

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-274, SUB 122

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by Heater Utilities, Inc., Post Office)	
Drawer 4889, Cary, North Carolina, for Authority)	
to Transfer the Franchise to Provide Water)	ORDER APPROVING
Utility Service in Hardscrabble Plantation)	TRANSFER, ACQUISITION
Subdivision in Durham and Orange Counties,)	ADJUSTMENT, AND
North Carolina, from Southland Associates, Inc.,)	MAINTAINING CURRENT
and for Approval of Rates)	RATES

HEARD IN: Durham City Council Chamber, City Hall, 101 City Hall Plaza, Durham, North Carolina, on Tuesday, October 1, 1996, at 7:00 p.m.

BEFORE: Danny Stallings, Hearing Examiner

and

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 7, 1997, at 10:00 a.m.

BEFORE: Commissioner Charles H. Hughes, Presiding; and Commissioners Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt, Judy Hunt, and Jo Anne Sanford

APPEARANCES:

For Heater Utilities, Inc.:

Robert F. Page, Attorney at Law, Crisp, Page & Currin, L.L.P.,
1305 Navaho Drive, Suite 302, Raleigh, North Carolina 27609-7482

For the Using and Consuming Public:

Amy Barnes Babb, Staff Attorney, Public Staff - North Carolina Utilities
Commission, Post Office Box 29520, Raleigh, North Carolina, 27626-0520

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Mar 13 2023

BY THE COMMISSION: This matter arose on May 14, 1996, with the filing of a joint application by Heater Utilities, Inc. (Heater or the Company) and Southland Associates, Inc. (Southland) for authority to transfer the franchise for water utility service in Hardscrabble Plantation Subdivision (Hardscrabble) in Durham and Orange Counties, North Carolina from Southland to Heater and for authority to change rates.

The rates Heater requested in this application are the same uniform rates presently provided in all of Heater's other service areas and would result in a rate increase for the customers in Hardscrabble Plantation Subdivision. In addition, Heater requested rate base treatment of its purchase price for the Hardscrabble Plantation water system without regard to whether or not Southland's investment in the utility facilities was previously recovered from the customers of Hardscrabble Plantation through other means, such as lot sales.

On June 25, 1996, the Commission issued an Order declaring the matter to be a general rate case, suspending the proposed rates, and scheduling the matter for public hearing on October 1, 1996, in Durham. By subsequent Commission Order, the hearing on October 1, 1996, was declared to be solely for the purpose of receiving testimony from the customers at Hardscrabble, with the remainder of the proceeding to be heard on October 11, 1996. The public hearing for customers was held in Durham on October 1, 1996, before Hearing Examiner Stallings and no customers appeared. On October 1, 1996, Heater filed a Motion requesting that the remainder of the proceeding be rescheduled and assigned for hearing to a panel of three Commissioners or the full Commission.

Heater stated that its uniform rates and rate base treatment on the purchase price through a debit acquisition adjustment requests were consistent with the new Safe Drinking Water Act provisions and were in the public interest. On the other hand, the Public Staff argued that the application of uniform but higher rates and the rate base acquisition adjustment are not consistent with the Commission's existing policies or the legislative intent of Safe Drinking Water Act.

On August 16, 1996, Heater filed the direct testimony of Jerry H. Tweed, its Director of Environmental and Regulatory Affairs.

On September 17, 1996, the Public Staff filed the testimony of Kenneth E. Rudder, Utilities Engineer; Andy R. Lee, Director of the Public Staff's Water Division; David A. Poole, Staff Accountant; and the Affidavit of Thomas W. Farmer, Jr., Director of the Public Staff's Economic Research Division.

On October 1, 1996, Heater filed the rebuttal testimony of its President, William E. Grantmyre, and Jerry H. Tweed.

On December 6, 1996, the Public Staff filed a Motion to Strike portions of the testimony of witnesses Grantmyre and Tweed that refer to decisions or policy statements of the Commission prior to 1990, as well as portions of Mr. Tweed's testimony that refer to Commission policies in other jurisdictions.

Also, on December 6, 1996, the Public Staff filed a Motion in Limine, requesting a ruling on the legal issue raised by the filing of Heater's rebuttal testimony in this case, of whether the Commission has the legal authority to change rates for utility service, based primarily on overriding public policy considerations, without going through all of the factual determinations required by G.S. 62-133 for a general rate case.

On December 27, 1996, Heater filed responses to the Motions filed by the Public Staff. By Order issued on January 2, 1997, the Commission denied the Public Staff's Motion to Strike and stated that it would allow the parties to address the issues raised in the Motion in Limine through the filing of briefs.

Each of the above named witnesses appeared and testified at the resumed hearing in this matter on January 7, 1997. Exhibits and cross-examination Exhibits were accepted into the record on behalf of both Heater and the Public Staff.

Based on the foregoing, the verified application, the evidence presented at the hearing, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Heater is a corporation duly organized under the laws of South Carolina and is authorized to do business in the State of North Carolina. It is a franchised public utility providing water and sewer service in North Carolina and is subject to the jurisdiction of the Commission. Heater's record of service is satisfactory.
2. Southland is a corporation duly organized under the laws of North Carolina and is also authorized to do business in the State of North Carolina. Southland is the franchise holder for Hardscrabble Plantation Subdivision located on the border between Durham and Orange Counties in North Carolina. Harrco Utilities, Inc., held the initial franchise of Hardscrabble from September 27, 1990, until Southland acquired the franchise from Harrco on April 29, 1993.
3. The Hardscrabble water system currently serves a total of 152 customers and is approved for a total of 230 lots.
4. The Hardscrabble system was properly installed and is properly operating with no improvements needing to be made.

5. Southland relies exclusively on contract operators for the ongoing operations of its water system. Southland is in the process of divesting itself of its remaining land holdings in Hardscrabble and there is some indication that Southland may be in the process of winding up its remaining business affairs prior to dissolving. Southland has no in-house utility operating expertise and no other utility operations.

6. Harco Utilities, Inc., served as the contract operator of the Hardscrabble system from April, 1993 until March, 1996. Beginning in March, 1996, Heater has provided the contract operator service to Hardscrabble.

7. Heater and Southland have entered into an Agreement To Purchase Water System Assets. Under the agreement, if approved, Heater will pay \$100 per serviceable lot for the entire water production, storage, and distribution system of Hardscrabble or "the original cost net investment (defined as utility plant in service less CIAC less accumulated depreciation) as determined by the investigation of the Public Staff and final decision of the Commission in the transfer and rate increase proceedings that will result as a result of this Purchase Agreement" and in return, Southland will transfer Southland's franchise and all of its rights and obligation to provide water service to Hardscrabble to Heater; Heater will commence serving Hardscrabble's customers as franchise holder; and Southland will abandon the service it currently provides to Hardscrabble.

8. The Public Staff has not opposed the transfer of the system.

9. Heater is financially fit to provide water utility service to the Hardscrabble Subdivision.

Rate Base

10. The original cost net investment of Hardscrabble has been fully recovered by the sale of lots, resulting in a net book value of the Hardscrabble system of \$0.

11. With 152 current customers and the Commission's determination of \$0 original cost net investment, Heater, through its agreement with Hardscrabble, is offering to pay \$15,200 for the Hardscrabble system, resulting in a premium to Southland of \$15,200 at the date of purchase of the system.

12. Heater has requested that the \$15,200 premium which it is paying for the system be placed in rate base as a debit acquisition adjustment.

13. The test that the Commission has heretofore used to determine whether the debit acquisition adjustment should be allowed in rate base is what is referred to as the three-prong test: 1) the benefit to ratepayers should outweigh the cost of inclusion in rate base of the excess purchase price, 2) system deficiencies would go unaddressed if not for

the acquisition by the acquiring company, 3) the acquisition is a result of arm's length bargaining.

14. The transaction proposed herein is prudent, at arm's length, and the benefits accruing to the customers outweigh the costs of inclusion in rate base of the excess purchase price.

Rates

15. Heater is seeking to increase Hardscrabble's rates up to Heater's uniform rates. This is not a case confined to a small part of the rate structure of Hardscrabble, but is a request for a determination of the entire rate structure of Hardscrabble.

16. Heater's present monthly rates are as follows:

Base charge, zero usage	\$11.79 per month
Usage charge	\$ 2.84 per 1,000 gallons

17. Hardscrabble's present monthly rates are as follows:

Base charge, zero usage	\$ 7.00
Usage charge	\$ 2.00 per 1,000 gallons

18. The test year established for use in this general rate case proceeding is the twelve month period ended March 31, 1996.

19. Hardscrabble's current revenues and expenses do not justify Heater's uniform rates. Heater has not presented sufficient evidence of revenues and expenses for either Heater or Hardscrabble to justify its request that Hardscrabble's rates be raised at the time of transfer to Heater's uniform rates.

Revenue And Expenses

20. The proper method to use in determining the appropriate levels of revenues and expenses in this and other transfer proceedings is: a) actual and known costs, when available, should be used for directly assignable costs, such as electric power for pumping, and property taxes; b) incremental or variable costs should be allocated to the system being acquired based on the per customer factor from the purchaser's last general rate case; and, c) fixed costs of the purchaser should not be allocated to the system being acquired since the purchaser has already been allowed full recovery of fixed costs through rates approved in its last general rate case.

21. It is inappropriate in a transfer proceeding coupled with a general rate case proceeding to consider or allow post-test year cost increases incurred by the acquiring

company that have a bearing on all of the acquiring company's system-wide customers. Such post-test year cost increases are more properly evaluated in the context of the acquiring company's next system-wide general rate increase proceeding where the applicant's overall rate of return and operations can be examined and all properly evaluated system-wide expenses and customer numbers can be used in determining just and reasonable rates for the system as a whole.

22. The pro forma service revenue for the existing and proposed rates is as follows:

Southland (existing) rates:	\$31,522
Heater (proposed) rates:	\$47,434

23. The appropriate level of miscellaneous revenues under present rates is \$137.

24. The appropriate level of uncollectible revenues under present rates is \$48.

25. The appropriate level of operating revenue deductions requiring a return is \$19,977.

26. The revenue requirement for the Hardscrabble system under Heater's operation is \$24,097.

Rate of Return

27. The operating ratio method is the appropriate method for determining rates in this proceeding. A 9.4% rate of return on operating revenue deductions is just and reasonable.

28. Heater's uniform rates would result in a 76.83% rate of return on operating revenue deductions for Hardscrabble.

CONCLUSIONS OF LAW

1. Heater's application for approval of the transfer of the assets of Hardscrabble is properly before the Commission. The applicable statutory authority for Commission consideration of this application is G.S. 62-111(a), which states in pertinent part:

No franchise now existing or hereafter issued under the provisions of this Chapter, other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, `` any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written

approval by the Commission, which approval shall be given if justified by the public convenience and necessity.

This statute has been interpreted by the North Carolina Court of Appeals to require the Commission to inquire into all aspects of anticipated services and rates occasioned and engendered by the proposed transfer. Utilities Commission v. Village of Pinehurst, 99 N.C. App. 224 (1990). "Our Supreme Court and this Commission have construed the statute as requiring the Commission to determine whether or not rates and services will be adversely affected by the proposed sale." Utilities Commission v. Duke Power, 78 N.C.U.C. 481 (1988).

For the reasons set forth hereinafter, the Commission concludes that the rates and services of the Hardscrabble system will not be adversely affected by the proposed transfer and that it is reasonable to approve the transfer of the Hardscrabble system to Heater.

2. The parties have submitted briefs on the issue of whether the uniform rates of the purchasing utility may be applied to the transferred system as a matter of policy at the time of transfer. The Commission concludes that, based upon the case law cited in the Public Staff's brief and for the further reasons set forth hereinafter, the Commission is required to institute a general rate case proceeding in accordance with G.S. 62-133 in conjunction with a transfer proceeding to consider an applicant's request for an increase in rates at the time of transfer. Accordingly, the Commission cannot, as a matter of law or policy, assign Heater's uniform rates to Hardscrabble without conducting an inquiry into the revenues and expenses of the transferred system. Notwithstanding that an inquiry is required of the revenues and expenses of the transferred system, the Commission further concludes that as a matter of policy that it is not always necessary to perform an extensive or exhaustive audit; however, in reaching its decision, the Commission must review the present expenses of the transferee and give consideration as to what the transferee proposes to do with respect to improvements to the transferred system and requirements imposed by the Safe Drinking Water Act. Based upon such a review, Hardscrabble's revenues and expenses do not justify Heater's uniform rates. Therefore, Hardscrabble's current rates should remain in effect.

3. The Commission further concludes, for the reasons set forth hereinafter, that based upon the facts of this proceeding, the premium which Heater pays for the Hardscrabble system may be placed as a debit acquisition adjustment into rate base. In reaching this conclusion, the Commission has determined that the transaction proposed herein is prudent, at arms-length, and the benefits accruing to the customers outweigh the costs of inclusion in rate base of the excess purchase price. The Commission further concludes that under the specific facts and circumstances of this case, it would be unreasonable to deny the acquisition adjustment simply because there are no service deficiencies to be addressed.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NOS. 1-3, 7, AND 18

The evidence supporting these findings of fact is contained in the verified application, the Commission files and records regarding this proceeding, and the testimony and exhibits of the witnesses. These findings of fact are essentially informational, procedural and jurisdictional in nature, and the matters that they involve are essentially uncontroverted. Witness Tweed did testify, however, that the intent of the purchase agreement was that Heater would pay the greater of \$100 per serviceable lot or the original cost net investment of Hardscrabble.

EVIDENCE IN SUPPORT OF FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Rudder and is uncontroverted by the Applicant.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NOS. 5-6

The evidence supporting these findings of fact is contained in the testimony of Heater witness Tweed and Public Staff witness Rudder.

Witness Tweed testified that Southland sold all its development interests in Hardscrabble in early 1996 and owns no other water utility systems other than Hardscrabble. Witness Tweed further testified that Southland apparently plans to wind up its remaining business affairs and dissolve by the end of 1997, or sooner, if possible.

Both witnesses Tweed and Rudder testified regarding the past and present contract operations of the Hardscrabble system and this matter is uncontroverted.

EVIDENCE IN SUPPORT OF FINDING OF FACT NO. 8

The evidence supporting this finding of fact is contained in the testimony of Public Staff witnesses Rudder, Farmer, Poole, and Lee. All of these witnesses testified that they were not opposed to the transfer, but that they were opposed to placing uniform rates on the Hardscrabble system and to placing the premium Heater pays for the system into rate base.

EVIDENCE IN SUPPORT OF FINDING OF FACT NO. 9

The evidence for this finding of fact is contained in the affidavit of Public Staff witness Farmer.

Public Staff witness Farmer testified that to determine the financial fitness of Heater, he evaluated the financial and accounting information in this docket, the 1995 and prior

annual reports of Heater as filed with the Commission, and financial information of Heater's parent company, Minnesota Power and Light Company from the Company's filings with the Securities and Exchange Commission and analytical reports by Value Line and Standard and Poor's Corporation. Based upon this evaluation, Mr. Farmer concluded that Heater is financially fit to operate the water utility system for which it has applied in this docket. Mr. Farmer recommended to the Commission that Heater should be granted a certificate of public convenience and necessity to provide water utility service in Hardscrabble.

No party to this proceeding contested this evaluation and recommendation regarding Heater's financial fitness.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NOS. 10-14

The evidence supporting these findings of fact is contained in the application, the testimony of Heater witnesses Tweed and Grantmyre, and Public Staff witnesses Rudder, Poole, and Lee.

Regarding the original cost net investment, Mr. Poole testified that his investigation showed that the original cost of utility property dedicated to public use for the Hardscrabble service area had been fully recovered by the developers through the sale of lots. The Applicant did not contest this fact. Therefore, the Commission concludes that the original cost net investment for utility property of the Hardscrabble system is \$0.

Heater has agreed to pay Southland \$100 per serviceable lot for the Hardscrabble water system assets. The Public Staff has recommended a zero rate base, indicating that it believes the water system cost has been recovered by the developer through lot sales. Heater has requested rate base treatment of its purchase price and the Public Staff opposes that treatment, on the grounds that two of the three tests set forth in the three-prong test previously used by the Commission have not been met.

Witness Lee testified that the Commission has established a policy where the acquiring utility company may be allowed ratemaking treatment of excess purchase price if the following three conditions are met:

1. The benefits to ratepayers should outweigh the cost of inclusion in rate base of the excess purchase price;
2. System deficiencies would have gone unaddressed if not for the acquisition by the acquiring company; and
3. The acquisition was a result of arm's length bargaining.

According to witness Lee, the three-prong test was adopted by the Commission in Docket No. W-354, Sub 39. In that docket, the Commission allowed the excess purchase price to be included in Carolina Water Service's rate base for seven systems acquired from Mecklenburg Utilities. The systems were in poor condition and Mecklenburg Utilities was not financially able to improve the systems. Since then, the three-prong test has been used on a case-by-case basis to evaluate whether excess purchase price should be included in rate base.

Witness Lee further testified that the transfer at issue in this docket

1. "...will not result in any additional significant benefits to Heater's existing customers..." and
2. "...the Hardscrabble system has no deficiencies that need to be addressed."

Heater witness Tweed attached to his testimony as Tweed Rebuttal Exhibit 1 the portions of Hearing Examiner Kirby's Order in Docket W-354, Sub 39, dated January 10, 1986, which related to the issue of rate base treatment on the acquiring utility's asset purchase price.

In his Order in Docket No. W-354, Sub 39, Examiner Kirby discussed a large number of specific facts in that case including: (1) service improvements that would have gone unaddressed; (2) increased rates; (3) arms' length bargaining; (4) prudent purchase price; (5) benefits to acquired and acquiring customers; (6) average per customer rate base of the acquiring company as opposed to the per customer purchase price; (7) operating efficiencies; and (8) spreading costs under unified rate structure and other items. He then concluded that, under the specific facts before him, the acquiring utility company should receive rate base treatment on its purchase price.

The three-prong test mentioned by witness Lee does not appear, verbatim, in Examiner Kirby's Order. The Hearing Examiner in that case does give some guidance for future cases on page 21 of that Order by stating that

"The Hearing Examiner notes also that the danger of including such debit adjustments in rate base - encouraging transfers made to build up rate base--may be adequately guarded against by examining each transaction to ensure that it is prudent, at arms length and the benefits accruing to the customers outweigh the costs of inclusion in rate base of the excess purchase price."

Heater argues that, if there is any proper guidance for the future regarding acquisition adjustments in Examiner Kirby's Order, it is the three underlined tests shown above -- prudent purchase price, arms' length bargaining and benefits to consumers that

outweigh the cost of including the purchase price in rate base. Heater contends that the Hardscrabble transfer meets all three of these tests. The Commission agrees.

Heater admits that the Hardscrabble water system is currently in good condition, requiring little improvement, but argues that this is not a good reason to deny the acquisition adjustment since the long-term viability of the system is significantly improved by the transfer to Heater.

The Commission concludes, based upon the facts presented in this proceeding, that forcing the acquiring utility to prove that there are, or will be, unaddressed system deficiencies which will not be corrected unless the transfer is approved is inappropriate. Although the presence or absence of system deficiencies may be a factor to be considered by the Commission in determining the overall benefits accruing to the customers, it should not, by itself, be considered as a reason to approve or deny rate base treatment of the purchase price.

The Commission concludes that it is not reasonable, and would conflict with sound regulatory policy and practice, to send a signal to the water utility industry that a small system should be allowed to deteriorate so that it can command a higher sales price, since the acquiring company could then obtain rate base treatment on its purchase price.

Heater argues that the Hardscrabble acquisition was an arms' length transaction and the Public Staff agrees. Heater argues that the proposed acquisition is prudent since: (1) Heater is paying \$100 per customer connection to Southland, whereas Heater's average rate base is approximately \$575 per customer, (2) Hardscrabble is located near other Heater systems as indicated in Public Staff witness Rudder's testimony; and (3) the Hardscrabble water system is presently in good condition.

Heater further argues that the acquisition will benefit Heater's existing customers by diluting its per customer rate base and increasing its customer base in Heater's service areas. The acquisition will benefit the customers of Hardscrabble by ensuring the long-term viability of their water system, in that it will be owned and operated by a professional utility company with the technical, managerial and financial capacity to ensure the long-term provision of adequate service.

The Commission concludes that the acquisition is in the best interests of the customers and that Heater should be allowed to make the requested debit acquisition adjustment to rate base after the transfer has been completed. The Commission has articulated a position of encouraging the orderly transfer of water systems from developers and small owners to reputable water utilities like Heater and from reputable water utilities to municipalities and other governmental owners. The Commission believes that its decision herein, based upon the facts and circumstances presented, promotes and serves this position and is in the public interest.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NOS. 15-17, AND 19-26

The evidence supporting these findings of fact is contained in the application of the Company, the files of the Commission, the testimony of Company witnesses Grantmyre and Tweed, the testimony of Public Staff witness Poole and the briefs submitted by the parties. The Company has requested that the Commission adopt a policy in this case of approving a water or sewer utility's uniform rates at the time of transfer.

The Commission acquires its authority to modify rates from the General Assembly. State ex rel. Utilities Commission v. North Carolina Textile Manufacturers Association, 59 N.C. App. 240 (1982). There is no authority granted by the General Assembly or the courts to modify rates in a transfer proceeding. A general rate case proceeding must be instituted in conjunction with the transfer proceeding in order to address modification of the transferred system's rates. Accordingly, the Commission cannot, as a matter of law or policy, assign Heater's uniform rates to Hardscrabble without conducting an investigation of the cost of service of the acquired system. In its Motion In Limine filed on December 6, 1996, the Public Staff states that when applicants for transfers have also requested an increase in rates for systems to be transferred, it has recommended that the matter be declared a general rate case and has titled it as both a transfer and an approval of rates case. In reviewing these requests for transfer and increase in rates cases, the Public Staff conducts an investigation sufficient to determine whether the proposed rates are just and reasonable under G.S. 62-133. Although the Public Staff does not necessarily do an extensive or exhaustive audit, the Public Staff does look at the present expenses of the transferee as well as what the transferor might do in improvements to the transferred system. It is not uncommon for the Public Staff to recommend an increase on these grounds in conjunction with a transfer proceeding. The Commission agrees that this is the appropriate standard by which to evaluate the appropriateness of the rates of the transferred system.

With respect to Hardscrabble's specific rates, Public Staff witness Poole provided testimony and schedules which indicate that Hardscrabble is exceeding its revenue requirement with its current rates. Public Staff witness Poole testified that he determined the appropriate level of operating expenses by using the directly assignable cost where available and by using the per customer allocation factor to allocate certain incremental costs. Public Staff witness Poole further testified that it is inappropriate to allocate certain fixed costs in a transfer proceeding since the transferee has already been allowed the opportunity to fully recover those fixed costs through the rates approved in its previous general rate case proceeding. To do so would result in the transferee collecting more than 100% of those fixed costs, thus resulting in a windfall for the transferee. Finally, Public Staff witness Poole testified that his methodology is consistent with the methodology used by the Public Staff in previous transfer proceedings.

Company witness Grantmyre did make several statements in his testimony concerning the Public Staff's methodology. However, the Company did not present sufficient evidence or schedules concerning the appropriate amounts of any adjustments to the Public Staff's levels of revenues and expenses for the Hardscrabble system. First, Mr. Grantmyre alleged that the Public Staff deviated significantly from previously used accounting and cost analysis procedures. A careful review of the dockets cited in Grantmyre Rebuttal Exhibit A shows that the Public Staff has in fact been consistent with procedures used in other transfer dockets. In each and every docket cited in Grantmyre Exhibit A, the Public Staff allocated only those costs that could be considered to be incremental as identified in the specific account groupings used by Hydraulics.

Second, Mr. Grantmyre stated in his rebuttal testimony that the Public Staff has excluded substantial costs that have been incurred by Heater since the end of its last general rate increase, specifically additions to general plant, extensions to its Operations Center, computer upgrades, additional field trucks, and a new billing and mailing machine, among other items. However, Heater failed to provide any documentation quantifying these increases and any corresponding increases in customer growth in this proceeding. Furthermore, these types of costs are not due to the addition of the Hardscrabble system, and are more appropriately addressed in a general rate case for Heater's overall operations, where the total additions can be audited and allocated over all customers who benefit from the additional cost.

Based on the foregoing, the Commission finds and concludes that the appropriate method to use in determining the appropriate levels of revenues and expenses in this and other transfer proceedings is: a) actual and known costs, when available, should be used for directly assignable costs, such as electric power for pumping, and property taxes; b) incremental or variable costs should be allocated to the system being acquired based on the per customer factor from the purchaser's last general rate case; and, c) fixed costs of the purchaser should not be allocated to the system being acquired since the purchaser has already been allowed full recovery of fixed costs through rates approved in its last general rate case. To allow such expenses to be allocated in this proceeding would result in an over-recovery of those expenses thus resulting in Heater exceeding its authorized rate of return. Furthermore, this method does not materially deviate from procedures and concepts used by the Public Staff and accepted by the Commission in other transfer proceedings.

Based on this methodology, the Commission concludes that the appropriate level of service revenues under present rates is \$31,522; the level of service revenues under Heater's proposed rates is \$47,434; the appropriate level of miscellaneous revenues under present rates is \$137; the appropriate level of uncollectible revenues under present rates is \$48; and the appropriate level of operating revenue deductions under present rates is \$19,977.

The Commission finds and concludes that Heater has failed to satisfy its burden of proof under G.S. 62-75 that the present rates are unjust and unreasonable. The Commission further concludes that the present rates, which have been charged to Hardscrabble customers since April 1993, are not unreasonable. Notwithstanding the Public Staff's testimony that present rates are in fact generating a higher rate of return than has recently been granted by this Commission, the Commission agrees with the Public Staff that the present rates should be continued to avoid confusion among customers and to minimize the potential 'rate shock' that may occur at a future point in time when the Hardscrabble operations are ultimately included in Heater's overall operations and subject to Heater's uniform rates.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NOS. 27-28

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Farmer. The company did not offer any evidence to counter Public Staff witness Farmer's rate of return recommendation.

IT IS, THEREFORE, ORDERED as follows:

1. That the application for the transfer of the certificate of public convenience and necessity to provide water utility service in Hardscrabble Plantation Subdivision in Durham and Orange counties from Southland Associates, Inc., to Heater Utilities, Inc., is hereby approved.
2. That Appendix A attached hereto shall constitute the certificate of public convenience and necessity.
3. That Heater's request to increase Hardscrabble's rates at the time of the transfer is hereby denied and that the Schedule of Rates, attached hereto as Appendix B, is hereby approved and deemed filed with the Commission pursuant to G.S. 62-138.
4. That Heater shall, in a future rate case proceeding, be allowed rate base treatment of its purchase price for the Hardscrabble water system as discussed in this Order.
5. That Heater's request that the uniform rates of a purchasing utility be placed on the purchased utility as a matter of policy is denied.
6. That the Notice to Customers attached hereto as Appendix C shall be mailed with sufficient postage or hand delivered to all customers in Hardscrabble Plantation in conjunction with the Applicant's first billing.

7. That Heater has posted a bond for the Hardscrabble Plantation Subdivision system in the amount of \$21,000 and such bond is hereby approved.

8. That the \$21,000 bond posted by Southland Associates, Inc., is hereby released and that United Carolina Bank, 3605 Glenwood Avenue, Raleigh, North Carolina, is hereby authorized to release such bond.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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Mar 13 2023

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

APPENDIX A

DOCKET NO. W-274, SUB 122

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

HEATER UTILITIES, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

HARDSCRABBLE PLANTATION SUBDIVISION

Durham and Orange Counties, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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Mar 13 2023

SCHEDULE OF RATES

for

HEATER UTILITIES, INC.

for providing water utility service in

ALL ITS SERVICE AREAS IN NORTH CAROLINA

Metered Rates: (monthly)

(A) Base charge (zero consumption) (C) EPA Testing Surcharge ^{4/}

<1" meter	\$ 11.79	\$ 2.08
1" meter	29.48	5.20
1 1/2" meter	58.95	10.40
2" meter	94.32	16.64
3" meter	176.85	31.20
4" meter	294.75	52.00
6" meter	589.50	104.00

(B) Commodity charge - \$ 2.84 per 1,000 gallons, or
 \$ 2.13 per 100 cubic feet

Metered Rates: (Turner Farms, Turner Farms IV, Turner Farms V, and Middle Creek Subdivisions)

Base charge, zero usage	\$ 8.45
Usage charge, per 1,000 gallons	\$ 2.65

Metered Rates: (Hardscrabble Plantation Subdivision)

Base charge, zero usage	\$ 7.00
Usage charge, per 1,000 gallons	\$ 2.00

Billing Service Charge: ^{1/} \$ 2.00 per month per bill

Meter Installation Fee: ^{2/} \$70.00

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Temporary Service: \$ 40.00 - A one time charge to builder of a residence under construction payable in advance. Fee entitles builder to six months service, unless construction is completed earlier and the service is intended for only normal construction needs for water (not irrigation). Applicable only in the seven following subdivisions where such charge is specifically provided by contract with the developer as follows:

Chesterfield II	- Contract date August 24, 1988
Fairstone	- Contract date September 3, 1988
Fox N' Hound	- Contract date June 13, 1988
Pear Meadow	- Contract date January 19, 1988
Pebble Stone	- Contract date August 24, 1988
Southwoods Sect. III	- Contract date May 25, 1988
South Hills Ext.	- Contract date May 25, 1988

Connection Charges: 3/

3/4" x 5/8" meters -

For taps made to existing mains
installed inside franchised service area: \$525.00

For mains extended by Heater outside of franchised service area:	120% of the actual cost of of main extension
---------------------------------------------------------------------	-------------------------------------------------

Meters exceeding 3/4" x 5/8" - 120% of actual cost

Reconnection Charges:

If water service cut off by utility for good cause:	\$25.00
If water service discontinued at customer's request:	\$ 5.00

Returned Check Charge: \$20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

- 1/ Heater is authorized to include on its monthly water bill to the residents of Cary Oaks and Oak Chase Subdivisions the charges resulting from sewer service provided by the Town of Cary. Heater will bill the Town of Cary \$2.00 per month per bill for providing this service.
- 2/ The fee will be charged only where cost of meter installation is not otherwise recovered through connection charges.
- 3/ In most areas, connection charges do not apply pursuant to contract and only the \$70.00 meter installation fee will be charged to the first person requesting service (generally the builder). Where Heater must make a tap to an existing main, the charge will be \$525.00, and where main extension is required, the charge will be 120% of the actual cost.
- 4/ This surcharge shall be applicable for 12 consecutive monthly bills. The surcharge shall be applicable only to those customers served by systems (and extensions thereof) franchised to Heater on or before July 31, 1995.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

APPENDIX C

**NOTICE TO CUSTOMERS
DOCKET NO. W-274, SUB 122
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

Notice is given that after hearings in this docket, the North Carolina Utilities Commission has approved the transfer of the franchise for water utility service in Hardscrabble Plantation Subdivision in Durham and Orange Counties, North Carolina, from Southland Associates, Inc., to Heater Utilities, Inc. The rates approved for Heater Utilities, Inc., in Hardscrabble Plantation Subdivision were not changed and remain as follows:

Base charge, zero usage	\$ 7.00
Usage charge, per 1,000 gallons	\$ 2.00

The following fee changes were also approved:

Reconnection Charges:

If water service cut off by utility for good cause:	\$ 25.00
If water service discontinued at customer's request:	\$ 5.00
Meter installation fee	\$ 70.00

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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