133.2 which affect the fuel charges of electric utilities. They are the fuel charge adjustment component and the "true-up" component. A fuel charge adjustment is an adjustment in the fuel cost component (cost of fuel and the fuel portion of purchased power) which takes effect in the future and is

designed to adjust the rates of the electric utility prospectively to take into account the fact that the cost of fuel has changed since the last general rate case. In and of itself it does not recover fuel undercharges for the utility or overcharges for the customer. It takes into account the past cost of fuel only insofar as it is a guide as to what the future cost of fuel will be. The "true-up" component is the method by which under-recovered fuel costs are recovered for the utility, and over-recovered fuel costs are recovered for the customers. "True-ups" are a retroactive adjustment to the utility rate.

Prospective fuel charge adjustments have been a part of North Carolina rate making in one form or another for approximately 21 years. "True-ups" were added by the General Assembly in its 1987 clarification of G.S. 62-133.2.

The 1987 rewrite of G.S. 62-133.2 contained a sunset of July 1, 1989. This was extended to July 1, 1991 in 1989. As stated above, the 1991 sunset was extended to July 1, 1997.

G.S. 62-133.2 provides a mechanism for adjusting utility rates on an annual basis to reflect changes in the cost of fuel. This allows the adjustment to be made without the necessity of a general rate case. The fuel cost component of the electric utility rate is the most difficult to predict. It varies with the cost of fossil fuels which are commodities subject to swings of the market, and with the utility's ability to use its nuclear power plants to the maximum capacity.

Fuel charge proceedings are held for each electric utility every twelve months. The Commission receives evidence from the the utility, the Public Staff, and any intervenor desiring to submit evidence, which includes the Attorney General and general public. The Commission may consider only reasonable fuel expenses which have been prudently incurred. The burden of proof as to the reasonableness and prudence of the fuel charges is on the utility.

An extensive review of the history of fuel charge proceedings in North Carolina can be found in this Committee's Report to the 1989 General Assembly.

93C-SR-097

§ 62-133.2. (Repealed effective July 1, ~~1981~~ 1997) Fuel charge adjustments for electric utilities.

(a) The Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the cost of fuel and the fuel component of purchased power used in providing their North Carolina customers with electricity from the cost of fuel and the fuel component of purchased power established in their previous general rate case.

(b) For each electric utility engaged in the generation and production of electric power by fossil or nuclear fuels, the Commission shall hold a hearing within 12 months of the last general rate case order and determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates established in the last preceding general rate case. Additional hearings shall be held on an annual basis but only one hearing for each such electric utility may be held within 12 months of the last general rate case.

(c) Each electric utility shall submit to the Commission for the hearing verified annualized information and data in such form and detail as the Commission may require, for an historic 12-month test period, relating to:

(1) Purchased cost of fuel used in each generating facility owned in whole or in part by the utility.
(2) Fuel procurement practices and fuel inventories for each facility.
(3) Burned cost of fuel used in each generating facility.
(4) Plant capacity factor for each generating facility.
(5) Plant availability factor for each generating plant.
(6) Generation mix by types of fuel used.
(7) Sources and fuel cost component of purchased power used.
(8) Recipients of and revenues received for power sales and times of power sales.
(9) Test period kilowatt hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the public staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the price of fuel consumed and changes in the price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed. The Commission shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period, based upon the prudent standards set pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-

§ 62-133.2 has a delayed repeal date. See notes for date.

recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case. The burden of proof as to the correctness and reasonableness of the charge and as to whether the fuel charges were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested fuel adjustment that is based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operations. In evaluating whether fuel expenses were reasonable and prudently incurred, the Commission shall apply the rule adopted pursuant to subsection (d1). To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and the fuel cost component of purchased power over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

(d1) Within one year after ratification of this act, for the purposes of setting fuel rates, the Commission shall adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs.

(e) If the Commission has not issued an order pursuant to this section within 120 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested fuel adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

(f) Nothing in this section shall relieve the Commission from its duty to consider the reasonableness of fuel expenses in a general rate case and to set rates reflecting reasonable fuel expenses pursuant to G.S. 62-133. (1981 (Reg. Sess., 1982), c. 1197, s. 1; 1987, c. 677, s. 1.)

Section Repealed Effective July 1, 1991. — This section is repealed, effective July 1, 1991, by Session Laws 1987, c. 677, s. 5, as amended by Session Laws 1989, c. 15, s. 1.

Editor's Note. — Session Laws 1987, c. 677, ss. 2 and 3 provide:

"The enactment of this act shall be construed as clarifying rather than changing the meaning of G.S. 62-133.2 as it was previously worded and as construed by the Utilities Commission in Commission Rule R8-55 so that electric utilities will recover only their reasonable fuel expenses prudently incurred, including the fuel cost component of purchased power, with no over-recovery or under-recovery, in a manner that will serve the public interest.

"Until the Commission has formally adopted a rule as prescribed by subsection (d1) of G.S. 62-133.2 all fuel charge adjustment proceedings shall be heard and decided pursuant to the applicable provisions of subsection (a), (b), (c), (d), (e) and (f) of G.S. 62-133.2 and Commission Rule R8-55."

CASE NOTES

This section was enacted by the General Assembly in order to eliminate undesirable limitations which existed under former § 62-134(e). State ex rel. Utilities Comm'n v. Thornburg, 84 N.C. App. 482, 353 S.E.2d 413 (1987).

Subsections (a) and (d) Compared. — Subsection (a) of this section defines

Comm'n v. Carolina Util. Customers Ass'n, 328 N.C. 37, 399 S.E.2d 98 (1991).

VII. TEST PERIOD.

The plain language of subsection (c) merely provides that the components of the rate making formula are to be determined based on an historical test period, and do not require a nexus between operating expenses and "property used and useful." The statute reserves this requirement solely to the reasonable original cost of the public utility's property, the ratebase component which is described in subdivision (b)(1). State ex rel. Utils. Comm'n v. Thornburg, 325 N.C. 463, 385 S.E.2d 451 (1989).

§ 62-133.2. (Repealed effective July 1, 1997) Fuel charge adjustments for electric utilities.

Section Repealed Effective July 1, 1997. — This section is repealed, effective July 1, 1997, by Session Laws 1991, c. 129, s. 2. For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. —

Session Laws 1991, c. 129, s. 1, effective May 27, 1991, repealed Session Laws 1987, c. 677, s. 5, as amended by Session Laws 1989, c. 15, s. 1, which had provided for repeal of this section effective July 1, 1991.

Session Laws 1991, c. 129, s. 3 provides: "On July 1, 1993 and every two years thereafter, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended. The Joint Legislative Utility Review Committee shall report to the General Assembly beginning with the 1994 Regular Session and every two years thereafter which report shall contain the information provided by the Utilities Commission and the Committee's recommendation whether G.S. 62-133.2 should be continued, repealed, or amended."

§ 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

§ 62-133.2 has a delayed repeal date. See notes for date.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

Sec. 2. This act is effective upon ratification and applies to appointments made on and after this date.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 407 CHAPTER 129

AN ACT TO CONTINUE PERIODIC REVIEW OF ELECTRIC UTILITY FUEL COSTS.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 677 of the 1987 Session Laws, as amended by Section 1 of Chapter 15 of the 1989 Session Laws is repealed.

Sec. 2. G.S. 62-133.2 is repealed effective July 1, 1997.

Sec. 3. On July 1, 1993 and every two years thereafter, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended. The Joint Legislative Utility Review Committee shall report to the General Assembly beginning with the 1994 Regular Session and every two years thereafter which report shall contain the information provided by the Utilities Commission and the Committee's recommendation whether G.S. 62-133.2 should be continued, repealed, or amended.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 409 CHAPTER 130

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OR HIS DESIGNEE SHALL BE AN EX OFFICIO MEMBER OF THE NORTH CAROLINA FARMWORKER COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-426.25(b) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of ~~12~~ 13 members as follows:

(1) Four shall be appointed by the Governor.

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 15
HOUSE BILL 126

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO EXTEND THE EXPIRATION DATE OF THE FUEL CHARGE ADJUSTMENT PROVISIONS OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 677 of the 1987 Session Laws reads as rewritten:

"Sec. 5. G.S. 62-133.2 is repealed in its entirety effective July 1, ~~1989.~~ 1991."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of March, 1989.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H D

93-LBXZ-410A(5.17)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Sewer District Amendments. (Public)

Sponsors: Representative Kuczmarski.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPEDITED PROCEDURE FOR CREATION OF COUNTY WATER AND SEWER DISTRICTS AFTER FAILURE OF LOW PRESSURE PIPE SEWER SYSTEMS, TO CLARIFY THE POWERS OF COUNTY WATER AND SEWER DISTRICTS, AND CONCERNING THE APPLICATION DATES FOR CLEAN WATER BOND LOANS AND GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-86 is amended by adding a new subsection to read:

"(b1) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published not more than 30 nor less than 14 days before the hearing. The newspaper notice and the public hearing may cover more than one district covered by this subsection.

This subsection applies only when the local Health Director or the State Health Director has certified that there is a present or imminent serious public health hazard caused by the failure of

a low pressure pipe sewer system within the area of the proposed district, and in such case the board of commissioners may proceed either under subsection (a) of this section or under this subsection."

Sec. 2. G.S. 162A-87(b) reads as rewritten:

"(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

'The foregoing resolution was adopted by the . . . . . County Board of Commissioners on . . . . . and was first published on . . . . . .

Any action or proceeding questioning the validity of this resolution or the creation of the . . . . . Water and Sewer District of . . . . . County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

.....
Clerk,.....Cou
Board of Commissione

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period.

Notwithstanding any other provision of this section, in the case of any county water and sewer districts created under G.S. 162A-86(b1):

(1) A resolution may cover the creation of more than one district;

(2) The board of commissioners shall cause the resolution to be published once in the newspaper in which the notices of the hearing were published; and

(3) References in this subsection to '30 days' are instead '21 days'. "

Sec. 3. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"**§ 162A-87.1. Initial boundaries of district.**

(a) The initial boundaries of a district may exclude areas contained solely within the external boundaries of the district.

(b) The initial boundaries of a district may include non-contiguous portions, as long as the closest distance from a non-contiguous piece to the part of the district containing the greatest area does not exceed one mile.

(c) This section does not invalidate any district created prior to the effective date of this section."

Sec. 4. G.S. 162A-87.2 reads as rewritten:

"**§ 162A-87.2. Abolition of water and sewer districts.**

(a) Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners.

(b) If the:

(1) Terms of any contract between a county water and sewer district and a city provide that upon certain conditions, all the property of the district is conveyed to that city; and

(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

then such contract may also provide that no earlier than such conveyance the district may be abolished by action of the governing board of the city. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a city must provide for assumption of

such other indebtedness by the city. If the district is owed any assessments, then the right to collect such assessments becomes that of the city. The governing board of the city shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the governing board. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(c) If the:

(1) Terms of any contract between a county water and sewer district and a private person provide that upon certain conditions, all the property of the district is conveyed to that private person; and

(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

such contract may also provide that no earlier than such conveyance the district may be abolished by action of the Utilities Commission. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a private person must provide for assumption of such other indebtedness by the private person. If the district is owed any assessments, then the private person may collect the assessment under the same procedures as if it was the district. The Utilities Commission shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the Utilities Commission. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(d) Any resolution of abolition adopted under this section on or after the effective date of this section shall be filed with the Secretary of State."

Sec. 5. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-88.1. Contracts with private entities.

A county water and sewer district may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county water and sewer district is authorized by law to engage in."

Sec. 6. G.S. 160A-36 reads as rewritten:

"§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun.~~ begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any non-contiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size. An area developed for urban purposes is also the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this sentence only applies to annexation by a municipality if that:

(1) Municipality has provided in a contract with that district that the area is developed for urban purposes; and

(2) Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this sentence only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 7. G.S. 160A-48 reads as rewritten:

"**§ 160A-48. Character of area to be annexed.**

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is ~~begun.~~ begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any non-contiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in ~~size.~~ size; or

(4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:

a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area

which does not meet the requirements of subsection (c) if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or

(2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Sec. 8. G.S. 159G-10 is amended by adding a new subsection to read:

"(a1) When the State Health Director has certified that there is a present or imminent serious public health hazard on account of a failure of a low pressure pipe sewer system, and funds are applied for by a county water and sewer district from any or all of the High-Unit Cost Wastewater Account, the General Wastewater Revolving Loan and Grant Account, or the Emergency Wastewater Revolving Loan Account, the Environmental Management Commission may establish a special period for consideration of such applications outside the semiannual period provided by subsection (a) of this section. In such case:

(1) The certification of the State Health Director provided for by this subsection satisfies the requirements of G.S. 150B-21,1(a)(1) for adoption of temporary rules;

(2) The Environmental Agency Commission need not adopt permanent rules;

(3) The Environmental Management Commission, notwithstanding G.S. 150B-21.1(d) may provide that the temporary rules become effective upon adoption;

(4) The Environmental Management Commission may establish priorities for such loans or grants, or both, notwithstanding G.S. 159G-10; and

(5) The provision of G.S. 159G-8(b) do not apply, unless the project is a major project in accordance with the minimum criteria rule as defined in G.S. 113A-9(6), although nothing in this subsection limits the ability of the Environmental Management Commission by temporary rule to require such environmental information as it deems appropriate.

Any temporary rules allowed by this subsection may be adopted prior to the receipt of the application for the grant or loan.

Sec. 9. This act is effective upon ratification, and Section 8 of this act is only effective with respect to applications for grants and loans received on or before December 31, 1994.

State of North Carolina
Utilities Commission

Post Office Box 29510
Raleigh, N. C. 27626-0510

December 3, 1993

The Honorable Joseph E. Johnson, Co-Chairman
Joint Legislative Utility Review Committee
North Carolina State Senate
Legislative Building
Raleigh, North Carolina 27603

The Honorable George W. Miller, Jr., Co-Chairman
Joint Legislative Utility Review Committee
North Carolina House of Representatives
Legislative Building
Raleigh, North Carolina 27603

Dear Senator Johnson and Representative Miller:

On September 1, 1993, the North Carolina Utilities Commission entered an Order in Docket No. W-848, Sub 16, appointing emergency operators for all of the sewer systems owned by North State Utilities, Inc. (North State), in North Carolina. Harrco Utility Corporation (Harrco) was appointed the emergency operator for all sewer systems in Wake, Durham, and Orange Counties, and Tri-County Wastewater Management (Tri-County) was appointed emergency operator for the Oakcroft Subdivision in Mecklenburg County. The Commission Order required North State to forfeit the $20,000.00 in bonds it had posted pursuant to G.S. 62-110.3. The forfeited bond monies are being used to fund emergency repairs.

In appointing emergency operators for the North State sewer systems, the Commission found that there are serious deficiencies in almost all of the North State sewer systems and that those systems do not comply with the applicable standards and regulations of the Health Departments of Wake, Durham, Orange, and Mecklenburg Counties and the Division of Environmental Health (DEH). The Commission further found that homeowners in the subdivisions who are customers of North State face the prospect of loss of sewer service and substantial financial loss due to these deficiencies, unless the deficiencies are corrected. The Commission concluded that there is an emergency in all of the sewer utility service areas of North State which required the appointment of emergency operators pursuant to G.S. 62-118(b). An emergency is defined under State law as the imminent danger of losing adequate sewer utility service or the actual loss thereof. In finding a need to appoint emergency operators, the Commission concluded that North State did not have the expertise necessary to bring its sewer systems into compliance with the applicable rules and regulations of the health agencies responsible for regulating those sewer systems.

The Commission has required the emergency operators to prepare lists of the capital improvements that are needed in each system in order to bring the North State systems into compliance with the rules and regulations of the Division of Environmental Health and the Wake, Durham, Orange, and Mecklenburg County Health Departments. The Commission has now begun holding hearings to consider improvements that need to be made to the North State systems and has in fact approved customer 'assessments to fund necessary work on an emergency basis, such as replacing a dosing pump on one system, repiping and replacing solenoid valves on two systems, and replacing access hatches on six systems. Many customers appeared and testified at the public hearings conducted by the Commission to consider emergency assessments. They were understandably frustrated and angry. The customers generally emphasized the fact that they are victims and are in no way responsible for the problems with their sewer systems which they believe to be the fault of North State Utilities, Inc. They also testified to a general feeling of disappointment and disillusionment with the agencies of the State of North Carolina responsible for supervising and regulating North State. The customers also expressed feelings of skepticism regarding Harrco and Tri-County due to the emergency operators' high monthly rates and requests for assessments.

On November 23, 1993, the Public Staff filed a motion whereby the Commission was requested to institute an investigation into the operational and financial history of North State Utilities, Inc. In support of its motion, the Public Staff noted that inquiries from customers, the press, and others have indicated great interest in such questions as how the North State systems reached their present state of disrepair, whether any financial relief is available for present customers, and what can be done to prevent such occurrences in the future. The Public Staff proposed to conduct a financial audit of North State and any affiliated companies and to investigate the planning, construction, and maintenance of the systems in North State's service areas. The Public Staff further requested the Commission to require the cooperation of all parties under its jurisdiction.

On November 29, 1993, the Utilities Commission instituted an investigation into the operational and financial history of North State to address, in particular, the issues raised by the Public Staff in its motion of November 23, 1993. A copy of the Commission Order initiating investigation is attached for your information and review. The Utilities Commission has no authority over other state and county agencies which exercise regulatory jurisdiction over North State. That being the case, and based upon the problems the Commission and Public Staff are now addressing in conjunction with the North State emergency, we recommend that the Joint Legislative Utility Review Committee conduct public hearings to investigate the practices and procedures followed by all state agencies having regulatory oversight over North State Utilities, Inc., since its inception as a public utility in 1986, including the North Carolina Utilities Commission, the Public Staff, the Divisions of Environmental Management and Environmental Health of the Department of Environment, Health and Natural Resources, and the Orange, Durham, Wake, and Mecklenburg County Health

Departments. This investigation should focus on the issues of how the North State sewer systems reached their present state of disrepair, whether any financial relief is available from any governmental agency for present customers, and what can and should be done to prevent such occurrences in the future. Customers are understandably angry and disillusioned, particularly when faced with the prospect of having to pay assessments amounting to more than $1 million to fund necessary capital improvements to their sewer systems based upon the following estimates provided by Harrco, the emergency operator:

Subdivisions	Current Number of Customers	Total Estimated Repair Costs
Monticello	18	$ 55,504
Sutton Estates	19	$ 64,115
Saddleridge	16	$ 77,755
Woods of Ashbury	32	$ 106,971
Banbury Woods	22	$ 66,518
Holly Brook	66	$ 203,097
Manchester	46	$ 152,069
Piney Mountain	33	$ 209,814
Wexford	18	$ 76,569
	TOTAL	$1,012,412

An estimate of capital improvements for the Oakcroft sewer system is not yet available.

The Utilities Commission and Public Staff believe that the matters detailed in this letter are very important and are deserving of investigation by the Joint Legislative Utility Review Committee. We are prepared to fully participate in this investigation and will certainly provide any assistance requested by the Joint Legislative Utility Review Committee.

Sincerely,

John E. Thomas

John E. Thomas, Chairman
North Carolina Utilities Commission

Robert P. Gruber

Robert P. Gruber, Executive Director
Public Staff

cc: Senator Mary P. Seymour
Senator Paul S. Smith
Representative David Flaherty, Jr.
Representative Erin Kuczmarski

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of North State Utilities, Inc. - Appointment of Emergency Operators Pursuant to G.S. 62-118(b)	)	ORDER INSTITUTING INVESTIGATION AND REQUIRING COOPERATION OF ALL PARTIES SUBJECT TO JURISDICTION OF THE NORTH CAROLINA UTILITIES COMMISSION

BY THE COMMISSION: On September 1, 1993, the Commission entered an Order in this docket appointing emergency operators for all of the sewer systems owned by North State Utilities, Inc. (North State), in North Carolina. Harrco Utility Corporation (Harrco) was appointed the emergency operator for all sewer systems in Wake, Durham, and Orange Counties, and Tri-County Wastewater Management (Tri-County) was appointed emergency operator for the Oakcroft Subdivision in Mecklenburg County. The Commission Order forfeited the $20,000.00 in bonds posted by North State pursuant to G.S. 62-110.3.

In appointing emergency operators for the North State sewer systems, the Commission found that there are serious deficiencies in almost all of the North State sewer systems and that those systems do not comply with the applicable standards and regulations of the Health Departments of Wake, Durham, Orange, and Mecklenburg Counties and the Division of Environmental Health (DEH). The Commission further found that homeowners in the subdivisions who are customers of North State face the prospect of loss of sewer service and substantial financial loss due to these deficiencies, unless the deficiencies are corrected. The Commission concluded that there is an emergency in all of the sewer utility service areas of North State which required the appointment of emergency operators pursuant to G.S. 62-118(b). An emergency is defined under State law as the imminent danger of losing adequate sewer utility service or the actual loss thereof. In finding a need to appoint emergency operators, the Commission concluded that North State did not have the expertise necessary to bring its sewer systems into compliance with the applicable rules and regulations of the health agencies responsible for regulating those sewer systems.

The Commission has required the emergency operators to prepare lists of the capital improvements that are needed in each system in order to bring the North State systems into compliance with the rules and regulations of the Division of Environmental Health and the Wake, Durham, and Orange County Health Departments. The Commission has now begun holding hearings to consider improvements that need to be made to the North State systems and has in fact approved customer assessments to fund necessary work on an emergency basis, such as replacing a dosing pump on one system, repiping and replacing solenoid valves on two systems, and replacing access hatches on six systems. Many customers appeared and testified at the public hearings conducted by the Commission to consider emergency assessments. They were understandably frustrated and angry. The customers generally emphasized the fact that they are victims and are in no way responsible for the problems which currently exist with respect to their sewer systems caused by North State Utilities, Inc. They also testified to a general feeling of disappointment and disillusionment with the agencies of the State of North Carolina responsible for supervising and regulating North State. The

customers also expressed feelings of skepticism regarding Harrco and Tri-County due to the emergency operators' high monthly rates and requests for assessments.

On November 23, 1993, the Public Staff filed a motion in this docket whereby the Commission was requested to institute an investigation into the operational and financial history of North State Utilities, Inc. In support of its motion, the Public Staff noted that inquiries from customers, the press, and others have indicated great interest in such questions as how the North State systems reached their present state of disrepair, whether any financial relief is available for present customers, and what can be done to prevent such occurrences in the future. The Public Staff proposed to conduct a financial audit of North State and any affiliated companies and to investigate the planning, construction, and maintenance of the systems in North State's service areas. The Public Staff further requested the Commission to require the cooperation of all parties under its jurisdiction.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause to grant the motion for investigation filed in this docket by the Public Staff on November 23, 1993. The Public Staff is hereby requested to conduct an investigation into the operational and financial history of North State Utilities, Inc. The Commission endorses the Public Staff's proposal to conduct a financial audit of North State and any affiliated companies and to investigate the planning, construction, and maintenance of the North State sewer systems. All parties subject to the jurisdiction of this Commission, including the officers, directors, and shareholders of North State, are hereby ordered to cooperate fully with the Public Staff during the course of this investigation.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff is hereby requested to undertake an investigation into the operational and financial history of North State Utilities, Inc., in conformity with the provisions of this Order.

2. That the Public Staff shall, not later than 30 days from the date of this Order, propose and file a timetable for conducting its audit and investigation and preparing and filing a report of its findings, conclusions, and recommendations in this docket.

3. That all parties subject to the jurisdiction of this Commission, including North State Utilities, Inc., its officers, directors, and shareholders, be, and the same are hereby, required to cooperate fully with the Public Staff during the course of the investigation in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of November 1993.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

(SEAL)

Geneva S. Thigpen, Chief Clerk

Ken Kimsey
2-7-94
Exhibit H

RECOMMENDATIONS CONCERNING PRIVATE SEWER SYSTEMS

1. Change bond requirement which might include:
   a. Raising the minimum bond (in effect this could be done by Commission action).
   b. Make the bonding requirement retroactive, or give the Commission authority to require a bond retroactively. Give Commission authority to establish flexible methods of payment of bonds, such as payment over time.
   c. Ask Commission to consider other types of surety than cash.

2. Expand the Utilities Commission's authority to include low pressure systems operated by homeowners associations and developers developing subdivisions where lots are sold to individuals.

3. Require DEHNR to report to the Utilities Commission and the Public Staff the following:
   a. Noncompliance conditions uncorrected after 30 days.
   b. Recommendation items not complied with after 30 days.
   c. Noncompliance conditions occurring more than once within 12 months for the same type of condition (e.g. effluent on surface more than once, even if in a different field).
   d. Recommendations concerning the same type of condition occurring within one year of the previous recommendation.

e. Any third party complaint made to DEHNR regarding any private, nonmunicipal sewer system serving more than ten residences or businesses, or any combination equalling ten residences or businesses.

4. DEHNR must supply or specify the inspection forms to be used by local agencies acting on its behalf. Forms to be uniform for a given type of inspection.

5. Require DEHNR to do a formal follow-up of recommendation items after 60 days.

6. Make falsification of reports to DEHNR concerning nonmunicipal sewer systems a felony on the second or third conviction.

7. Make the penalty for falsification of reports or failure to report noncompliance conditions include the loss of the operator's certificate.

8. Require, or clarify the requirement, that local agencies doing inspections on behalf of the DEHNR forward a copy of inspection reports to DEHNR within five days of the inspection.

9. Require mutual notice between DEHNR and the Utilities Commission of applications for permits or certificates of convenience and necessity where both agencies have jurisdiction.

10. Require DEHNR, the Utilities Commission, and the Public Staff to study the extent of problems relating to the operation and financial stability of nonmunicipal nonpublic utility private sewer systems and report their findings to the Joint Legislative Utility Review Committee by July 1, 1994. This report will also include recommendations as to the feasibility of establishing a revolving fund for emergency repairs, and how such a fund might be reasonably financed.

11. Authorize the Utilities Commission to use its fee surplus account for the purpose of guaranteeing a loan to an emergency operator for repairs, such authorization to expire after five years and to be for a maximum of $500,000.

12. Require operator of nonmunicipal public utility sewer system to notify customers of occurrence of the same type of noncompliance violation if second occurrence is within twelve months. At operator's expense. (This could be required by Commission rule.)

February 7, 1994

94C-SR-120

Draft Report
North State Utilities Issues
Solutions and Management Team

Introduction

On March 1, 1994 Secretary Jonathan Howes appointed a team to assess funding options and solution opportunities available to the property owners served by 10 subsurface wastewater disposal systems previously operated by North State Utilities.

The Solutions & Management Team included the following members:

Linda Sewall, Chair	Division of Environmental Health
Bobby Blowe	Division of Environmental Management
Andy Lee	Public Staff, Utilities Commission
Wally Venrick	Public Water Supply Section
Wanda Bryant	Attorney General's Office
Boyce Hudson	DEHNR, Raleigh Regional Office

The team met on March 9, March 14, March 21, and March 28, 1994. Outside assistance was received from Sally Meacham, Attorney General's Office; John Soles, Farmers Home Administration; Eric Weatherly, Hobbs, Upchurch & Associates and Steven Berkowitz, On-site Wastewater Section, Division of Environmental Health.

The team agreed to address three major issues: potential technical solutions, financing alternatives, and long term solutions to avoid similar problems in the future. Differences in system location, size and condition resulted in identification of different solutions for each system or group of systems.

Funding alternatives considered were primarily loans with the exception of high unit cost grants and the State's Contingency and Emergency Funds. The possibility of specific appropriations to address North State Utilities issues was not considered in this report.

Seven of the failed systems are located in Wake County. The County has indicated that they do not intend to enter the sewer business. Therefore, county service was not considered as an option for the Wake County systems.

The General Statutes provide for creation of a number of quasi-governmental alternatives for providing water and sewer service. Appendix A describes several of these alternatives. County commissioners' involvement is required for each of these options. The team has determined that creation of a Water and Sewer Authority or a County Water and Sewer District would be the most expedient method of establishing a unit of local government to manage the collection systems serving these communities in situations where

municipal takeover is not practical. Throughout this report, the term "sewer authority" is used to mean either a Water and Sewer Authority or a County Water and Sewer District.

Several of these systems were intended to serve lots that are still owned by the developer. The team believes that, in these cases, the developer should be required to fund a proportionate share of the cost of the solution since solving these problems will clearly increase the value of the remaining lots. In addition, in systems for which the disposal fields are to be replaced by connection to another wastewater system, the team believes the proceeds from the sale of the property currently used for the disposal fields should be used towards the cost of the repairs. This will require that North State Utilities or the developer, depending on who now owns the property, relinquish ownership of the system to whatever new management entity is selected for each case.

Technical Solutions and Financing Alternatives

For purpose of this report, systems are grouped by similar opportunities for solutions. The Utilities Commission has hired a consultant, Hobbs, Upchurch & Associates, to study the most cost effective alternatives for each system. This report includes identification of issues that should be considered in the consultants study.

Any of the options which require creation of a sewer authority and subsequent application for Farmers Home Administration funding are long term solutions. Interim repairs and maintenance will be needed to keep these systems operational during the year or more it will take to even begin construction on the new system. The emergency operators should be encouraged to remain in place during this period. High rates and occasional assessments will probably be required until a final solution is reached.

All of these systems are STEP (Septic Tank Effluent Pumping) systems as described in Appendix B. Even if these systems are connected to nearby municipal systems, a management program will be required for the segments of the system related to the home septic tanks and pumps and the pressurized collection systems.

Sutton Estates/Manchester/Banbury Woods

These three systems and an elementary school, Brassfield, are located close to the Raleigh City Limits and relatively close to existing City of Raleigh sewer lines. Approximately 94 of the 347 lots in these subdivisions are served by the North State systems. The remaining lots are served by individual septic tank systems which, according to the Wake County Health Department, are not experiencing any particular problems.

The City of Raleigh has expressed a willingness to extend municipal wastewater service to these three subdivisions and the school. They estimate the cost of the sewer line extension and required lift stations to be $700,000. The City would not require immediate annexation but would expect to annex these areas in the future. The City would not request financing assistance for this project but would expect to recoup the expended funds through tap on fees from existing and future development.

The City of Raleigh has experience in maintaining STEP Systems in the Town of Rolesville. It appears likely, however, in this case that the STEP systems would be abandoned and each home would be connected directly to the City's system. If the STEP system is to remain in operation significant repairs will be needed.

An alternative would be for the County commissioners to establish a sewer authority in this area. The sewer authority could apply for State Revolving Loan and Grant Funds or Farmers Home Administration loan funds to finance needed repairs to the STEP collection system. The sewer authority would be a bulk customer of the City's for wastewater disposal. Its rates would have to be set to repay any improvement loans, the cost of operating and maintaining the collection system, and the City's bulk rates. The rates might be high enough to qualify the authority for a high unit cost grant to cover some of the construction costs.

The City and the Team prefer the direct extension of the City's wastewater system to serve this area. One potential drawback is that the probability of future annexation might be undesirable to the majority of the residents in these subdivisions since their septic tank systems are not failing and annexation would result in increased taxes.

Although repair of the existing systems appears to be possible, the repair which is estimated to cost $282,702, does not appear to be the best long term solution since the City is willing to provide service.

The Public Staff's consultant should be asked to compare the initial and the monthly costs of these three alternatives.

Saddle Ridge/Monticello/Wexford

These three systems are located North of Raleigh and in close proximity to each other. Saddle Ridge and Monticello are in Wake County and Wexford is in Durham County. Approximately 64 of the 159 lots in these subdivisions are served by the North State systems. The developers still own many of the lots that remain in these subdivisions.

Even though these three systems are as close to the City of Raleigh's existing sewer lines as Manchester and Banbury Woods, the City of Raleigh has indicated a lack of willingness to extend sewer lines to these subdivisions or to accept them as bulk customers. Therefore, interconnection with the City was not considered a viable solution.

The systems serving Saddle Ridge and Wexford have a reasonable probability for successful repair. The Monticello system however is experiencing extensive failure requiring difficult and expensive repairs. Monticello's small size makes technical alternatives such as package plants impractical. However, the team recommends that these three systems join together to develop an alternative system to benefit all three.

The counties could establish a sewer authority in this area. The sewer authority would be eligible to apply for State Revolving Loan and Grant Funds and/or Farmers Home Administration loan funds to construct a new treatment system to serve the authority. Treatment alternatives include discharging systems or land application systems both of which would face serious limitations due to their location on a water supply watershed. Sewer rates would likely be high enough to allow the authority to qualify for a high unit cost grant to fund at least a part of the construction costs.

As an alternative to a sewer authority, the homeowners in these three subdivisions could join to form a single homeowners association. The association could apply for a Farmers Home Administration loan but would be ineligible to apply for State funds.

A major drawback with either of these alternatives is that management of the sewer system would be the responsibility of an authority or association inexperienced in wastewater collection and disposal. An appropriately certified operator would have to be retained. The rates would have to cover the costs of repayment of any loan funds, operation, maintenance, monitoring and future repairs or replacement. It is possible that another regulated utility could be encouraged to install and operate the alternative system. The utility company would not be eligible for Farmers Home Administration financing.

The Public Staff's consultant should be asked to develop cost and feasibility estimates for a discharging system to serve Monticello alone or a combination of Monticello, Saddle Ridge and/or Wexford. The costs of repairing the existing systems should be considered in the analysis of alternatives.

Hollybrook

This system is located near Cary and has received approval to connect to the Town of Cary's sewer system. Previous concerns about potential conflicts with the Town of Apex appear to have been resolved. However, information that the team has received indicates that Cary has only agreed to serve the existing 66 homes. There are approximately 50 additional lots in this subdivision which were originally intended to be served by the North State system for which an alterative solution will be needed. Connection of these additional lots to the Cary system appears to be the most practical alternative.

Preliminary cost estimates for extension of the Town's service of $128,100 are less than the estimated $203,097 to repair the existing system. However, the costs of repairing the STEP system need to be added to the cost of connection to the Town to develop a total project cost.

The team recommends that the Town of Cary reconsider its decision to limit service to the existing homes. If connection of the lots still owned by the developer can be permitted, the developer can be expected to contribute heavily to the total project costs, thereby reducing the burden on the current homeowners.

Whether or not the additional lots can connect to the Town system, the Town, the homeowners association, a sewer authority or a regulated utility will have to assume responsibility for repair, operation and maintenance of the STEP system. Potential funding sources for the repair vary with the ownership.

The Town of Cary or a sewer authority could apply for State or Farmers Home Administration loan funds and the homeowners association could apply for Farmers Home Administration funds but a private utility company would not be eligible for either program. In any case, the Town can request State loan funds for the extension of the Town's system. It is unlikely that the Town can qualify for high unit cost grants since the determination must be based on the average water and sewer rates in the community (Cary) rather than the rates charged in this particular subdivision. If, however, the County establishes a sewer authority to serve this area, the authority is eligible to apply for State funds and might qualify for a grant to cover at least a portion of the project costs.

The Public Staff's consultant should include the cost of repairing the subdivision's collection system in the total estimated project costs.

Woods of Ashbury

This system is located near Fuquay-Varina. The Town has agreed to furnish sewer service to the subdivision by way of a line which will be constructed to Wake

Technical College beginning in 1995. Interconnection with the Town is the recommended long term solution for this systems disposal problems. However, immediate repair of the collection system is needed to resolve serious infiltration problems. These repairs will be needed even after the system connects to the Town so money spent on this work will not be wasted. Additionally, the control system for the existing disposal system must be repaired so that this system can continue to operate until the connection to Fuquay-Varina can be completed.

There are approximately 34 of a proposed 71 homes already served by this system. The developer should contribute heavily in the solution costs since the money spent can be recouped through the sale of the remaining lots.

As with Hollybrook, a management entity will be required for the STEP system. Options include the homeowners association, a regulated utility, a sewer authority or the Town. Potential funding sources vary with the system ownership.

The Town of Fuquay-Varina or a sewer authority could apply for State or Farmers Home Administration loan funds and the homeowners association could apply for Farmers Home Administration funds but a private utility company would not be eligible for either program. In any case, the Town can request State loan funds for the extension of the Town's system. It is unlikely that the Town can qualify for high unit cost grants since the determination must be based on the average water and sewer rates in the community (Fuquay-Varina) rather than the rates charged in this particular subdivision. If, however, the County establishes a sewer authority to serve this area, the authority is eligible to apply for State funds and might qualify for a grant to cover at least a portion of the project costs.

The Public Staff's consultant should include cost estimates for the short term solution in addition to the cost of the connection to Fuquay-Varina.

Piney Mountain

The technical solution to this problem is already well underway. Draft agreements are in place which will allow Orange County to apply for State grant and loan funds to construct a line to transfer the wastewater to the City of Durham for treatment. Orange County is expected to apply for State grant and loan funds for the cost of their sewer line. They are likely to be grant eligible. The Orange Water and Sewer Authority (OWASA) will be responsible for operation of the line from the subdivision to the City. This portion of the solution is expected to be designed by June 1994.

The existing collection system serving this subdivision will continue to require operation and maintenance. There are major problems with the STEP system which

require repairs before the connection to the City system can achieve its desired goals. The residents of this community have sued the State in an attempt to finance the needed repairs. If the residents win this suit, the State should consider legal action against North State Utilities, the engineering firm that designed and certified the system and the developer to recoup at least a portion of the settlement.

Other funding alternatives include establishment of a homeowners association or a sewer authority to apply for Farmers Home Administration or Farmers Home Administration and State funds respectively. Establishment of another sewer authority in Orange County may not be feasible since this community is already within the area served by the OWASA. Management of the STEP system by OWASA would probably result in a more satisfactory long term solution to this problem. The developer should be expected to contribute to the costs of the solution since there are approximately 16 undeveloped lots.

Oakcroft

This system is located in Mecklenburg County close to the Union County line. The developer still owns this system although it was operated by North State Utilities. Only approximately one half of the 70 lots in this subdivision have been developed. Therefore the developer should be expected to contribute significantly to the solution.

Although soil conditions indicate that repair of the existing system would be possible, space limitations and homeowner concerns make interconnection with a governmental system a preferred option. Both the Charlotte Mecklenburg Utility Department (CMUD) and the Town of Stallings in Union County have indicated a willingness to accept the wastes. CMUD, Union County, or the Town of Stallings could apply for State loan funds. It is not clear whether any of these units of local government would be grant eligible.

There does not appear to be an organized homeowner's association in this community. This would make continued operation of the collection system by a regulated utility, CMUD or a new sewer authority preferable to operation by a new homeowners association.

CMUD or a sewer authority could apply for State or Farmers Home Administration loans for the repair of the subdivisions collection system. A sewer authority would be more likely to be eligible for a high unit cost grant.

The Public Staff's consultant should develop cost estimates for on-site repair, connection to CMUD and connection to Stallings. The costs to be compared should

include repairs to the collection system and the monthly operating costs of each type of system.

Future Solutions

The team has developed the following recommendations for changes which may avoid a recurrence of the North State Utilities dilemma. The team agreed that these long term solutions should apply to water and wastewater systems since they face similar management problems.

1) Bonding should be required for all residential water and wastewater systems except those served by units of local government. The team recommends that the role of the Utilities Commission be expanded to include all privately owned water and sewer systems including homeowners associations and mobile home parks. All of these systems must be required to show that they are self supporting. Two philosophies of bonding were discussed.

   a) Cash bonds large enough to cover 100% of system repair should be held by the Utilities Commission. Separate bonds should be collected for each system regardless of ownership.

      This approach would have clearly helped if it had applied to North State Utilities. However, a 100% bond would likely discourage some utility companies and many homeowners associations and mobile home park owners from entering the business. There was considerable discussion about whether this was a bad thing. Regionalization of water and wastewater systems and the development of county systems would be encouraged by this approach.

      Requirement for 100% bond may be unreasonable since at least a portion of each system would be expected to be reused in a repair. Some smaller percentage such as 75% may be more reasonable if this approach is adopted.

   b) Smaller bonds (25-50%) should be collected for each system and pooled to form a contingency or insurance fund. The team believes that this approach will be best if coordinated with suggestion number 2 below. Failure to implement both might result in disincentives to properly maintain the systems. The contingency fund should only be used for emergency situations. Utilities should not be allowed to rely on it for all repair and maintenance needs.

2) At the time of system approval and at each permit renewal, financial viability of each system should be determined. The Utilities Commission is best able

to determine financial viability if the permitting agency provides data and assistance in determining realistic costs of operation. The applicant for a permit must submit a statement of anticipated costs including monitoring, operation and maintenance expenses, cost of repayment of any construction loans, plant depreciation and a reasonable profit. The applicant must show that these cost will be covered by the rates or fees collected and how they will allow a prescribed percentage to be saved for future repairs. For example, an applicant should save 5% of replacement costs each year for a system expected to last 20 years. Statutory changes may be required to assure that the Utilities Commission can and will consider plant depreciation as replacement costs and will allow rates to be set accordingly. This process should force system owners and operators to consider the need for rate increases on a regular basis and to maintain a fund for needed plant replacement. For systems that fail even after all of these precautions, the emergency fund generated by the bonds as described in 1 (b) would be used to repair the system.

3) Bonding requirements should not be made retroactive to existing systems. The team believes that such an action would result in many owners and operators being forced to/or choosing to abandon their systems. A new system is in a better position to post a bond since the amount of the bond can be recouped through the sale of lots. Even existing systems should be required to contribute to the contingency fund described in recommendation 1(b).

4) Viability assessment should apply to existing systems at the time of permit renewal. The permitting agency should assist the applicant in identifying ways to make nonviable systems viable. Methods of obtaining viability may include increasing rates or system restructuring. A schedule for obtaining viability should be established and system expansion should not be allowed until the system is financially viable.

5) Permitting agencies should be encouraged to use enforcement options available to them in a timely manner. Each case must be considered individually. The existence of a plant replacement fund established by recommendation number 2 should allow agencies to feel more confident that repairs can be forced without resulting in system abandonment.

6) Adequate state and local staff should be funded to allow for inspection of each system every 1-3 years depending on the size and complexity of the system. Without an adequate inspection program, deficiencies cannot be identified in time to address problems before they become emergencies.

7) Requirements for operator certification should be continued. In addition continuing education for certified operators should be mandatory. Required

training for small system operators should include management skills such as rate setting and calculating operation and maintenance costs.

8) The source of water supply and wastewater disposal should be recorded on each deed. The department should prepare public education materials related to various types of water supply and wastewater disposal systems and the costs associated with operation of those systems. These materials should be available to be distributed at closings so that home buyers will understand what the notations on their deed really mean to them. It is often a surprise to homeowners to find that small systems cost more per household to operate that larger systems.

APPENDIX A

CREATION OF GOVERNING DISTRICTS

Sanitary District G.S. 130A-55

May be created without regard for county, township or municipal lines providing is with permission of governing body of municipal corp.

By petition of 51% of resident freeholders or 51% of freeholders within proposed district to county board of commissioners

Board of commissioners requests joint hearing with DEHNR

Notice of public hearing required to be posted at courthouse and by newspaper publication at least once a week for 4 successive weeks before hearing

After hearing, Comm. for Health Services and county board determine if advisable to create and CHS adopts resolution creating district

Water and sewer authority G.S. 162A-3

Created by governing body of a county or governing bodies of 2 or political subdivisions (def. as co., city, town, incorp. village, sanitary district other subd. or public corp.)

Requires public hearing with 10 days notice prior to date of hearing, in newspaper having circulation in political subd.

Resolution by governing body or bodies

Certified copy of resolution to Secretary of State who issues certificate of incorporation

Metropolitan sewer district G.S. 162A-66

Created from 2 or more political subd. in one or more counties, or any political subd. or subds. and any unincorporated area or areas located within one or more counties - political subds. or area need not be contiguous

Requires resolutions from governing body of each political subd. and if any unincorporated area is to be included a petition signed by not less than 51% of the qualified voters resident within the area to be filed with county board of commissioners

Board of commissioners requests joint hearing with EMC

Notice of public hearing required 30 days prior to the hearing posted at courthouse and by newspaper at least once a week for 4 successive weeks before hearing

After hearing, EMC and county boards determine if advisable to create and EMC adopts resolution creating district

County service district G.S. 153A-302

Established by county board of commissioners, cannot include territory lying within the limits of a city or sanitary without agreement of entities

Board must determine if demonstrable need for service, if it is impossible or impractible to provide service on countrywide basis, if it is feasible to provide service without unreasonable

taxes, and if there is a demonstrable demand for service by persons in district

Board must prepare report which is available for public inspection at least 4 weeks prior to public hearing

Notice must be provided by mail to all taxpayers within district at least 4 weeks prior to hearing and by publication at least one week before the date of hearing

After hearing resolution by board becomes effective at the beginning of a fiscal year commencing ater its passage

County water and sewer district G.S. 162A-86

Creation of district within a county when need for providing water and/or sewer services in area by board of county commissioners

Requires public hearing and prior notice of not less than 20 days, including newspaper notice once a week for 3 weeks

After hearing board of commissioners determines need, benefit to residents and economic feasibility of providing service without unreasonable taxes and then publishes resolution once a week for 2 weeks in newspaper - final after 30 days

Joint agency/Interlocal agreement G.S. 160A-461

Created by any unit of local government and any 1 or more other units of local government

By contract or agreement to execute any undertaking for a reasonable duration ratified by resolution of the governing board of each unit

Units may be confer power upon a joint agency for undertaking

REGULATORY AUTHORITIES OF STATE ORGANIZATIONS

NORTH CAROLINA

Power	City	County	Interlocal Agreement	Joint Management Agency	County Service District	County Water & Sewer District	Sanitary District	Sewer Authority	Private Corporation
Surveys of Sanitary problems/needs	x	x	x	x	x	x	x	x	
Issue general obligation bonds	x	x	x	x	x	x	x		
Issue revenue bonds	x	x	x	x	x	x	x	x	
Impose Assessments	x	x	x	x	x	x		x	
Levy taxes	x	x	x		x	x	x		
Set fees, rates or charges	x	x	x	x	x	x	x	x	
Receive grants/ loans	x	x	x	x	x	x	x	x[2]	
Hold title to all real property of the system	x	x	x	x	x	x	x	x	
Operate System	x	x	x	x	x	x	x	x	
Enter into contracts	x	x	x	x	x	x	x	x	
Install/operate/ maintain systems on private property	x	x	x	x	x	x	x[1]	x	

[1] Sanitary district cannot require installation of sewer lines in new subdivisions or adopt subdivision regulations.

[2] Sewer authority cannot receive federal revenue-sharing funds or community development grants.

Source: Water Resources Research Institute of the University of North Carolina.

JW/IOC
3-20-91

I. List of organizational alternatives for providing water and sewer services in North Carolina

A. City. G.S. 160A, Art. 16.

B. County. G.S. 153A, Art. 15.

C. Sanitary District. G.S. 130A, Art. 2, Part 2.

D. Water and Sewer Authority. G.S. 162A, Art. 1.

E. Metropolitan Water District. G.S. 162A, Art. 4.

F. Metropolitan Sewerage District. G.S. 162A, Art. 5.

G. Interlocal Agreement. G.S. 160A, Art. 20.

H. Joint Management Agency. G.S. 160A, Art. 20.

I. County Service District. G.S. 153A, Art. 16.

J. County Water and Sewer District. G.S. 162A, Art. 6.

K. Private non-profit associations.

L. Private water and sewer utilities.

M. Combinations

II. Sources of funds for financing water and sewer services

A. Local taxes.

B. Rates.

1. Use

2. Availability. (Cities)

C. Payments from property.

1. Special assessments.

2. Subdivision requirements.

3. Payments in advance.

4. Acreage charges.

5. Special connection charges.

6. Impact fees.

D. Special service charges (tap fees, fire protection, etc.).

E. State and federal grants.

MANAGEMENT ENTITIES: COMPARATIVE FEATURES

	GOVERNING BOARD: Elected	GOVERNING BOARD: Appointed	POWERS	Water	Sewer	Use Fees, Charges	Levy Property Taxes	General Obligation Bonds	Revenue Bonds	Special Assessments	Require Connections	Condemn Land	Regulate Land Use	General Police Powers	
A. City	X			X	X	X	X	X	X	X	X	X	X	X	
B. County	X			X	X	X	X	X	X	X	X	X	X	X	
C. County Water and Sewer District	X			X	X	X	X	X	X	X		X			
D. County Service District	X			X	X	X	X	2	2	2	2	2	2	2	
E. Sanitary District	X			X	X	X	X	X	X	X[1]	X[1]	X	X[1]		
F. Water & Sewer Authority		X		X	X	X			X	X		X			
G. Metropolitan Water District		X		X	X[1]	X	X	X	X			X			
H. Metropolitan Sewer District		X			X	X	X	X	X		X	X			
I. Health Dept.		X													
J. Public Utility				X	X	X						X			
K. Interlocal Contract				X	X	X	3	3	3	3	3	3	3	3	
L. Joint Mgmt. Agency		X		X	X	X									

1. Limiting conditions apply. 2. County may exercise these powers within a service district.
3. These powers may be exercised by any participating unit possessing them.

Appendix B

Description of a "STEP" Pressure Sewer System

"STEP" stands for Septic Tank Effluent Pumping.

The STEP systems in use by North State Utilities have three major segments.

Segment 1

At each home there is a septic tank, a pump tank, a pump and electrical controls. The wastes are first collected in the septic tank where the solids settle to the bottom and the clarified liquid wastes ("effluent") flow into the pump tanks. There the pump pumps the liquid wastes into the pressurized collection system. The electrical controls determine when the pump is activated and trigger an alarm if the pump fails.

Segment 2

The effluent from each individual home is pumped into a common pressurized collection system. This system uses relatively small diameter PVC pipe and, unlike conventional gravity sewers, can move wastewater uphill. These systems are usually significantly less expensive to install than conventional gravity systems.

Segment 3

The effluent collected from the individual homes is delivered to a central dosing tank followed by a subsurface treatment and disposal system. The treatment and disposal systems serving the North State systems are subsurface low pressure pipe systems. In this type of system, the soils provide the treatment through filtering and biological activity.

Treatment alternatives that could have been used include other types of subsurface systems; discharge to a municipal wastewater collection system; a package treatment plant (or recirculating sand filter) and a lagoon with land application for disposal; or a package treatment plant (or recirculating sand filter) with a surface water discharge.

PROPOSAL TO SOLVE IMMEDIATE PROBLEMS OF SUBDIVISIONS SERVED BY NORTH STATE UTILITIES

Rep. Erin Kuczmarski May 13, 1994

This proposal is designed to address problems of the particular subdivisions which are served by North State Utilities or the potential for failure of similar systems. It is not designed to address the long-term problems associated with the failure of North State Utilities. This proposal follows one of the suggestions contained in the draft report of the DEHNR Solutions and Management Team, which was presented at the Joint Legislative Utility Review Committee meeting of April 22, 1994. It also substantially complies with the Wake County Residential Water and Wastewater Policy adopted by the Wake County Commission on May 2, 1994. A copy of that policy is attached.

Proposal: The County Commissioners create one County Water and Sewer District under Article 6 of Chapter 162A of the General Statutes for each of the involved subdivisions. A copy of Article 6 is attached. The advantages of this approach are:

(1) Enables simple and quick creation of a unit of local government that can be the recipient of a

high-unit-cost clean water grant, as well as clean water revolving loans, from DEHNR.

(2) The County Commissioners are the governing board, allowing the existing board with its professional staff to be the decision-makers. This should result in low overhead because the county government will handle administration of the district with its existing staff, charging the districts for staff time if desired.

Procedure for establishing these units:

(1) The County Commissioners call a public hearing, with notice published 20 days prior.

(2) After the hearing, the Commissioners make findings as required by statute, adopt resolutions creating the districts, and publish the resolutions for two-week period. Any challenge to the creation of a district must be made within 30 days after the first publication of the resolution.

The district has the following powers:

(1) May collect fees for water and sewer service.

(2) May use eminent domain.

(3) May issue general obligation and/or revenue bonds.

(4) May levy property taxes for operation and maintenance of water and sewer service.

(5) May make special assessments for construction and improvements.

NOTE: All these charges are paid for by the beneficiaries of the districts. They are not levied against the taxpayers of the county who are not involved with North State Utilities.

Proposed implementation:

(1) Counties create districts, while county staffs simultaneously prepare grant applications on behalf of each district. DEHNR would assist county in preparation, where necessary.

(2) Districts apply for high-unit-cost grants for capital improvements. These grants would finance part or all of the costs of major repairs and construction necessary to connect to other sewer systems. How much would be covered by the grant would vary with the expenses of each district, and the amount of the grant awarded.

(3) Districts contract with municipal sewer systems or private sewer operators to handle the construction and renovations involved, as well as for the

operation of the districts. Thus, the counties would have very little hands-on involvement in the construction and renovation phase or in the operation phase. Even billing and collection of monthly charges would be handled by contractor.

(4) In districts where the grants were not sufficient to pay for capital expenses involved, the remaining cost could be obtained through clean water revolving loans, financing by the ultimate operator of the system, or advancing of capital costs by the county. These could be recovered in a variety of ways including monthly charges, assessments, special property taxes, and possibly other methods.

This proposal has the advantage of providing for an immediate and permanent solution to the problems of the citizens who are customers of North State Utilities. It involves no direct expense to the general taxpayers, no operational commitments on the part of the counties involved, and all costs are advanced by the existing grant program, or are absorbed by the affected property owners in those subdivisions. This proposal avoids the extremely large assessments which the North State customers are faced with.

There may be a need for some legislation in the short session to fine-tune the existing statutes and programs. We should know if this will be necessary in approximately a week. The Utility Review Committee could meet briefly to consider and recommend such legislation prior to the introduction deadline.

94d-SR-171

Amendments to the Wake County Policy for the Extension of Water Supply and Sewage Systems

J. Extensions to Residential Subdivisions in Municipal Extra Territorial Jurisdictions (ETJ) or Perimunicipal Planning Areas (PPA).

The County may participate in the extension of water or wastewater lines in a ETJ or PPA if there are public health, safety or environmental conditions that could be solved by such an extension. For properties in a municipality's ETJ where the municipality should have extended lines the County may participate but terms will be negotiated. Every attempt will be made to obtain grant or low-interest loan assistance from the State or Federal government. The County may participate by providing funds to build the project which will be assessed to the affected property owners as allowed by law.

1) The service and treatment to those areas or subdivisions will be provided by the municipality in whose ETJ or PPA the area to be served is located.

2) Should a municipality have water or wastewater treatment capacity available to provide service to the affected subdivision and refuse to provide the service the County may begin action to remove the area from that municipality's ETJ or PPA if allowed by law.

3) The waterlines constructed by the County shall be subject to front footage fees and acreage fees. The sewer lines constructed by the County shall be subject to acreage fees.

4) Additional service lines or upgrades to existing lines within the subdivision will be paid for through the assessment of the individual property owners. In addition, the property owners shall be responsible for the payment of all appropriate fees and charges levied by the municipality for connection to the municipality's system. Wake County will not own or maintain any of these lines internal to a subdivision.

ATTACHMENT I
4

The extension of residential water and wastewater lines within municipal corporate limits is totally the responsibility of the municipality. Therefore the County will not participate in line extensions in these areas.

K. Extension to Residential Subdivisions in Areas of the County Outside of Corporate Limits, Extra Territorial Jurisdictions (ETJ) and Perimunicipal Planning Areas (PPA).

The County may participate in the extension of water and wastewater lines in these areas if there are public health, safety or environmental conditions that could be solved by such an extension. Every attempt will be made to obtain grant or low-interest loan assistance from the State or Federal government. The County may participate by providing funds to build the project which will be assessed to the affected property owners as allowed by law.

1) The County must be able to negotiate a contract with the closest utility service provider for the service, treatment, operation and maintenance of the utility lines.

2) The contract to be negotiated by the County with the provider will be for the provision of water or wastewater treatment at a bulk sales rate. These contracts will only be negotiated for subdivisions which have a private utility operator under contract providing for the operation and maintenance of the system within the subdivision.

3) The waterlines constructed by the County shall be subject to front footage fees and acreage fees. The sewerlines constructed by the County shall be subject to acreage fees.

4) The entire cost of the system to be constructed by the County will be the responsibility of the property owners within the affected area or

subdivision. These costs will be assessed against the owners by the County under the provisions of the N.C. General Statutes.

5) The County will retain the right to select alternative approaches to solving the problem should it become necessary.

§§ 162A-82 to 162A-85: Reserved for future codification purposes.

ARTICLE 6.

County Water and Sewer Districts.

§ 162A-86. Formation of district; hearing.

(a) The board of commissioners of any county may create a county water and sewer district.

(b) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once a week for three weeks in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published the first time not less than 20 days before the hearing.

(c) At the public hearing, the commissioners shall hear all interested persons and may adjourn the hearing from time to time. (1977, c. 466, s. 1; 1979, c. 624, ss. 2, 3.)

Editor's Note. — Session Laws 1979, c. 624, which amended this section, in ss. 6 and 7 provided:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-87. Creation of district; standards; limitation of actions.

(a) Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds that:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both;

(2) The residents of all the territory to be included in the district will benefit from the district's creation; and

(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

Territory lying within the corporate limits of a city or town may not be included in the district unless the governing body of the city or town agrees by resolution to such inclusion. Otherwise, the board of commissioners may define as the district all or any portion of the territory described in the notice of the public hearing.

(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolu-

tion to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

"The foregoing resolution was adopted by the ..... County Board of Commissioners on .....and was first published on .....

Any action or proceeding questioning the validity of this resolution or the creation of the .....Water and Sewer District of .....County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

.....
Clerk, ...County Board of Commissioners"

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period. (1977, c. 466, s. 1; 1979, c. 624, s. 4.)

Editor's Note. — For the provisions of ss. 6 and 7 of Session Laws 1979, c. 624, s. 4 of which amended this section, see the Editor's note under § 162A-86.

§ 162A-87.1. Extension of water and sewer districts.

(a) Standards. — The board of commissioners may, by resolution, annex territory to any water and sewer district upon a finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) The residents of the territory to be annexed will benefit from the annexation; and

(3) It is economically feasible to provide the proposed service or services in the annexed district without unreasonable or burdensome annual tax levies.

(b) Annexation by Petition. — The board of commissioners may, by resolution, extend by annexation the boundaries of any water or sewer district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the water and sewer district.

(c) Annexation of Property within a City or Sanitary District. — Territory lying within the corporate limits of a city or sanitary district may not be annexed to a water and sewer district unless the governing body of the city or sanitary district agrees, by resolution, to the annexation.

(d) Report. — Before the public hearing required by subsection (e) of this section, the board of commissioners shall have prepared a report containing:

(1) A map of the water and sewer district and the adjacent territory, showing the present and proposed boundaries of the district; and

(2) A statement showing that the area to be annexed meets the standards and requirements established in subsections (a), (b), or (c) of this section.

The report shall be available for public inspection in the office of the clerk of the board of commissioners for at least two weeks before the date of the public hearing required by subsection (e) of this section.

(e) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution extending the boundaries of a water and sewer district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) of this section is available for inspection in the office of the clerk of the board of commissioners. The notice shall be published at least once not less than one week before the date of the hearing. In addition, unless the hearing is because of a petition for annexation submitted under subsection (b) of this section, the notice shall be mailed, at least four weeks before the date of the hearing, to the owners, as shown by the county tax records as of the preceding January 1, of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board of commissioners to mail the notice shall certify to the board of commissioners that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1985, c. 627, s. 1; 1989, c. 543.)

§ 162A-87.2. Abolition of water and sewer districts.

Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners. (1985, c. 627, s. 2.)

§ 162A-87.3. Services outside the district.

(a) A county water and sewer district may provide water or sewer services, or both, to customers outside the district, but in no case shall the county water and sewer district be held liable for damages to those outside the district for failure to furnish such services.

(b) A county water and sewer district may provide a different schedule of rents, rates, fees, and charges for services provided outside the district.

(c) A county water and sewer district may not extend service to customers lying within the corporate limits of a city or sanitary district unless the governing body of a city or sanitary district agrees, by resolution, to the extension.

(d) A county water and sewer district may not extend service to customers lying within another county unless the board of commissioners of that county agrees, by resolution, to the extension. (1989, c. 726, s. 1.)

§ 162A-88. District is a municipal corporation.

The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article. (1977, c. 466, s. 1; 1979, c. 624, s. 5.)

Editor's Note. — For the provisions of ss. 6 and 7 of Session Laws 1979, c. 624, s. 5 of which amended this section, see the Editor's note under § 162A-86.

CASE NOTES

Broad Powers Granted to Water and Sewer Districts. — The legislature has granted broad powers to water and sewer districts, some of which are set forth in this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Powers Granted to Sewer District and County under Chapter 153A, Article 15. — In addition to those powers granted to sewer district in this section, county, as operator of a public enterprise, is clothed with those powers set forth in Chapter 153A, Article 15, including the power to mandate connections and to fix charges for those connections under § 153A-284. The plain wording of § 153A-284 clearly supports this conclusion. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Water and sewer districts may contract with counties to carry out their purposes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Power of County to Exercise Rights, Powers and Functions Granted to Water and Sewer Districts. — Pursuant to an interlocal cooperative agreement and pursuant to au-

thority granted in Article 15 of Chapter 153A, a county may, among other things, operate a water and/or sewer system for and on behalf of another unit of local government, such as a water and sewer district, and in conjunction therewith may exercise those rights, powers, and functions granted to water and sewer districts as found in this section and those rights, powers, and functions granted to counties in Ch. 153A, Art. 15. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Financing a Project by Charging for Services "To Be Furnished." — A local government is not required to use an assessment procedure to finance a project, and a sewer district may effectively finance a project through its authority to charge for services "to be furnished" pursuant to this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

User Fees Are Not Limited. — The provisions of this section authorizing user fees for services "to be furnished" is not limited to the financing of maintenance and improvements of existing customers. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Annexation of Water and Sewer District. — Trial court did not err in holding that city could lawfully annex part of water and sewer district, even though a water and sewer district under this chapter is termed a municipal corporation; a water and sewer district is a municipal corporation organized for a special purpose, which does not qualify as a municipal corporation for purposes of Chapter 160A. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, — N.C. —, 393 S.E.2d 842 (1990), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

§ 162A-89. Governing body of district; powers.

The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district. (1977, c. 466, s. 1.)

§ 162A-89.1. Eminent domain power authorized.

A county water and sewer district shall have the power of eminent domain, to be exercised in accordance with the provisions of Chapter 40A of the General Statutes, over the acquisition of any improved or unimproved lands or rights in land, within or without the district. (1977, c. 466, s. 1; 1983, c. 735, s. 1; 1987, c. 2, s. 2.)

CASE NOTES

Cited in Pinehurst v. Regional Invs., 97 N.C. App. 114, 387 S.E.2d 222 (1990).

§ 162A-90. Bonds and notes authorized.

A county water and sewer district may from time to time issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, for the purposes of providing sanitary sewer systems or water systems or both.

A county water and sewer district may from time to time issue tax and revenue anticipation notes pursuant to Chapter 159, Article 9, Part 2. (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority in this section and §§ 162A-91 and 162A-92 is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-91. Taxes authorized.

The governing body of a county water and sewer district may levy property taxes within the district in order to finance the operation and maintenance of the district's water system or sewer system or both and in order to finance debt service on any general obligation bonds or notes issued by the district. No voter approval is necessary in order for such taxes to be levied. (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority §§ 162A-90 and 162A-92 and this section is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-92. Special assessments authorized.

A county water and sewer district may make special assessments against benefited property within the district for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems.

A district shall exercise the authority granted by this section according to the provisions of Chapter 153A, Article 9. For the purposes of this section references in that Article to the "county" and the "board of commissioners" are deemed to refer, respectively, to the "district" and the "governing body of the district." (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority in §§ 162A-90 and 162A-91 and this section is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-93. Certain city actions prohibited.

(a) No city may duplicate water or sewer services provided by a district under this Article by installing parallel lines and requiring owners of improved property in territory annexed by the city to connect, except with consent of the district governing body.

(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less

than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of certiorari, within 30 days after the finding.

(c) Provision of public water and sewer services by a district under this Article to an area annexed by a city shall satisfy the city's obligation to provide for water and sewer services under G.S. 160A-35 and G.S. 160A-47. The city may negotiate for purchase of the lines or systems owned and operated by the district.

(d) Upon annexation by a city of an area served by a district under this Article, the city may provide for installation of and use fire hydrants on the district water lines, by arrangement with the district and at the city's cost. (1989, c. 741, s. 1.)

§§ 162A-94 to 162A-100: Reserved for future codification purposes.

ARTICLE 7.

Assumption of Indebtedness of Certain Districts.

§ 162A-101. Assumption of indebtedness of certain districts.

Subject to approval by a majority of the qualified voters of the county voting at an election thereon, a county may assume all indebtedness, incurred for paying all or any part of the cost of a water supply and distribution system, a sewerage system, or both, of any:

(1) Water and sewer authority organized under Article 1 of this Chapter;
(2) Metropolitan water district organized under Article 4 of this Chapter;
(3) Metropolitan sewerage district organized under Article 5 of this Chapter; or
(4) County water and sewer district organized under Article 6 of this Chapter;

An election under this Article shall be called and held in accordance with the provisions of the Local Government Finance Act, insofar as the same may be made applicable, and the returns of the election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of the statement of result. In the event that any indebtedness of a water and sewer authority, metropolitan water district, metropolitan sewerage district, or county water and sewer district is assumed by the county, there shall be annually levied and collected an ad valorem tax upon all the taxable property in the county sufficient to pay the assumed indebtedness and the interest thereon as it becomes due and payable; provided, however, the tax may be reduced by the amount of other moneys actually

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

93J-RW-010
THIS IS A DRAFT 7-FEB-94 11:30:32

Short Title: Exempt Utility Trucks (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM REGISTRATION AND THE MOTOR FUEL TAX VEHICLES REGISTERED IN ANOTHER STATE AND OPERATED TEMPORARILY IN THIS STATE BY A UTILITY PROVIDER OR ITS CONTRACTOR FOR THE PURPOSE OF RESTORATION OF UTILITY SERVICES IN AN EMERGENCY OUTAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-50 reads as rewritten:

"§ 20-51. Exempt from registration.

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or

employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term 'transporting' as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as 'tow dollies.' A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a

full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5.

(13) Any vehicle registered in another state and operated temporarily within this State by a public utility, a governmental or cooperative provider of utility services, or its contractor for the purpose of restoration of utility services in an emergency outage."

Sec. 2. G.S. 105-449.49 reads as rewritten:

"§ 105-449.49. Temporary permits.

Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than 20 days. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the 20-day period. The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits.

A temporary permit is not required for any vehicle registered in another state and operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or its contractor for the purpose of restoration of utility services in an emergency outage."

Sec. 3. This act becomes effective October 1, 1994.

APPENDIX L

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1994

D

94d-RLZ-170
THIS IS A DRAFT 11-MAY-94 16:14:53

Short Title: Gas Report Time. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE TIME BY WHICH THE NORTH CAROLINA UTILITIES COMMISSION AND THE PUBLIC STAFF PROVIDE BIENNIAL NATURAL GAS SERVICE REPORTS TO THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-36A reads as rewritten:

"**§ 62-36A. Natural gas planning.**

(a) The Commission shall require each franchised natural gas local distribution company to file reports with the Commission detailing its plans for providing natural gas service in areas of its franchise territory in which natural gas service is not available. ~~Initial reports shall be filed at a time set by the Commission, but not later than January 1, 1990.~~ Commission rules shall require that each local distribution company shall update its report at least every two years.

(b) The Commission shall develop rules to carry out the intent of subsection (a) of this section, and to produce an orderly system for reviewing current levels of natural gas service and

planning the orderly expansion of natural gas service to areas not served.

(c) Within ~~120~~ 180 days after all local distribution companies have filed their initial or biennial update reports, the Commission and the Public Staff shall independently provide analyses and summaries of those reports, together with status reports of natural gas service in the State, to the Joint Legislative Utility Review Committee."

Sec. 2. This act is effective upon ratification.

STATEMENT OF COMMISSIONER LAURENCE A. COBB
ON BEHALF OF THE NORTH CAROLINA UTILITIES COMMISSION
BEFORE THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

May 13, 1994

The Commission's 1994 report on the status and expansion of natural gas service within the State was submitted to members of the Joint Legislative Utility Review Committee on May 3, 1994. It was the third report prepared pursuant to G.S. 62-36A and is based on a careful analysis of (1) information contained in the updated reports filed by the local distribution companies (LDCs), (2) information and data provided by the LDCs in response to Commission and Public Staff data requests, (3) meetings, interviews, and discussions with executive level LDC management and other personnel, and (4) other information and data. My comments here today will present an abbreviated overview of the Commission's report.

From the standpoint of economic analysis, all four LDCs now employ a state-of-the-art capital budgeting decision-making methodology known as the net present value method of analysis. The net present value of an investment is defined as the present value of future cash flows to be realized from the investment, discounted at the marginal cost of capital to the firm, minus the present value of the cost of the investment.

NORTH CAROLINA NATURAL GAS CORPORATION (NCNG)

NCNG identified three expansion projects in its 1994 report to the Commission. Specifically, the projects were identified as follows:

(1) Whiteville in Columbus County
(2) Mount Olive-Faison-Warsaw-Turkey
(3) Tarboro-Bethel-Robersonville

The Whiteville project is a new pipeline to an industrial park in Columbus County. The majority of the funds for this project will be provided by Columbus County and NCNG anticipates that this project will be completed in 1994.

The total estimated cost of the two remaining projects expected to be incurred during the period covered by this report is approximately $9.4 million. That cost excludes the cost associated with the first phase of the Mount Olive-Faison-Warsaw-Turkey project which is the expansion of facilities from a point near Rosewood in Wayne County to Mount Olive. That phase of the project will be financed with the Company's own funds. These two projects were evaluated using the net present value method of analysis. The net present values of the Mount Olive-Faison-Warsaw-Turkey project and the Tarboro-Bethel-Robersonville project are negative; i.e., the net present values of the anticipated costs to NCNG of these projects were determined to be greater than the net present values of revenues expected to be realized from the projects.

With regard to the Mount Olive-Faison-Warsaw-Turkey project and the Tarboro-Bethel-Robersonville project, NCNG anticipates that part of the costs of those projects will be funded by the Company from conventional sources and that the negative net present values associated with the projects will be provided from an expansion fund to be approved by the Commission. The Company takes this

position in order to avoid placing an unreasonable and long-term burden on its existing customers.

NCNG has previously investigated the feasibility of extending natural gas service to eight of the presently unserved counties in its franchised service area--Bertie, Carteret, Duplin, Jones, Martin, Onslow, Pender, and Washington. The Company has also investigated the feasibility of providing expanded service to Craven and Pitt Counties. The investigations relating to those counties were initially conducted by Stone & Webster consultants, and were completed in the summer of 1988. More recently, the Company has restudied the feasibility of natural gas service to Onslow County and has conducted further economic analysis regarding service to Martin and Duplin Counties. These studies show the extension of service to the eight unserved counties and the expansion of service within Craven and Pitt Counties to be economically infeasible.

After review and analysis, the Commission has reached the following conclusions with regard to NCNG's expansion plans:

1. That the Company should proceed with the projects in Columbus and Wayne Counties as soon as practicable, and within the time frame included in its proposal;

2. That the Company should continue to aggressively seek innovative financing that would enhance the economic feasibility of expansion into unserved counties;

3. That the Company should, assuming G.S. 62-158 is found to be constitutional, be in a position to seek funding from the newly implemented natural gas expansion fund for the proposed projects to Martin and Duplin counties, and that the Company should construct those projects as soon as practicable;

4. That NCNG should remain committed to providing natural gas service to unserved areas where economically feasible and that appropriate studies should be made, when the situation warrants;

5. That NCNG should continue to study the economic feasibility of expansion of its facilities into Onslow County, and NCNG should include a copy of such a study in its next regularly scheduled expansion plan report now due to be filed with the Commission on or before January 1, 1996;

6. That NCNG should continue to make every reasonable effort to identify potential industrial demand for use in its net present value analyses related to proposed expansion projects; and

7. That NCNG should continue to work with the City of Jacksonville, Onslow County, Camp Lejeune and the Weyerhaeuser Plants in Plymouth and New Bern toward the provision of natural gas service.

It is the overall conclusion of the Commission that NCNG's plans for expansion of natural gas service within its franchised service territory in North Carolina are reasonable for purposes of G.S. 62-36A.

NORTH CAROLINA GAS SERVICE (N.C. GAS)
A DIVISION OF PENNSYLVANIA & SOUTHERN GAS COMPANY

N.C. Gas's policies and practices related to system expansion are based principally on a capital budgeting, decision-making methodology which incorporates present-value-based economic analysis. This methodology is used for the purpose of assessing economic feasibility. Generally, it is the Company's policy that in order for a project to be deemed economically feasible, it must first be determined that the project can be expected to provide a rate of return close to that authorized by the Commission in the Company's last general rate case proceeding. N.C. Gas also relies on certain subjective factors when evaluating the feasibility of any project such as the stability of the end-user, the ability of the end-user to use alternative sources of energy, and the overall public benefit.

The Company has identified two proposed expansion projects in its report filed with the Commission.

The first project which the Company intends to undertake would extend service to Walnut Cove in southeastern Stokes County at an estimated cost of $702,000.

The second identified project would extend service to the Shady Grove Road section of the Town of Eden at an initial cost of $91,000.

The Company's last report included a discussion regarding an expansion project to Stoneville. Due to its negative net present value, the Company stated in response to a discovery request that the Stoneville project would be a likely candidate for funding with expansion fund monies if the constitutionality of G.S. 62-158 is upheld by the North Carolina Supreme Court.

Based on the information and data contained in the report submitted by N.C. Gas, it is the overall conclusion of the Commission that the Company's plans for expansion of natural gas service within North Carolina are reasonable.

PIEDMONT NATURAL GAS COMPANY, INC.

Piedmont's general policy objectives regarding residential and commercial customer additions are: (1) to maintain or increase market share and (2) to position itself for future growth by expanding its system.

In the Commission's May 1990 Gas Expansion Report, the Commission noted that Piedmont employed a modified net income method of analysis in evaluating the feasibility of a specific project that essentially assesses economic feasibility over the life of the project. In mid-1990, Piedmont adopted the net present value method of analysis in addition to the modified net income methodology for internal project evaluation.

Piedmont, in its January 1992, biennial update report, identified 70 additional projects subsequent to January 1990 that were budgeted to cost more than $100,000; 52 of which have now been completed. According to Piedmont's December 1993, biennial update report, the 18 remaining projects are either under construction or are awaiting construction.

The estimated direct cost to complete those 18 projects is approximately $1.2 million. The majority of such projects are in the Company's Charlotte and Winston-Salem service areas.

In its December 1993 biennial update report, Piedmont has identified 62 additional projects subsequent to January 1992 that are budgeted to cost more than $100,000 each; 24 of which have now been completed. The remaining 38 projects are under construction or are awaiting construction.

The estimated direct cost to complete those 38 projects is approximately $5.3 million. The majority of the projects are located in the Charlotte and Greensboro service areas.

Piedmont provides services to all of the counties within its franchised area except Alexander and Gaston counties. Since the 1992 expansion plan filing, Piedmont has extended its distribution facilities across the Catawba River for potential future service in Alexander County. As was the case in its 1990 and 1992 filings, Piedmont has indicated that due to the low population density and lack of commercial or industrial establishments in its small franchised area of Gaston County, expansion into that county continues to be economically infeasible.

In its December 1993 biennial update report, Piedmont has included all the potential expansion projects that the Company has investigated to date. Those projects encompass areas that are franchised and unfranchised; at least four unfranchised counties are represented. According to Piedmont, none of the projects include expansion of service into another LDC's service territory.

It is the overall conclusion of the Commission that Piedmont's plans for the expansion of natural gas service within North Carolina are reasonable.

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.

The overall philosophy of Public Service is to invest all available funds in facilities or activities that will best enhance the existing gas transmission and distribution system for the benefit and protection of its customers and to provide the maximum benefit to the maximum number of new customers through optimum system expansion. Consistent with this policy, the Company has budgeted approximately $2 million for 10 main extension projects for the period 1994 through 1996.

In evaluating the economic feasibility of capital expansion projects, the Company relies on the internal rate of return and the net present value methods of economic analysis as well as other factors in evaluating a given project's feasibility.

With regard to system expansion into unserved or virtually unserved counties, on October 1, 1992, Public Service issued a study prepared by Deloitte & Touche regarding the feasibility of providing service to its unserved franchised areas within Alexander, Franklin, Haywood, McDowell, and Warren Counties. Based upon the results of that study, Public Service continues to find that it is not economically feasible to extend its facilities into its unserved

franchised areas using traditional financing methods. Public Service has since extended its facilities into Franklin County to the Town of Franklinton, as a result of a special financing arrangement with Franklin County which resulted in the County owning a portion of the required pipeline extension.

Public Service is prepared to move forward with the expansion of natural gas service into its unserved and underserved counties at such time as funding becomes available under G.S. 62-158. Specifically, Public Service has stated that it is committed to allocating an appropriate portion of new business construction dollars to projects in those unserved areas once funds equivalent to the negative net present values of the projects are available from expansion funds established under G.S. 62-158.

Based upon our review and analysis, it is the Commission's overall conclusion that Public Service's plans for expansion of natural gas service within North Carolina are reasonable.

SYNOPSIS OF RECENT LEGISLATION

On October 24, 1992, the President signed into law the Energy Policy Act of 1992 (EPACT). Section 115 of EPACT establishes federal standards on integrated resource planning and investments in conservation and demand management for natural gas utilities.

Section 115 of EPACT further provides that each state regulatory authority, with respect to each natural gas utility for which it has ratemaking authority, shall provide public notice and conduct a hearing respecting the above-quoted standards. The state regulatory authority must decide whether to adopt the federal standards, and it must make its determination by October 24, 1994.

In order to comply with EPACT, the Commission issued an Order on August 11, 1993, scheduling a hearing to consider the federal standards. That hearing was held on December 14, 1993, and January 25, 1994. The Commission has this matter under review and has not yet rendered its decision.

The Commission continues to implement G.S. 62-158. This legislation authorizes the Utilities Commission to create special natural gas expansion funds to be used by the natural gas utilities to construct facilities into areas where it would otherwise be unprofitable to serve. The sources of funding may be refunds from the LDCs' suppliers of natural gas, surcharges, or any other sources as approved by the Commission. The Commission has issued an Order authorizing the LDCs to hold any supplier refunds returned to them for possible inclusion in an expansion fund. As of March 31, 1994, NCNG was holding $8.2 million in supplier refunds (in addition to the monies already transferred to its expansion fund); Public Service was holding $11.2 million (in addition to the monies already transferred to its expansion fund); Piedmont was holding $13.4 million and N.C. Gas was holding about $581,400.

NCNG filed a petition to create an expansion fund pursuant to G.S. 62-158, and the Commission held hearings at which several parties participated and presented testimony. On February 8, 1993, the Commission issued an Order establishing an expansion fund for NCNG and approving funding of the expansion

fund. The Commission required NCNG to transfer $3.7 million of supplier refunds, plus interest, to the expansion fund. The Order establishing an expansion fund was appealed by CUCA, Alcoa, the Cities of Greenville, Monroe, Rocky Mount, Wilson, and the Greenville Utilities Commission.

Public Service also filed a petition to create an expansion fund, and the Commission, following hearings, issued an Order on June 3, 1993, establishing an expansion fund for Public Service and approving funding. The Commission required Public Service to transfer $4.8 million of supplier refunds, plus certain additional refunds to be received each month through July 1994, plus interest, to the expansion fund. This Order was appealed by CUCA.

The Supreme Court, recognizing the urgency of the matter, allowed a petition to bypass the Court of Appeals. The two appeals were argued before the Supreme Court on February 1, 1994, and the Commission is waiting for the Court's decision.

Piedmont filed an application for establishment of an expansion fund and approval of funding on July 20, 1992. The petition did not meet the requirements of the Commission's rule implementing G.S. 62-158, and the Commission required Piedmont to supplement its petition in order to comply with the rule. The Commission provided that it would proceed once this supplement was filed. Piedmont has made no further filing in the docket. Piedmont has asserted that it will proceed following the outcome of the appeals.

In conclusion, this report represents the results of an extensive investigation conducted by the Commission. G.S. 62-36A presently provides that the Commission and the Public Staff must present their reports to the Joint Legislative Utility Review Committee within 120 days after all LDCs have filed their reports. The Commission recommends that G.S. 62-36A be amended to allow 180 days for the Commission and the Public Staff to conduct future investigations. If the foregoing recommendation is implemented, the Commission intends to require that the LDCs' biennial update reports be filed with the Commission no later than October 31 in the year due. Thus, the Commission's report to the Joint Legislative Utility Review Committee will continue to be provided on or about May 1.

PRESENTATION TO THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

PUBLIC STAFF'S 1994 EXPANSION REPORT

MAY 20, 1994

As a result of questions from this Committee when we presented our last report, we presented information concerning how much money the LDCs were spending on transmission lines and distribution lines in table form for each of the LDCs in this year's report. We provided actual expenditures for 1989 through 1993 and, where available, for 1994 through 1996. We went one step further and compared the level of construction expenditures of the North Carolina LDCs to expenditures of LDCs in other states. This comparison showed that the North Carolina LDCs compare favorably to both the high growth group of LDCs we developed and to the group of 35 LDCs reported on by a large stock brokerage firm. A table showing the results of this comparison is set out on page 12 of the Public Staff's report. It shows that the North Carolina LDCs compare favorably with the LDCs in other states in terms of the amount of capital generated internally, the amount they spend to add an additional customer on average and their overall construction budget in terms of their size.

NORTH CAROLINA NATURAL GAS CORPORATION

NCNG provides service to customers in 29 of the 43 counties in its franchise area. Its served counties have an average population density of 114 persons per square mile. Its unserved counties have an average population density of 63 persons per square mile. The average population density for the State as a whole is 142 persons per square mile.

NCNG has completed three of the five projects it proposed in its 1992 report at a total cost of $9.7 million. It currently plans to complete in 1995 the Wayne County portion of the Wayne County/Duplin County project proposed in its 1992 report, by extending service to Mount Olive without the use of expansion funds. The remainder of the Wayne County/Duplin

County project and all of the previously proposed Edgecombe/Pitt/Martin Counties project have been placed "on-hold" pending the Supreme Court's decision as to the constitutionality of the expansion fund legislation. Expansion projects designed to provide service to parts of Duplin County and to parts of Edgecombe, Pitt, and Martin Counties were updated and included again in the Company's current report. NCNG proposes to make these projects feasible by either (1) the use of funds made available by the implementation of G.S. 62-158 or (2) through county and/or end-user participation in funding. In addition, NCNG reported on the construction of a 6-in transmission pipeline from NCNG's existing transmission pipeline near Bladenboro to an industrial park west of Whiteville in Columbus County, which is being funded in large part by the County.

During the last five years, NCNG has increased total net gas utility plant from $100 million in 1989 to $151 million in 1993. Annual construction expenditures for utility plant during this period averaged $16.9 million. Information as to the type of plant invested in can be found on page 70 of the Public Staff's report. The chart on this page shows, for example, that investment in transmission pipeline ranged from a high of $11.4 million in 1992 to a low of $1.1 million in 1989. NCNG's forecasted construction expenditures for 1994 through 1996 are broken down by category on page 74 of the Public Staff's report.

PUBLIC SERVICE COMPANY OF NORTH CAROLINA

Public Service provides service in 23 out of the 26 counties in its franchise area. Its franchise area has an average population density of 195 persons per square mile. Annual construction expenditures during this period have averaged $36.6 million. Information as to the type of plant invested in can be found on pages 97 and 98 of the Public Staff's report. The chart on page 97 shows, for example, that investment in transmission pipeline ranged from a high of $10.2 million in 1991 to a low of $1.4 million in 1992.

Unlike the other LDCs, Public Service does not have available any detailed construction expenditure forecasts past the current year by plant categories. It plans to spend approximately

$48 million in each of the next three years. Some detail for 1994 can be found on page 101 of the Public Staff's report.

In 1992, Deloitte & Touche (D&T) conducted a service expansion study to evaluate the feasibility of extending natural gas to the five counties that were unserved at that time. The conclusion reached in the feasibility study is that none of the proposed gas projects is economically feasible. The study showed estimated construction costs to be $47 million, with a negative net present value of $25 million.

Since the completion of the Deloitte & Touche study, Public Service has extended gas service approximately five miles into Franklin County with approximately 8.5 miles of distribution main. Public Service has stated that it is prepared to move forward with one or more of the projects studied by D&T once the legal issues surrounding G.S. 62-158 have been resolved.

PIEDMONT NATURAL GAS COMPANY

Piedmont's franchised territory includes 12 counties, 5.5% of Gaston County and 17.5% of Alexander County and has a population density of approximately 461 persons per square mile. Piedmont currently serves all of the counties within its franchised territory, except its small areas in Gaston and Alexander Counties.

Annual construction expenditures during the last five years averaged $41 million. Most of these expenditures have been for distribution mains and services directly related to hooking-up new customers. Information as to the type of plant invested in can be found on page 118 of the Public Staff's report. The chart on this page shows, for example, that investment in transmission pipeline ranged from a high of $6 million in 1993 to a low of $1 million in 1989. Forecasted expenditures for 1994 through 1996 are broken down by category on page 121 of the Public Staff's report.

Piedmont has evaluated several potential expansion fund projects and provided an estimate of their negative net present value in its report. It is taking no further action on these projects until the constitutionality of G.S. 62-158 has been determined.

THE IMPLEMENTATION AND CURRENT STATUS OF G.S. 62-158 - THE EXPANSION FUND LEGISLATION

NCNG's Expansion Fund

On February 8, 1993, the Commission issued an Order that established an expansion fund for NCNG and deferred action on the project proposed by NCNG until after the resolution of the anticipated appeal by Carolina Utility Customers Association (CUCA). NCNG was authorized to transfer $3.7 million of supplier refunds into the expansion fund.

On March 25, 1993, CUCA appealed the Commission's Order by filing a Notice of Appeal to the North Carolina Court of Appeals. CUCA asserted that G.S. 62-158 is unconstitutional because a number of constitutional limitations had been exceeded. CUCA also argued that the Commission committed several other errors of law. NCNG's wholesale customers (the Cities of Rocky Mount, Greenville, Monroe and Wilson) and an industrial customer, Aluminum Company of America, also appealed on similar grounds.

The Supreme Court granted the Appellees' petition to by-pass the Court of Appeals by order dated September 9, 1993. The Public Staff and the Attorney General then filed a motion requesting that oral argument be scheduled as soon as possible. This motion was granted by order of the Court dated November 29, 1993. Oral argument was heard on February 1, 1994. The Public Staff argued in favor of the statute's constitutionality and that the Commission had committed no reversible errors. The Court has not yet rendered its decision. The next opinion dates are in mid-June and late July. We hope to receive an opinion at one of those two times. The next opinion date after that is September 9, 1994.

Public Service's Expansion Fund

The Commission issued its Order establishing an expansion fund for Public Service on June 3, 1993. The balance in this fund is now approximately $5.2 million. CUCA filed its Notice of Appeal on July 2, 1993, raising basically the same issues it raised in the NCNG appeal. The appellants filed a motion to by-pass the Court of Appeals. The petition also requested that oral argument be scheduled to follow oral argument on the NCNG appeal, unless that would cause the NCNG oral argument to be delayed. This petition was granted by order of the Court dated December 2, 1993. The Public Staff and McDowell County filed a joint brief that generally made the same arguments that were made in the NCNG appeal. Oral argument was heard on February 1, 1994, following the oral argument on the NCNG appeal.

Piedmont Natural Gas Company

As stated before, Piedmont is waiting until the constitutionality of G.S. 62-158 is resolved before taking any further action on establishing an expansion fund.

I will be glad to answer any questions.