

INFORMATION SHEET

PRESIDING: Commissioner Duffley, Presiding; and Commissioners Brown-Bland, Hughes, McKissick, and Kemerait

PLACE: Dobbs Building, Raleigh, NC

DATE: Thursday, March 9, 2023

TIME: 9:34 a.m. – 1:27 p.m.

DOCKET NOS.: A-41, Sub 22

COMPANY: Bald Head Island Transportation, Inc., and Bald Head Island Transportation, LLC

DESCRIPTION: Joint Application of Bald Head Island Transportation, Inc., and Bald Head Island Transportation, LLC, for Approval of Transfer of Common Carrier Certificate to Bald Head Island Ferry Transportation, LLC, and Permission to Pledge Assets.

VOLUME NUMBER: 5

APPEARANCES

(See attached)

WITNESSES

(See attached)

EXHIBITS

(See attached)

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REPORTED BY: Kaylene Clayton

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PLACE: Dobbs Building, Raleigh, North Carolina  
DATE: Thursday, March 9, 2023  
TIME: 9:34 a.m. - 1:27 p.m.  
DOCKET NO.: A-41, Sub 22  
BEFORE: Commissioner Kimberly W. Duffley, Presiding  
Chair Charlotte A. Mitchell  
Commissioner ToNola D. Brown-Bland  
Commissioner Daniel G. Clodfelter  
Commissioner Jeffrey A. Hughes  
Commissioner Floyd B. McKissick, Jr.  
Commissioner Karen M. Kemerait

IN THE MATTER OF:  
Joint Application of  
Bald Head Island Transportation, Inc., and  
Bald Head Island Ferry Transportation, LLC, for  
Approval of Transfer of Common Carrier Certificate to  
Bald Head Island Ferry Transportation, LLC, and  
Permission to Pledge Assets

VOLUME: 5

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# NORTH CAROLINA UTILITIES COMMISSION

## APPEARANCE SLIP

DATE: 3-7-23 DOCKET NO.: A-41, Sub 22

ATTORNEY NAME and TITLE: Marcus W. Trathen

FIRM NAME: Brooks Pierce McLendon Humphrey & Leonard, LLP

ADDRESS: 1700 Wells Fargo Capitol Center, 150 Fayetteville St.

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Village of Bald Head Island

APPLICANT: --- COMPLAINANT: --- INTERVENOR: X

PROTESTANT: --- RESPONDENT: --- DEFENDANT: ---

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**NORTH CAROLINA UTILITIES COMMISSION  
APPEARANCE SLIP**

**DATE:** 3-7-23 **DOCKET NO.:** A-41, Sub 22

**ATTORNEY NAME and TITLE:** Craig D. Schauer

**FIRM NAME:** Brooks Pierce McLendon Humphrey & Leonard, LLP

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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27601

**APPEARANCE ON BEHALF OF:** Village of Bald Head Island

**APPLICANT:** \_\_\_ **COMPLAINANT:** \_\_\_ **INTERVENOR:** X

**PROTESTANT:** \_\_\_ **RESPONDENT:** \_\_\_ **DEFENDANT:** \_\_\_

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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27601

**APPEARANCE ON BEHALF OF:** Village of Bald Head Island

**APPLICANT:** \_\_\_ **COMPLAINANT:** \_\_\_ **INTERVENOR:** X

**PROTESTANT:** \_\_\_ **RESPONDENT:** \_\_\_ **DEFENDANT:** \_\_\_

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**NORTH CAROLINA UTILITIES COMMISSION**  
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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27604

**APPEARANCE ON BEHALF OF:** Village of Bald Head Island

**APPLICANT:** --- **COMPLAINANT:** x-- **INTERVENOR:** ---

**PROTESTANT:** --- **RESPONDENT:** --- **DEFENDANT:** ---

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**NORTH CAROLINA UTILITIES COMMISSION**  
**APPEARANCE SLIP**

**DATE:** 3-7-23 **DOCKET NO.:** A-41 Sub 22  
**ATTORNEY NAME and TITLE:** M. Gray Styers, Jr. + Elizabeth Hedrick

**FIRM NAME:** Fox Rothschild

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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27601

**APPEARANCE ON BEHALF OF:** Bald Head Island Limited; and Bald Head Island Transportation

**APPLICANT:** --- **COMPLAINANT:** --- **INTERVENOR:** ---

**PROTESTANT:** --- **RESPONDENT:** x **DEFENDANT:** ---

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**NORTH CAROLINA UTILITIES COMMISSION**  
**APPEARANCE SLIP**

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**FIRM NAME:** Nexsen Pruet PLLC

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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27612

**APPEARANCE ON BEHALF OF:** Respondent SharpVue Capital, LLC

**APPLICANT:**     **COMPLAINANT:**     **INTERVENOR:**    

**PROTESTANT:**     **RESPONDENT:** x **DEFENDANT:**    

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**NORTH CAROLINA UTILITIES COMMISSION  
APPEARANCE SLIP**

**DATE:** 3-7-23 **DOCKET NO.:** A-41 Sub 22

**ATTORNEY NAME and TITLE:** Daniel Higgins

**FIRM NAME:** Burns, Day & Presnell, PA

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**CITY:** Raleigh **STATE:** NC **ZIP CODE:** 27608

**APPEARANCE ON BEHALF OF:** Bald Head Island Club

**APPLICANT:** --- **COMPLAINANT:** --- **INTERVENOR:** x

**PROTESTANT:** --- **RESPONDENT:** --- **DEFENDANT:** ---

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**NORTH CAROLINA UTILITIES COMMISSION**  
**PUBLIC STAFF - APPEARANCE SLIP**

DATE: March 7, 2023

DOCKET #: A-41, Sub 22

PUBLIC STAFF ATTORNEYS: Gina C. Holt and William E. H. Creech

TO REQUEST A **CONFIDENTIAL** TRANSCRIPT, PLEASE PROVIDE YOUR EMAIL ADDRESS BELOW:

ACCOUNTING \_\_\_\_\_

CONSUMER SERVICES \_\_\_\_\_

COMMUNICATIONS \_\_\_\_\_

ENERGY \_\_\_\_\_

ECONOMICS \_\_\_\_\_

LEGAL: gina.holt@psncuc.nc.gov;  
zeke.creech@psncuc.nc.gov

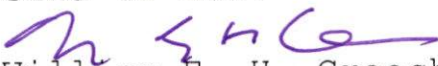
TRANSPORTATION \_\_\_\_\_

WATER \_\_\_\_\_

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COUNSEL/MEMBER(s) REQUESTING A **CONFIDENTIAL** TRANSCRIPT WHO HAS SIGNED A CONFIDENTIALITY AGREEMENT WILL NEED TO SIGN BELOW.

/s/ Gina C. Holt

  
/s/ William E. H. Creech

# **EXHIBIT 1**

## **SharpVue Responses to Village Second Data Requests**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**Docket No. A-41, Sub 22**

In the Matter of		
Joint Application of Bald Head Island	)	
Transportation, Inc., and Bald Head	)	<b>SHARPVUE CAPITAL, LLC'S</b>
Island Ferry Transportation, LLC, for	)	<b>RESPONSES TO VILLAGE</b>
Approval of Transfer of Common Carrier	)	<b>OF BALD HEAD ISLAND'S</b>
Certificate to Bald Head Island Ferry	)	<b>SECOND DATA REQUESTS</b>
Transportation, LLC, and Permission to	)	
Pledge Assets	)	

SharpVue Capital, LLC ("SharpVue"), by and through its undersigned counsel, hereby responds to the Village of Bald Head Island's Second Data Request to SharpVue Capital, LLC in the above-captioned docket.

**GENERAL OBJECTIONS**

SharpVue objects to the Data Requests to the extent they seek information, documents, materials, support, and/or things protected from disclosure by the attorney-client privilege, the work-product doctrine, consulting expert privilege, the common-interest privilege, and/or seek information beyond the regulated assets at issue herein. Inadvertent disclosure of any such information, documents materials, support, and/or things shall not operate as a waiver of any applicable privilege or immunity. SharpVue's production of documents or information does not waive any SharpVue's right to object to this request as not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Certain SharpVue information provided herein are produced on the condition that they are held as confidential pursuant to the parties' confidentiality agreement. SharpVue

reserves the right to object to the admissibility of any of these responses, in whole or in part, at any further proceeding of this matter, on any grounds, including but not limited to timeliness, materiality, relevance, and privilege.

### **RESPONSE TO DATA REQUESTS**

1. Please produce any and all documents identified, referred to, or relied upon in preparing your response to the Village's Second Set of Data Requests.

**RESPONSE:** See SHARPVUE NOS. 0831 to 0882.

2. Provide a complete summary of the existing business operations, if any, of BHI Ferry Transportation, LLC, Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC.

**RESPONSE:** BHI Ferry Transportation, LLC, Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC are all affiliates of and managed by SharpVue Capital, LLC. These entities were established to own and operate the assets purchased pursuant to the Asset Purchase Agreement ("APA") attached as Exhibit E to the Joint Application filed herein. BHI Ferry Transportation, LLC will own the regulated assets, and Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC will own the non-regulated assets – much in the same way the existing owner holds the assets.

3. Provide state the current capitalization of BHI Ferry Transportation, LLC, Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC and identify all documents showing such capitalization.

**RESPONSE:** See Exhibit F to the Joint Application filed herein. This document has been previously provided to the Village in a previous data request, and was provided as CONFIDENTIAL – ATTORNEYS' EYES ONLY.

4. Provide a complete summary of SharpVue's experience providing utility services, broken down by SharpVue entity. If SharpVue's experience consists solely of acquiring ownership interests entities providing utility services, please (a) identify the entity providing utility services, (b) state the percentage

ownership interest held and the type and nature of the interest, and (c) state the dates that SharpVue Capital acquired and sold such interests.

**RESPONSE:** SharpVue plans to hire the operations' current management to continue in their current roles and duties, to include (but not limited to): Charles A. "Chad" Paul, III, President of Bald Head Island Transportation, Inc. and Chief Executive Officer and a Manager of Bald Head Island Limited LLC; Shirley Mayfield, Chief Financial Officer of Bald Head Island Limited LLC; and Captain Bion Stewart, the current Chief Operating Officer of Bald Head Island Transportation, Inc. Further, SharpVue has committed to hire almost all of the current employees.

SharpVue objects to Data Request No. 4 in that it requests irrelevant information that is not likely to lead to discoverable information about separate and distinct investments that are not related to its purchase of the assets described in the APA. SharpVue has raised capital specifically for this opportunity from a group of primarily local investors with the understanding that this collection of assets can be held for the long term. In other words, and importantly, this investment will not be held in a limited life fund, but in an LLC with a perpetual life.

5. What is the average length of SharpVue Capital's pre percentage ownership interest held and the type and nature of the interest, and (c) state the dates that SharpVue Capital acquired and sold such interests.

**RESPONSE:** SharpVue objects to Data Request No. 5 in that it requests irrelevant information that is not likely to lead to discoverable information about separate and distinct investments that are not related to its purchase of the assets described in the APA. SharpVue has raised capital specifically for this opportunity from a group of primarily local investors with the understanding that this collection of assets can be held for the long term. In other words, and importantly, this investment will not be held in a limited life fund, but in an LLC with a perpetual life.

6. Explain all ways in which SharpVue will maintain a strong local community presence and constructive relationships on the island.

**RESPONSE:** SharpVue intends to step into the Seller's shoes, and maintain the same level of strong local community presence and constructive relationships on the island, to include employing the same personnel who have been representing the Sellers on the island in the past.

7. Explain all ways in which SharpVue will be a committed partner to the continued success, prosperity, and conservation mission of Bald Head Island.

**RESPONSE: The success of SharpVue's investment depends fully on Bald Head Island's continued success and prosperity, and therefore the interests of SharpVue and island stakeholders are fully aligned.**

8. Specify the capital improvements that SharpVue commits to undertake as owner of the transportation facilities, including (a) the projected date of completion of the improvement, and (b) the project cost of the improvement.

**RESPONSE: After closing the transaction, SharpVue intends to continue the ferry and tram operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it and make strategic decisions, including related to capital improvements, in due course.**

9. Does SharpVue intend to exercise operational control of the ferry and tram assets? In your response, state whether SharpVue's intention is to transfer operational control of the assets to a third party while retaining ownership the underlying real estate assets and the timeframe for this restructuring.

**RESPONSE: BHI Ferry Transportation, LLC is an affiliate of and will be managed by SharpVue Capital, LLC – not an unrelated third party entity. SharpVue plans to hire the operations' current management to continue in their current roles and duties, to include (but not limited to): Charles A. "Chad" Paul, III, President of Bald Head Island Transportation, Inc. and Chief Executive Officer and a Manager of Bald Head Island Limited LLC; Shirley Mayfield, Chief Financial Officer of Bald Head Island Limited LLC; and Captain Bion Stewart, the current Chief Operating Officer of Bald Head Island Transportation, Inc.**

10. What is SharpVue's timeframe for divesting 100% of the initial investments in this project?

**RESPONSE: SharpVue has no divestment timeframe. SharpVue intends to continue the ferry and tram operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it and make strategic decisions in due course.**

11. Identify the source of funds for the capital improvements specified in response to data request 8 and state whether such funds are currently committed or otherwise secured. If not committed or otherwise secured, state SharpVue's plans for obtaining the necessary funds.

**RESPONSE:** After closing the transaction, SharpVue intends to continue the ferry and tram operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it and make strategic decisions, including related to capital improvements, in due course. Regarding funding, see Exhibit F to the Joint Application filed herein.

12. Provide an estimate (in dollars) of the public benefits that SharpVue contends will accrue from the Transaction, if any. Provide all backup and workpapers substantiating and supporting this calculation in native format.

**RESPONSE:** SharpVue has not undertaken such an analysis.

13. Provide a complete description of the public benefits that SharpVue contends will accrue from the Transaction.

**RESPONSE:** SharpVue will ensure that the ferry and tram services continue uninterrupted in the same professional, safe, and reliable manner that the public has come to expect. Going forward, SharpVue is willing and able to provide the operations with the capital they need to accommodate growth and enhance the passenger experience while maintaining efficient operations.

14. Does SharpVue commit to implementing electronic ticketing? If so, specify when electric ticketing will be implemented.

**RESPONSE:** After closing the transaction, SharpVue intends to continue the ferry and tram operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it, and make strategic decisions, which could include electronic ticketing, in due course.

15. Will SharpVue commit to improving baggage handling operations? If “yes,” explain how SharpVue plans to improve baggage handling operations, the estimated cost associated with such improvements, and when SharpVue commits to completing the improvements.

**RESPONSE:** After closing the transaction, SharpVue intends to continue the ferry and tram operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it, and make strategic decisions, which could include changes or improvements to the baggage handling operation, in due course.

16. State the acquisition premium associated with the ferry assets, and provide a spreadsheet (in native form) showing the calculation of the premium, including any workpapers associated with or supporting the calculation.

**RESPONSE:** SharpVue does not believe the term “acquisition premium” applies in this context.

17. Does SharpVue commit that it will not seek to recover any portion of the acquisition premium described in the preceding data request from barge and/or parking customers (either directly or indirectly) if those services remain unregulated?

**RESPONSE:**

SharpVue does not believe the term “acquisition premium” applies in this context. SharpVue does not intend to raise prices as a result of any acquisition fees or expenses. After closing the transaction, SharpVue intends to continue the parking and barge operations without significant or immediate change. SharpVue plans to analyze the business more fully while operating it and make strategic decisions in due course.

18. In paragraph 34 of the Application, the applicants state that SharpVue “has experience with infrastructure projects which will be valuable in assuming operations.” Please identify all such projects, specify SharpVue’s role in such project, identify the extent of any ownership interest in such projects, and the dates SharpVue acquired and disposed of any interest in such projects.

**RESPONSE:** Lee H. Roberts, managing partner of SharpVue, has been involved with the following selected infrastructure transactions, among others:



- Financing of the \$1.6 billion Africa ONE fiber network encircling the African continent;
- Financing of the \$2.2 billion Mumbai Trans Harbour Link, India's longest bridge;
- Establishment of the Triangle Transit Authority's master developer program for "Transit-Oriented Development" around light rail;
- The \$5 billion redevelopment of the World Trade Center site in lower Manhattan;
- The \$300 million IPO and recapitalization of Golar LNG, the world's largest maritime shipper of liquefied natural gas;
- Acquisition of one of the largest privately owned waste services companies in the United States;
- Financing to support the wastewater treatment infrastructure for one of the largest master-planned communities in the Southeast.

Moreover, with regard to this transaction, SharpVue has reached agreement with the operations' current management to continue in their current roles and duties, to include (but not limited to): Charles A. "Chad" Paul, III, President of Bald Head Island Transportation, Inc. and Chief Executive Officer and a Manager of Bald Head Island Limited LLC; Shirley Mayfield, Chief Financial Officer of Bald Head Island Limited LLC; and Captain Bion Stewart, the current Chief Operating Officer of Bald Head Island Transportation, Inc. Further, SharpVue has committed to hire almost all of the current employees.

19. Identify all facts in support of the allegations of paragraph 27 of the Application.

**RESPONSE:** See Exhibit F to the Joint Application filed herein.

20. Identify all facts in support of the allegations of paragraph 28 of the Application.

**RESPONSE:** In addition to the business, finance, and management experience of the SharpVue team, SharpVue has a history of participating in infrastructure projects, as described above. Further, SharpVue has reached agreement with the operations' current management to continue in their current roles and duties, to include (but not limited to): Charles A. "Chad" Paul, III, President of Bald Head Island Transportation, Inc. and Chief Executive Officer and a Manager of Bald Head Island Limited LLC; Shirley Mayfield, Chief Financial Officer of Bald Head Island Limited LLC; and Captain Bion Stewart, the

**current Chief Operating Officer of Bald Head Island Transportation, Inc. Further, SharpVue has committed to hire almost all of the current employees.**

21. Specify how SharpVue allocates the purchase price among the assets to be purchased in the Transaction and how it proposes to allocate the purchase price among the acquired assets at closing. If SharpVue contends that it has not allocated the purchase price among the assets, explain how SharpVue has valued the individual components of the transaction and provide all documents relating to the valuation of these components.

**RESPONSE: Of the \$67.7M purchase price, \$56M is allocated to ferry, tram, parking, and barge. Otherwise, SharpVue has not completed such an analysis but will do so at the time of closing under the APA.**

22. Does SharpVue intend – either as a component of the Transaction or as a component of a planned future transaction – to pledge the assets comprising the ferry and tram operations as collateral or security? If SharpVue does not presently intend to pledge these assets, might SharpVue consider pledging those assets in the future?

**RESPONSE: See Exhibit F to the Joint Application filed herein.**

23. Does SharpVue intend – either as a component of the Transaction or as a component of a planned future transaction – to pledge the parking facilities or barge assets as collateral or security? If SharpVue does not presently intend to pledge these assets, might SharpVue consider pledging those assets in the future?

**RESPONSE: See Exhibit F to the Joint Application filed herein.**

24. Identify the individual investors in Pelican Legacy Holdings, LLC and SVC Pelican Partners, LLC, including name, address and committed funding amount.

**RESPONSE: SharpVue objects to this request because among other things it is beyond the scope of information relevant to the proceeding or likely to lead to discoverable information. Without waiving objections, see Exhibit F to the Joint Application filed herein for the committed funding**

amount. As is customary for such transactions, the committed amount will be in SharpVue's possession at closing under the APA.

25. Identify the "co-investors" in Pelican Legacy Holdings, LLC, including name and address.

**RESPONSE:** SharpVue objects to this request because among other things it is beyond the scope of information relevant to the proceeding or likely to lead to discoverable information. Without waiving objections, see Exhibit F to the Joint Application filed herein for the committed funding amount. As is customary for such transactions, the committed amount will be in SharpVue's possession at closing under the APA.

26. Provide the Operating Agreements for Pelican Legacy Holdings, LLC, and SVC Pelican Partners, LLC.

**RESPONSE:** See SHARPVUE NOS. 0831 to 0882.

27. State the ownership (by percentage of each owner) of each of BHI Ferry Transportation, LLC, Pelican Legacy Holdings, LLC, SVC Pelican Partners, LLC, and SharpVue Capital, LLC.

**RESPONSE:** SharpVue objects to this request because among other things it is beyond the scope of information relevant to the proceeding or likely to lead to discoverable information. Without waiving objections, see Exhibit F to the Joint Application filed herein for the committed funding amount. As is customary for such transactions, the committed amount will be in SharpVue's possession at closing under the APA.

28. Identify all communications with the Bald Head Association staff, Officers, or Board of Directors members concerning the Transaction or related matters before the North Carolina Utilities Commission, including those in Docket No. A-41, Sub 21.

**RESPONSE:** Objection to questions about Docket No. A-41, Sub 21 in Docket No. A-41, Sub 22. Without waiving objections, on July 27, 2022, Lee Roberts was invited to and attended an informational meeting for the Bald Head Island Association staff, officers, Board of Directors, and members. The Village and the Authority were also represented at the meeting. The meeting was held in person on the island and by Zoom. Mr.

Roberts, as well as the other invited guests, discussed the transaction and answered questions from Association members. Upon information and belief, over 400 Association members either participated in the meeting live or later viewed a recording of the meeting posted to the Association's website.

29. Please identify all due diligence referenced at page 6, line 14 of the Testimony of Lee H. Roberts.

**RESPONSE:** SharpVue performed research and review of the operating costs, financial data, and related information of BHIT/BHIL, which has been previously provided to the Village by BHIT/BHIL. Further, SharpVue had the benefit of the fact that BHITA had spent four years evaluating the system in great depth in conjunction with their plans to purchase the ferry and tram services. SharpVue obtained and reviewed appraisals, evaluations, reports, and analyses on all of the assets included in the APA and reviewed the records related to these operations as a going concern – all of which we believe has been previously provided to the Village by BHIT/BHIL.

30. Refer to page 6, line 16 of the Testimony of Lee H. Roberts. Please describe what is meant by “changes to its regulatory status or to the rate base” and provide copies (in native format) of all analysis or due diligence conducted or reviewed relating to such changes and their potential impact on utility rates.

**RESPONSE:** A decision in Docket No. A-41, Sub 21 or any future docket to include the assets of the parking and barge businesses that SharpVue has contracted to purchase from Bald Head Island Limited, LLC (“Limited”) in the ferry/tram rate base or to otherwise regulate those assets. Notwithstanding the above, SharpVue agrees to assume responsibility for all rights and obligations of BHIT that flow from the Commission's order approving a settlement of the 2010 Rate Case for the ferry and tram services in A-41, Sub 7. Specifically, this includes but is not limited to, the element of that order that \$523,725 of annual revenues (including regulatory fee impact) from the parking business that SharpVue seeks to acquire from BHIL will continue to be imputed to the revenue requirement of the utility with respect to the existing Commission-ordered ferry/tram rates until such time as the Commission may approve an adjustment to rates. SharpVue also affirms it will adhere to the 2012 and 2022 Commission orders regarding baggage entered in A-41, Sub 9 and 20, the current treatment of fuel surcharge as provided in the 2010 rate case, as well as abiding by the terms of the lease agreement between BHIT and BHIL to lease real property in Southport, North

Carolina and on Bald Head Island (upon which services involving the assets at issue in this docket are performed).

31. Refer to page 6, lines 16-21 of the Testimony of Lee H. Roberts. Please provide copies (in native format) of all financial and operational analysis and due diligence conducted or reviewed showing that SharpVue can continue to operate the ferry and tram services at the approved rates for at least one year.

**RESPONSE:** See operating costs, financial data, and related information of BHIT/BHIL, which has been previously provided to the Village by BHIT/BHIL. See BHITA due diligence documents, including appraisals, evaluations, reports, analyses on all of the assets included in the APA, and records related to these operations as a going concern, all of which we believe has been previously provided to the Village by BHIT/BHIL.

32. Refer to page 2, line 18 of the Testimony of Lee H. Roberts. Please provide the basis for Mr. Robert's statement of familiarity with Bald Head Island, including identification of any prior investments on the island, ownership of property, and other contacts with the island.

**RESPONSE:** Mr. Roberts has traveled to Bald Head Island multiple times over a twenty-year period. Additionally, Mr. Roberts served as the Budget Director for the State North Carolina at the time of the Bald Head Island Transportation Authority's formation, and was aware of the related legislative process and thesis behind the Bald Head Island Transportation Authority's creation. Mr. Roberts does not and has not personally owned property or other investments on Bald Head Island.

33. Provide copies of the agreements referenced at page 4, lines 1-7 of the Testimony of Lee H. Roberts. If the agreements have not been reduced to writing, summarize their terms.

**RESPONSE:** The offers to the operations' current management have not been reduced to writing, but the offers and expected agreements would be for them to continue in their current roles and duties. Again, SharpVue, on behalf of BHI Ferry Transportation, is simply stepping into the shoes of BHIT.

34. If SharpVue intends to hold the ferry assets "long term," how does SharpVue define this term. Include in your response the specific number of years that

would constitute “long term” ownership and state what assurances you will provide the Commission that you will retain ownership of this assets for this period of time?

**RESPONSE: Other than the preliminary information included in investor presentations at SHARPVUE-0001 to SHARPVUE-0655 previously provided to the Village, SharpVue does not have a predefined definition of “long term” ownership. SharpVue plans to analyze the business more fully while operating it and make strategic decisions in due course.**

35. Provide all documents produced to the Village or any other intervening party (including the Public Staff) in connection with Docket No. A-41, Sub 21.

**RESPONSE: All such documents that have been requested to date have been provided to the Village.**

This the 12<sup>nd</sup> day of September, 2022.

NEXSEN PRUET PLLC

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**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	)	ORDER APPROVING
to Transfer the Franchise to Provide Water	)	TRANSFER, ACQUISITION
Utility Service in Hardscrabble Plantation	)	ADJUSTMENT, AND
Subdivision in Durham and Orange Counties,	)	MAINTAINING CURRENT
North Carolina, from Southland Associates, Inc.,	)	RATES
and for Approval of 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

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

mz042997.01

**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



SCHEDULE OF RATES

for

HEATER UTILITIES, INC.

for providing water utility service in

ALL ITS SERVICE AREAS IN NORTH CAROLINA

Metered Rates: (monthly)

(A) <u>Base charge (zero consumption)</u>	(C) <u>EPA Testing Surcharge</u> <sup>4/</sup>
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<u>&lt;1" meter</u>	\$ 11.79	\$ 2.08
<u>1" meter</u>	29.48	5.20
<u>1 1/2" meter</u>	58.95	10.40
<u>2" meter</u>	94.32	16.64
<u>3" meter</u>	176.85	31.20
<u>4" meter</u>	294.75	52.00
<u>6" meter</u>	589.50	104.00

(B) <u>Commodity charge</u> -	\$ 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

<u>Billing Service Charge:</u> <sup>1/</sup>	\$ 2.00 per month per bill
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<u>Meter Installation Fee:</u> <sup>2/</sup>	\$70.00
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Connection Charges: <sup>3/</sup>

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

**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

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1000, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Petition of Utilities, Inc., for Transfer of	)	
the Certificate of Public Convenience and	)	
Necessity for Providing Sewer Utility	)	ORDER APPROVING
Service on North Topsail Island and	)	TRANSFER AND
Adjacent Mainland Areas in Onslow	)	DENYING ACQUISITION
County from North Topsail Water and	)	ADJUSTMENT
Sewer, Inc., and for Temporary Operating	)	
Authority	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 30, 1999, at 9:30 a.m.; and North Topsail Beach Town Hall, North Topsail Beach, North Carolina, on October 12, 1999, at 7:00 p.m.

BEFORE: Commissioner Sam J. Ervin, IV, Presiding; and Commissioners Ralph A. Hunt, Judy Hunt, William R. Pittman, and J. Richard Conder

APPEARANCES:

For Utilities, Inc.:

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

For Onslow County:

M. Gray Styers, Jr., and Benjamin R. Kuhn, Kilpatrick Stockton LLP, Attorneys at Law, 3737 Glenwood Avenue, Suite 400, Raleigh, North Carolina 27612

For the Using and Consuming Public:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On June 23, 1999, Utilities, Inc. (UI), filed a Petition pursuant to G.S. 62-111(a) and 62-116 to acquire the certificate of public convenience and necessity to operate the sewage treatment facilities of North Topsail Water and Sewer, Inc. (North Topsail or NTWS), in the North Topsail Beach and Sneads Ferry area in Onslow County, North Carolina. UI stated that it had entered into an asset purchase agreement with Joseph N. Callaway, Trustee in Bankruptcy for Marlow Bostic, owner of one-half of the outstanding corporate stock of NTWS, to transfer the utility franchise and assets subject to Commission approval. UI further stated that the purchase price under the agreement is \$2,700,000 and UI requested rate base treatment of the purchase price. UI also requested temporary operating authority pending issuance of a final order on the Petition. On July 2, 1999, UI filed a motion requesting the Commission to establish a hearing at the earliest possible date and require customer notice. On July 8, 1999, UI filed an addendum to its application containing five-year pro forma projections of revenues and expenses.

The matter was brought before the Commission at its Regular Staff Conference on July 26, 1999. The Public Staff stated that it opposed the inclusion of the \$2.7 million purchase price in rate base and would oppose the deferral of the acquisition adjustment issue because the Public Staff would oppose the transfer to UI if a purchase acquisition adjustment were allowed. The Public Staff also opposed the granting of temporary operating authority, and UI withdrew that request. The Public Staff requested that the Commission address several issues in this proceeding: a management plan, current employees, a refund plan for overcollection of gross-up on contributions-in-aid-of-construction (CIAC), appropriate tap fees, and system-specific rates.

By Order issued August 3, 1999, the Commission concluded that a hearing should be scheduled as soon as possible to decide the transfer, the purchase acquisition adjustment issue, and the other issues raised by the Public Staff. The matter was scheduled for public hearing on September 23, 1999, in the Town of North Topsail Beach for the sole purpose of receiving customer testimony and for September 30, 1999, in Raleigh for the purpose of taking testimony of UI, the Public Staff, and other parties of record.

The Public Staff also requested the Commission to issue a protective order with respect to unclaimed refunds held by NTWS. By Order issued August 3, 1999, the Commission denied the request for a protective order and stated that it would address the unclaimed refund issue at the same time the transfer petition was heard.

On September 13, 1999, Onslow County filed a Petition to Intervene. This Petition was allowed by Order issued September 17, 1999. The intervention and participation of the Public Staff is recognized pursuant to Commission Rule R1-19(e).

By Order issued September 23, 1999, the hearing in North Topsail Beach was continued until October 12, 1999, because of a recent hurricane.

The matter came on for hearing before the Full Commission in Raleigh as scheduled. UI presented the prefiled direct and rebuttal testimony of Carl J. Wenz, Vice President, Regulatory Affairs; and the rebuttal testimony of Carl Daniel, Vice President of Carolina Water Service, Inc. of North Carolina, a UI subsidiary. The Public Staff presented the prefiled joint testimony of Windley Henry, Staff Accountant; John Robert Hinton, Financial Analyst; Jack Floyd, Utilities Engineer; and Andy Lee, Director, Water Division.

On October 5, 1999, UI filed a Motion requesting the Commission to bifurcate its decision on whether to approve the transfer from other decisions, such as whether the purchase price should be included in rate base. Alternatively, UI requested the Commission to expedite the remaining procedural steps necessary to obtain an order. By Order issued October 12, 1999, the Commission denied the Motion.

The matter came on for hearing in North Topsail Beach on October 12, 1999, before Commissioners Ralph A. Hunt and Sam J. Ervin, IV. The following members of the public testified: Ed Miller, Richard J. Wenzel, Glen Adams, Bob Tate, Ron Lewis, David Clark, Charles Koenig, Richard Twiford, Ginny Hillyer, John B. Henderson, III, and Otis Sizemore. Onslow County attempted to introduce certain testimony from Ronald Lewis, County Manager, and David Clark, Public Works Director. The Hearing Commissioners sustained UI's objections to that testimony; however, Mr. Lewis was allowed to testify as a public witness. On October 15, 1999, Onslow County filed exceptions, a proffer of evidence, and a request for leave to file testimony. By Order issued October 21, 1999, the Commission affirmed its ruling at the October 12, 1999, hearing but allowed Onslow County to proffer the evidence filed with its motion.

On November 10, 1999, the Attorney General filed a Notice of Intervention and Comments in this docket in opposition to the request of UI for a broad policy favoring acquisition adjustments to encourage transfers.

On November 12, 1999, UI filed a Motion to Strike and/or Reject the Notice of Intervention and the Comments of the Attorney General, citing the Attorney General's failure to intervene in a timely fashion or otherwise seek to participate in the evidentiary hearings. UI argued that G.S. 62-20, which authorizes the Attorney General to intervene in Commission proceedings on behalf of the using and consuming public, "does not permit untimely, prejudicial interventions in contravention of the Commission's rules without even so much as a request for leave to intervene."

On November 18, 1999, the Attorney General filed a response to UI's Motion. In his response, the Attorney General acknowledged his late intervention and stated that he



did not seek to introduce new evidence, but that he wanted to address one important issue which is central to this case--the acquisition premium sought by UI. The Attorney General also acknowledged that "While there may be circumstances in which the right of intervention could be abused and other parties prejudiced, that case has not presented itself here."

By Order dated November 23, 1999, the Commission denied UI's Motion to Strike and/or Reject the Notice of Intervention and Comments of the Attorney General.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission now makes the following

### FINDINGS OF FACT

#### Jurisdictional

1. NTWS is a duly franchised public utility as defined by G.S. 62-3(23). NTWS provides sewer utility service on North Topsail Beach and certain other areas on the mainland of Onslow County pursuant to a certificate of public convenience and necessity granted by the Commission in 1982.

2. UI is a corporation duly organized under the laws of the State of Illinois and is authorized to do business in the State of North Carolina. Through affiliated companies, UI owns and operates water and sewer utility companies in Pender, Craven, and Carteret Counties.

3. NTWS provided sewer utility service to 1,943 residential and commercial customers as of June 30, 1999.

4. The assets of NTWS presently are held in trust by Joseph N. Callaway, Bankruptcy Trustee, under the control of the United States Bankruptcy Court for the Eastern District of North Carolina in the Marlow Bostic bankruptcy proceeding.

5. UI and Mr. Callaway have entered into an Asset Purchase Agreement, dated May 7, 1999, under which UI will purchase the NTWS assets for \$2.7 million.

6. The reasonable original cost net investment of NTWS at June 30, 1999, was \$976,907, consisting of the following components:

Plant in service	\$ 7,452,235
Accumulated tap on fees	(3,308,613)
Contributions in aid of construction	(2,368,689)
Accumulated depreciation	(798,026)
Original cost net investment	<u>\$ 976,907</u>

7. UI has requested that the \$1,723,093 it is paying in excess of the \$976,907 NTWS original cost net investment be placed in UI's rate base as a debit plant acquisition adjustment to be amortized over a 50-year period.

8. UI has requested no increase in NTWS rates, and UI has agreed that it will not seek an adjustment in NTWS rates for three years and has agreed to the withdrawal of NTWS's pending request for a 22% rate increase in Docket No. W-754, Sub 26 if UI's purchase price is included in rate base.

9. UI has expressed its willingness to make NTWS a part of Carolina Water Service, Inc. of North Carolina (CWS) and reduce the rates in NTWS to those currently charged by CWS if the purchase price for NTWS is included in rate base.

#### **Background on Marlow Bostic's Operation of NTWS<sup>1</sup>**

10. In 1981, the Commission received information that Marlow Bostic was operating a sewer facility on North Topsail Island without a franchise from the State.

11. In 1982, NTWS applied for and received a franchise to operate the sewer facility for an area being developed on the north end of Topsail Island by North Topsail Shores, a partnership between Marlow Bostic and Roger Page.

12. A deed in the public records shows an initial conveyance of Tracts 1-6 of NTWS from Mr. Bostic and his wife and from Roger Page and his wife to North Topsail Water and Sewer, Inc., on December 30, 1983. At the same time, two deeds of trust were executed, naming Mr. Bostic and Mr. Page as beneficiaries.

13. On May 11, 1993, NTWS moved for a rate increase in Docket No. W-754, Sub 17. On July 13, 1993, the Commission entered an interim order granting a rate increase in that docket. The Commission allowed the interim rate increase based on its finding that NTWS was unable to pay its current operating expenses and that emergency interim rate relief was warranted.

14. The North Carolina Attorney General moved on July 28, 1993, in Docket No. W-754, Sub 17, for reconsideration of the interim rate order and to expand the scope of the pending rate case. The Attorney General objected to the Commission's interim order on the grounds that the Commission allowed a 40% increase in the rate, that the Commission did not require NTWS to post a bond in the event that refunds would be required if the final rate increase was less than 40%, and that only 18 months had passed since NTWS' prior rate increase. The Attorney General supplemented its objection on

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<sup>1</sup>Evidence supporting findings of fact 10 through 51 is found in UI Wenz Exhibit I, submitted with Mr. Wenz' direct testimony.

August 16, 1993, with a copy of a federal court order in which the court found that Mr. Bostic was responsible for fraudulent transfers of NTWS property, which highlighted, the Attorney General maintained, Mr. Bostic's inability to offer customers reliable service.

15. As a result of these objections, on September 2, 1993, the Commission issued an Order in Docket W-754, Sub 17, granting the Attorney General's motion to expand the rate case proceeding to include an investigation concerning financial solvency, inadequate management and the need to appoint an emergency operator.

16. In connection with a hearing in the docket, the Public Staff submitted the testimony of Gina Casselberry on September 27, 1993. According to Ms. Casselberry's testimony, she conducted a preliminary audit of NTWS, which included a field inspection, review of NTWS's records, review of customer complaints, review of DEM files and an analysis of existing revenues at existing and proposed rates. Among other things, Ms. Casselberry noted that NTWS had leased equipment from Atlantic Enterprises, a company affiliated with Mr. Bostic, but NTWS assumed the expense of repairing all of the leased equipment. Moreover, when she asked for information from NTWS regarding supporting documentation for its lease arrangements with Atlantic Enterprises, the company failed to respond, and its breakdown of cash disbursements to Atlantic Enterprises was incomplete.

17. Subsequent to the hearing, on October 8, 1993, the Commission issued an Order in Docket No. W-754, Sub 17, reducing interim rates effective November 1, 1993. In addition, on November 10, 1993, based on the Public Staff's recommendation, the Commission authorized Mr. Bostic to transfer his 50% interest in NTWS to Thomas Morgan as trustee/escrow agent until such time as NTWS was either sold or returned to Mr. Bostic. The Commission also ordered that Mr. Bostic was to cease having any part in the operation of NTWS, Bennie Tripp was named sole manager and operator of NTWS, Mr. Bostic was barred from interfering in any way with Mr. Tripp's management of NTWS and NTWS was ordered to continue depositing tap fees into escrow.

18. On January 27, 1994, the Commission issued its final Order in Docket No. W-754, Sub 17, finding that Mr. Bostic had agreed that he would not participate further in the operation of NTWS; that as a result of numerous judgments and debts, NTWS was at risk that the utility operations would be interrupted because of execution or other action taken to satisfy these debts and that the Commission needed to investigate the extent of NTWS's outstanding debts, judgments and liens; that NTWS's relationship with Atlantic Enterprises was less than arms' length and that prior approval was required for future transactions.

19. The Commission also stated that although in NTWS's prior rate case in Docket No. W-724, Sub 12, the Commission had ordered reconveyance of the NTWS property that had been transferred to Mr. Page and Mr. Bostic and then leased back to

NTWS in 1988, the federal court fraud action had resulted in a court order barring Mr. Bostic from any such conveyance. The title to that land, therefore, remained clouded. The Commission concluded that it was inappropriate at that time to order NTWS to take back the tracts from Mr. Bostic by eminent domain in light of the federal court's order holding that the land could not be transferred until the judgment in the federal case (over \$12 million) was satisfied.

20. The Commission further noted that negotiations were ongoing to attract additional capital investors or for the sale of NTWS. With respect to the outstanding liens and judgments against NTWS, the Commission specifically found that the penalties assessed against the company could not be recovered from NTWS's customers through rates, assessments or tap fees and should be paid only from such funds that would prevent draining an adequate capital reserve needed for the operation of the utility.

21. Following the Commission's Order allowing a partial rate increase, the Public Staff also became aware that a federal tax lien had been filed against NTWS on October 1, 1993, and that the utility had been making payments to the IRS in the amount of \$2,500/month. The Public Staff moved to require the company to stop making payments to the IRS on the grounds that the lien was appropriately only against Mr. Bostic and not against the utility. Apparently, Mr. Bostic had hired employees for his other real estate development projects, but claimed those people on NTWS' tax returns. The IRS then found that no withholding taxes had been paid and filed the lien against the company. On June 3, 1994, the Commission granted the Public Staff's motion.

22. In the ongoing proceedings, the Commission subsequently ruled on April 7, 1995, that only Bennie Tripp could file state and federal tax returns on behalf of NTWS, and that Mr. Tripp should open new bank accounts for NTWS, with only Mr. Tripp having the ability to write checks for NTWS.

### **The Refund Proceedings**

23. In 1991, the Public Staff and NTWS entered into a stipulation that provided that NTWS would refund to its customers \$241,150 it had overcollected related to federal income taxes on contributions-in-aid-of-construction. NTWS agreed to refund this money over a three year period, beginning July 1, 1992.

24. When NTWS failed to file its refund plan as required, the Public Staff moved for a show cause hearing allowing NTWS to show why it should not be held in contempt. Following the show cause hearing, on September 23, 1992, the Commission was told by NTWS that the system might be sold. The Public Staff indicated, however, that the bankruptcy proceedings of one of the partners would hold up any sale.

25. Without a ruling from the Commission, the Public Staff moved on April 7, 1993, for an immediate interim order based on the Public Staff's concern over the financial integrity of the NTWS and NTWS's intentions regarding the refunds due its customers. The Public Staff also became aware that NTWS was about to receive in excess of \$100,000 in tap-on fees for a new subdivision. The Public Staff felt that "in order to preserve some degree of control over the finances of this utility, the Commission should immediately order the Company to place any tap-on fees into an escrow account that could only be used to make refunds required in the docket, unless the Company specifically applied to the Commission to use all or part of the funds, specifying how the funds would be used."

26. Following the Public Staff's motion to pay all tap-on fees into an escrow account, the North Carolina Division of Environmental Management (DEM) moved to require that those funds be expended to satisfy DEM's default judgments as a result of certain civil penalties for the violations arising in relation to other court actions.

27. The North Carolina Attorney General's office also filed a motion in support of the Public Staff's motion to deposit the tap-on fees into escrow. The Attorney General noted that the September 23, 1992 hearing had revealed that: (1) NTWS had not yet planned and carried out refunds because of a lack of financial resources; (2) NTWS had not yet planned and carried out the construction of a gravity sewer line in the Golden Acres subdivision because of a lack of financial resources; (3) NTWS had conveyed land used for spray fields to Mr. Page and Mr. Bostic, but that the shareholders, at the request of the Public Staff, reconveyed the land to NTWS, but a federal court set aside the reconveyance; (4) NTWS used its tap fees to meet operating expenses of the utility; (5) the General Manager of the NTWS was not aware that Mr. Page and Mr. Bostic were the owners; (6) NTWS was faced with numerous outstanding penalties or proceedings for environmental violations. In addition, the Attorney General noted that: (1) a number of complaint proceedings were pending concerning tap fee charges that North Topsail sought to impose; (2) a sale had not occurred of the utility despite NTWS's contentions at the show cause hearing that NTWS needed to garner more time to provide a refund plan; (3) there had been substantial storm damage to the sewer system.

28. NTWS did not file a response to the Attorney General's motion.

29. As a result of such motions, on April 23, 1993, the Commission ordered that NTWS immediately place into escrow all tap-on fees it received and that it could not expend those funds without permission pending a full hearing on May 11, 1993.

30. Following the hearing, the Coastal Resources Commission (CRC) filed a supplemental brief, asserting that the tap fees placed in escrow should be used first to pay for repairs needed to bring one of NTWS's sewer lines into compliance with DEM regulations; second, to pay the outstanding judgments for penalties assessed by CRC and,

last, to pay customer refunds. CRC's brief pointed out that "the evidence presented at the hearing reveals that the current management of North Topsail is irresponsible both fiscally and for purposes of compliance with the various environmental and health laws to which North Topsail is subject." CRC also noted that "It is clear from the evidence presented that the management of North Topsail, in particular officers Marlow Bostic and Roger Page, run the company primarily for the benefit of their own separate development interests."

31. The Attorney General also submitted a post-hearing list of recommendations for the use of the escrow funds for the benefit of the using and consuming public. The Attorney General noted that at the May 11, 1993 hearing, NTWS's manager, Bennie Tripp, admitted that the company was delinquent for more than \$40,000 in its electric bills and that the company was not performing current maintenance at the sewer plant required under its environmental permit. Further evidence at the hearing established that NTWS, under Mr. Bostic's ownership, required close Commission supervision to ensure compliance with its orders and that penalties did little to force compliance. In addition, the Attorney General noted that "serious questions have been raised as to whether the current owners and operators of the Company (those in charge) would make a good faith effort to serve its customers." For example, the Attorney General pointed to the fact that NTWS had conveyed its land to Mr. Bostic and Mr. Page in June, 1988 without permission from the Commission and that such conveyance was not revealed until a September 23, 1992, hearing before the Commission. The Attorney General also pointed out that Mr. Page and Mr. Bostic had been involved in a number of improprieties and mismanagement with respect to the relocation of S.R. 1568, including using one of Mr. Page's business entities to serve as the project engineer and gaining ocean front property as part of the relocation deal. Because of these concerns, the Attorney General strongly urged "considerable Commission involvement in and supervision over the utility's operations."

32. NTWS's attorney responded to the need to disburse the escrow funds to pay NTWS's outstanding electric bill or face disconnection on June 7, 1993. NTWS also stated that if the CRC's request was followed to use the escrow funds to pay judgments from environmental penalties, the utility would not have the cash to pay for the repairs needed to bring the utility into compliance.

33. In the years since the escrow account was established, the Commission has issued numerous orders allowing NTWS to borrow or expend money from the escrow account to pay for improvements or for operations:

- On June 2, 1994, the Commission ordered that NTWS could borrow \$45,000 from the tap-on fee escrow account to make repairs to its spray irrigation fields and that NTWS would not be required to pay back into the escrow account the \$25,000 engineering accounts.

- On October 18, 1994, the Commission authorized NTWS to use up to \$188,665 from the escrow account for certain equipment and office building needs, to be paid back at \$600/month. The same order also allowed NTWS to borrow \$37,300 to pay its past due electric bill, the loan to be paid back at \$1000/month.
- On April 23, 1996, the Commission authorized NTWS to use up to \$120,000 from the escrow account for additional equipment and office building needs, as long as the escrow funds were not used for a \$90,000 request for construction of a pump station. The Commission also authorized NTWS to borrow up to \$55,000 from the escrow account to pay for the replacement of the PVC spray field sprinkler head risers.
- On June 21, 1996, the Commission allowed NTWS to use up to \$25,200 from escrow to improve and replace a pipe leading from the third lagoon.
- On October 8, 1996, the Commission allowed NTWS to use up to \$148,850 from the escrow account to pay for Hurricane Fran repair and to borrow up to \$60,000 to cover revenue shortfalls to be paid back when the revenues were eventually collected.
- On May 27, 1997, NTWS was authorized to use up to \$368,697 from the escrow account to purchase new property and the construction of a new flow meter.
- On December 17, 1997, NTWS was authorized to use up to \$51,250 from the escrow account to cover costs associated with the purchase of a truck and computers, landscaping for the new office and the construction of a driveway, a security gate and a parking lot at the new business office.
- On June 9, 1998, NTWS was ordered to establish a new interest bearing capital account with respect to the existing connection fee escrow account, in which \$545,000 would be deposited, to cover the costs associated with the purchase of a service truck, a tractor, a back hoe and a track hoe, the costs of mapping the sewer system, the telemetry for the pump stations, soil testing of new property and a building addition. In addition, NTWS was authorized to borrow up to \$36,000 from the escrow account to pay off certain accounts payable, to be paid back at \$2000/month.
- On January 13, 1999, NTWS was authorized to use up to \$100,000 from the escrow account to cover the costs associated with the purchase of three spray field irrigation pumps and other necessary modifications to the existing facilities.



- On February 9, 1999, NTWS was authorized to use up to \$33,000 from the escrow account to cover the costs associated with conducting advanced soil testing of the existing spray irrigation fields under DWQ permit requirements.
- On April 27, 1999, NTWS was authorized to use up to \$25,300 from the escrow account to cover costs associated with purchase of fertilizer, lime and gypsum for the irrigation fields, to be reimbursed to the account beginning in June 1999 at \$4,216/month.
- On June 18, 1999, NTWS was authorized to use up to \$35,700 from the escrow account to cover the costs associated with the purchase of lagoon valves.

### **Operational Violations**

34. In April 1989, DEM issued a notice of violation concerning NTWS's spray field. On September 21, 1990, DEM restricted any additional connections until the problems were solved. In addition, Mr. Bostic entered into a land asset transfer and land lease agreement for the spray fields in 1988 without securing an easement for use as a spray field. Mr. Bostic conveyed the land for the spray fields to himself and Mr. Page, and then Mr. Bostic and Mr. Page entered into a lease agreement with NTWS to use the land in exchange for certain specified rent.

35. In addition, DEM issued a notice of violation in August, 1991, to NTWS after an inspection revealed that wastewater was flowing to an unfinished pump station in the Village of Stump Sound.

### **Federal Court and Bankruptcy Proceedings**

36. Federal court proceedings grew out of Mr. Bostic's plan to develop a tract of land on North Topsail Island to build a residential/resort community with a marina, home sites, a sewer facility and other amenities. Pursuant to his plan, Mr. Bostic distributed promotional literature to homesite purchasers outlining his plan and making many misrepresentations about the development of the site. In fact, Mr. Bostic had not received the necessary permits to go forward with the development of the property.

37. In 1991, a number of Mr. Bostic's purchasers brought individual actions against Mr. Bostic and Mr. Page in federal district court in Wilmington on claims of fraud and unfair and deceptive trade practices. These cases were consolidated and tried before Magistrate Judge Alexander Denson. Mr. Bostic and Mr. Page were held jointly and severally liable for the sum total of \$12,483,951.73 on these judgments, which included punitive damages.

38. On the same day that the first judgment was rendered on April 10, 1992, Mr. Bostic conveyed certain of his real property to NTWS. Three days later, on April 13, 1992, Mr. Bostic conveyed additional real property to his son. Soon thereafter, Magistrate Judge Denson conducted a hearing in which Mr. Bostic promised to reconvey the properties and further promised that he would not convey any other property without full consideration until the judgments in the case were satisfied. Plaintiffs then went forward with their post-judgment discovery and served Mr. Bostic with interrogatories and document requests on July 23, 1992. Mr. Bostic ignored the discovery requests.

39. Upon being ordered to file a response, Mr. Bostic served his answer on October 12, 1992. The answers, however, were deficient, and Mr. Bostic was again compelled to answer and was threatened with contempt. At a February, 1993 hearing, Magistrate Judge Denson ordered Mr. Bostic to provide truthful and complete answers to plaintiffs' discovery. More hearings ensued, and Mr. Bostic was given several more opportunities to provide answers and was given notice of plaintiffs' particular allegations on a claim of contempt. Finally, on May 27, 1993, Magistrate Judge Denson held a fact-finding hearing on the motion for contempt and certified the facts for review by the district court.

40. On August 6, 1993, Judge Fox held a show cause hearing for Mr. Bostic to show why he should not be held in contempt for failure to abide by the court's orders to respond fully and truthfully to the discovery requests. Following the hearing, Judge Fox made a number of findings of fact, including the following: Mr. Bostic misrepresented his ownership of Golden Acres, Inc. (the corporate entity selling real estate lots to the plaintiffs) and fraudulently transferred shares to his wife following the entry of the judgment; and Mr. Bostic willfully attempted to conceal ownership of a number of parcels of real property from the plaintiffs. The court then found Mr. Bostic in civil contempt and further found that confinement was necessary to achieve Mr. Bostic's compliance with the court's orders compelling complete and full disclosure to plaintiffs of his assets and further ordered Mr. Bostic to pay plaintiffs \$30,000 in attorneys' fees. Finally, the court ordered that Mr. Bostic be tried for criminal contempt predicated on his misrepresentation of his ownership interest in Golden Acres, Inc., and his failure to make full disclosure of his real estate ownership. The trial was to be held in Wilmington during the court's October 12, 1993, session.

41. While serving his jail time for contempt, Mr. Bostic filed for voluntary bankruptcy under Chapter 11 (ostensibly to avoid the federal court judgment). He hired an attorney, Buzzy Stubbs, to represent him in the bankruptcy. Although in a Chapter 11 proceeding the debtor-in-possession is normally responsible for calling a creditors' meeting and filing the appropriate disclosure statement and plan for reorganization, the Bankruptcy Administrator petitioned the court to have a Trustee appointed to oversee the reorganization and to have the assets sold to satisfy Mr. Bostic's debts. The bankruptcy then proceeded under the Trustee (Joseph Callaway), who has sold off virtually all of

Mr. Bostic's real estate and has now focused on the remaining issue of selling the North Topsail sewer facility.

42. During the first creditors' meeting called by Mr. Bostic, he again took the stance that he did not own the assets held by his wife. The bankruptcy administrator then delivered a recording of the meeting to the U.S. Attorney's office for possible prosecution or investigation as a misrepresentation during the official bankruptcy proceedings, but the U.S. Attorney did not proceed with the matter.

43. As part of the bankruptcy proceedings, the court approved a Plan of Reorganization, which gave the court continuing jurisdiction to approve sales of Mr. Bostic's assets. Among Mr. Bostic's assets was a one half ownership interest in NTWS. Mr. Bostic's ownership interest in NTWS was transferred to the bankruptcy estate. The other half of the NTWS stock was owned by Roger Page, Mr. Bostic's former real estate development partner. Through an out-of-court agreement, and in lieu of filing for bankruptcy, Mr. Page surrendered control of his shares in NTWS to his two major creditors, Bank of America and Branch Bank and Trust Company (collectively, the Banks).

44. On April 20, 1999, Bankruptcy Trustee, Joseph Callaway, moved the Bankruptcy Court for an order allowing the sale of NTWS, free and clear of all liens and encumbrances. Pursuant to the proposed sale, all liens and claims against Mr. Bostic or NTWS would be satisfied out of the sale proceeds, and the purchaser would obtain NTWS unencumbered.

45. The initial sale agreement accompanying the motion was between NTWS and AquaSource, Inc., a Texas corporation. Under the first proposed sale agreement, AquaSource was to purchase NTWS for \$2,250,000. The Banks, as beneficial owners of Mr. Page's stake in NTWS, agreed to reserve objection to the sale limited only to the grounds of the adequacy of the sale price and that any claims of the Banks or Mr. Page to NTWS would be satisfied and extinguished through the sale proceeds. In addition, Mr. Bostic's judgment creditors agreed that their claims would be satisfied out of the sale proceeds and that they too would surrender any rights or claims in NTWS upon its sale.

46. Under the proposed sale, any sale of NTWS requires and is subject to obtaining regulatory consent from the Commission. Any claim of the Commission to the NTWS assets, however, would be transferred to the sale proceeds. This includes claims in paragraph 13 of the Commission's Order of January 27, 1994, regarding gross-up for income taxes on CIAC.

47. The motion to sell NTWS was served on the Commission, giving it the opportunity to review the sale agreement and raise any objections. Under the terms of the sale agreement and order, regulatory pricing and terms remain the province and

jurisdiction of the Commission, and the purchaser will remain subject to the Commission's authority for future operation of NTWS assets.

48. UI's May 7, 1999 contract with the Bankruptcy Trustee arose from a subsequent UI upset bid and auction before the Bankruptcy Court in which UI's last bid of \$2.7 million exceeded the last bid of AquaSource of \$2.65 million.

#### **Other Court Actions Against Mr. Bostic**

49. In N.C. Dep't of Environmental Health v. Marlow Bostic, (Superior Court, Onslow County), a number of actions were brought against Mr. Bostic in Superior Court, Onslow County, to recover civil penalties for various environmental violations. The records show four such actions, all resulting in default judgments against Mr. Bostic. Three default judgments were entered prior to the Public Staff's efforts to have all tap-on fees deposited in escrow. Those defaults totaled \$75,955.10. Subsequently, another default judgment was entered against Mr. Bostic in the sum of \$16,520 on July 8, 1993. These judgments then created liens on NTWS's property.

50. In United States v. Mr. Bostic, Roger Page and North Topsail Water and Sewer, Inc., 92 CV 101 (U.S. Dist. Ct. E.D.N.C.), a Clean Water Act action for injunctive relief was brought to require defendants to restore environmental damage from discharge of pollutants onto wetlands. Defendants entered into a consent judgment on November 16, 1994, and clean up is complete.

51. In the Matter of Coastal Resources Commission Decision Against North Topsail Water and Sewer, Inc., 96 N.C. App. 468, 386 S.E.2d 92 (1989) in 1982, Mr. Bostic applied to the DEM for a permit to construct a spray irrigation wastewater treatment facility on "estuarine waters" in Onslow County. DEM issued the permit on May 11, 1982. After construction began, Mr. Bostic began excavations on the tract that were not depicted in the development plan submitted to the DEM. The Division of Coastal Management (DCM) then investigated and issued a notice of violation on February 24, 1984, directing Mr. Bostic to install an earthen dam in the tributary that the construction had disrupted. After Mr. Bostic initially ignored the order, he began piecemeal correction, and he did not fully comply until over a month later. As a result, DCM assessed three civil penalties against Mr. Bostic in the amount of \$24,000 on a finding that Mr. Bostic had willfully violated the Coastal Area Management Act. On appeal, the Court of Appeals agreed with the DCM that Mr. Bostic had willfully refused to comply with the DCM's directive and had engaged in "a pattern of intentional resistance."

#### **Transfer-Related Issues**

52. UI has the technical, managerial, and financial capacity to own and operate the NTWS sewer system.

53. Although NTWS is a financially-troubled public utility, there are no serious operational problems currently affecting the system. The sewer system is currently being operated in a satisfactory manner.

54. All other things remaining equal, inclusion of the proposed acquisition adjustment in rate base would support a \$12.00 per month or 38% increase in NTWS's residential rates.

55. The purchase price of \$2.7 million that UI agreed to pay for the North Topsail system, which was established through an arms length bidding process, was prudent.

56. UI is obligated to purchase North Topsail whether the proposed acquisition adjustment is included in rate base or not.

57. Approval of the proposed acquisition adjustment is not in the public interest since the benefits to customers resulting from the allowance of rate base treatment of an acquisition adjustment in this case would not outweigh the resulting burden or harm to customers associated therewith.

58. The proper level of connection fees is \$1,200 per residential equivalent unit.

59. The appropriate amount of bond to be required of UI is \$200,000.

60. The overcollection of gross-up on CIAC should be refunded.

61. The balance in the escrow account should be maintained by UI for purposes of making capital improvements to the NTWS sewer system.

62. UI's management plan is acceptable.

63. The transfer of the franchise and assets of NTWS to UI is in the public interest and should be approved.

### CONCLUSIONS

The Public Staff testified that it supports the proposed transfer provided that, among other things, an acquisition adjustment is not allowed. UI contends that there are two pivotal questions for the Commission to address. First, is NTWS a troubled system? Second, if NTWS is troubled, do the benefits of the proposed acquisition outweigh the costs to ratepayers?

In other words, it is UI's position that in order for an acquisition adjustment to be considered, the system must be troubled and the benefits to the customers must outweigh

the cost of including the acquisition adjustment in rate base. UI, through its testimony and cross-examination of the Public Staff, sought to demonstrate that NTWS is a troubled system and that there are benefits to the acquisition that would outweigh the costs to ratepayers. The Public Staff, however, takes the position that NTWS is not a troubled system and, therefore, the acquisition adjustment should not be allowed into rate base.

Onslow County, an intervenor in this proceeding, opposes the proposed transfer on the grounds that it is not consistent with the public convenience and necessity, especially considering the fact that UI is requesting to roll the acquisition adjustment into rate base. It is Onslow County's position that the public interest would be best served if the County acquires NTWS because Onslow County is in a better position to provide the best service at the lowest rates and to promote economic development throughout the County. However, no request for such an acquisition is before the Commission at this time.

The Attorney General takes the position that an acquisition premium is not appropriate in this case. According to the Attorney General, the broad policy advocated by UI favoring acquisition adjustments would, if adopted, harm consumers by increasing the transfer price paid for utility systems and would pose an unfair burden on consumers.

No testimony or evidence was presented in this docket calling into question the testimony of UI witness Wenz outlining UI's suitability as a purchaser of NTWS. Indeed, UI and its subsidiaries have long been considered to be professional, competently operated, well-capitalized water and sewer companies. The Commission has adopted policies encouraging the transfer of small, independently-operated, thinly-capitalized utilities to utilities like UI. UI has not conditioned its request to obtain the franchise for NTWS on Commission inclusion of the purchase price in rate base. The Commission concludes that UI possesses the financial and operational expertise and wherewithal to receive and operate the franchise and assets of the sewer facilities serving the North Topsail service area. Therefore, the Commission approves UI's request to obtain the franchise and assets of NTWS. The only substantive contested issue in this docket is whether UI should be permitted to include its \$2.7 million purchase price in rate base. The Public Staff, the Attorney General, and Onslow County oppose this UI request. For reasons set forth below, the Commission determines that the transfer should be approved, but that UI may not include its proposed acquisition adjustment in rate base.

**The Transfer is in the Public Interest and Should be Approved  
NTWS is a Financially-Troubled, but not Operationally-Troubled, Public Utility**

Today, NTWS continues to be a financially-troubled, although not an operationally-troubled, public utility. Since 1993, the owner of 50 percent of the NTWS stock, Marlow Bostic, has been in Chapter 11 bankruptcy. In order to liquidate the assets of Mr. Bostic, his 50-percent share of NTWS stock has been transferred to the bankruptcy trustee. Mr. Page owns the other 50 percent of the NTWS stock. Mr. Page's stock, held

by bank creditors, also has been transferred to the bankruptcy trustee so that the trustee can sell NTWS through the bankruptcy proceeding free of claims and so that the proceeds of the sale can be used to satisfy creditors' claims. Consequently, since 1993, NTWS has been tied up in the bankruptcy proceedings. NTWS's assets, stock, earnings and good will have been held by the bankruptcy trustee to be sold for the benefit of creditors. The owners have been unable to provide or attract equity capital. NTWS has been unable to attract long-term debt capital because NTWS has been inextricably tied up in the bankruptcy proceeding. NTWS has no sources of traditional capitalization. Since 1993, the bankruptcy trustee has had NTWS on the market for sale, and the Public Staff has discussed the sale with at least sixteen potential purchasers, but until 1999 no purchaser was willing to make an offer of purchase.

Prior to 1993, NTWS was owned and operated by those developing properties in the North Topsail area. The owners conducted their affairs in a fashion that placed the financial well being of NTWS at risk. NTWS refused or was unable to pay its bills, resulting in numerous outstanding claims and judgments. As of May 1993, NTWS had power bills in arrears from Jones-Onslow EMC of \$40,000, state environmental penalties from DEM and CRC reduced to judgment of \$75,000, bills from McKim and Creed Engineers of \$20,000, an outstanding loan from Atlantic Enterprises of \$19,848, a loan from Centura Bank of \$23,000, a bill from New River Marina for diesel fuel of \$8,389 and an unquantified debt to Onslow County. On January 27, 1994, the Commission determined that these outstanding financial obligations placed NTWS at risk that utility operations would be interrupted due to execution or other actions taken to satisfy the amounts owed. As of today, nearly six years later, a number of these obligations and judgments are still outstanding.

Subsequent to the institution of the Mr. Bostic bankruptcy proceeding in 1993 and the Commission's January 1994 Order removing Mr. Bostic from management of NTWS, NTWS has been forced to rely on existing or future customers for its capital needs. Residential connection fees are established at \$2,000 per connection, except where a pump station must be installed in which case the connection fee is \$3,000. According to the Public Staff, NTWS's actual average cost of making a connection and a pro rata cost of anticipated capital improvements is only \$1,200. Because NTWS operates under a DWQ imposed moratorium limiting new connections, NTWS has required those seeking to connect to the system in the future to prepay the connection fee in order for them to reserve the capacity for when it will be needed. To date, 728 customers have prepaid the connection fees to reserve future capacity. NTWS has collected \$1,491,000 in connection fees from these future customers. The estimated cost to connect these customers to the system is \$398,132. Consequently, NTWS has collected \$1,092,828 more from these future customers than NTWS will spend to connect them to the system. NTWS uses this source of customer-supplied capital to make improvements and repairs to the system and as a source of cash working capital.

As of June 30, 1999, NTWS had a balance of \$806,000 in the connection fee escrow fund. However, \$287,000 of that amount has been earmarked for projects the Commission already has authorized for funding from the escrow fund. Of the uncommitted balance of \$519,563, \$398,132 must be used to connect the future customers to the system. Thus, as of June 30, 1999, \$121,431 is left in the escrow fund as the unencumbered balance free for NTWS to use as a source of capital to meet any outstanding or future needs.

NTWS's reliance on the connection fee escrow fund is no legitimate source of capital for a financially-viable utility that is not dependent upon the Commission for extraordinary ratemaking devices. In the first place, future North Topsail customers should not be required to supply capital to make existing repairs and improvements and provide a source of cash working capital to meet current day-to-day operations. Capital to meet these needs should come from the owner of the system who has the responsibility to meet the utility's capital needs. Even current ratepayers only should be responsible for paying rates that are set to allow pro rata recovery of the prudently employed capital invested to provide current service and a reasonable return on the unrecovered balance.

With respect to the situation at North Topsail, future customers, on the other hand, should not be responsible for supplying any capital. A non-troubled, viable utility should have sufficient capacity to meet reasonably expected growth in its service area without a requirement that future customers pay a connection fee in excess of the costs of connection to reserve a place when and if they need service. North Topsail customers should only be required to pay a connection fee at the time the utility is called upon to incur the cost to connect them to the system.

Under the scenario presently in place for NTWS, the inability to obtain outside capital has resulted in a situation where Peter is being robbed to pay Paul. Future customers are supplying capital to enable current service. When and if these future customers are ready to be connected and need to receive service from the sewer plant and facilities, the services which their capital has been used to finance will already have been used up by someone else. Secondly, the future 728 customers have been required to pay approximately twice as much as the cost to connect them and the cost of the future capital additions they may cause NTWS to incur. Public Staff witness Floyd testified that the \$1,200 connection fee average cost is established to recover the labor and materials cost of connection, plus the cost of a fourth lagoon presently required under the DWQ environmental permit.

NTWS is financially-troubled because the connection fee escrow fund is an inadequate and inappropriate source of capital. Even where the connection fees have been established at the historical level well in excess of costs, the amount of capital in excess of costs of connection is too small to meet all of NTWS's capital needs. As of June 30, 1999, NTWS had \$121,000 in uncommitted funds in the escrow fund.



Public Staff Exhibit No. 2 lists the expenditures from the escrow fund from July 1993 through June 1999. Six times NTWS spent escrow fees in excess of \$121,000. In October 1996, NTWS spent \$208,850 from the escrow fund for Hurricane Fran related expenses. Public Staff witness Floyd testified that this was an essential expenditure that could not have been deferred or postponed.

NTWS is located geographically where it is extremely vulnerable to hurricanes. In fact, North Topsail is one of the most vulnerable spots for hurricane damage on the East Coast. Hurricane damage has been experienced often and recently in the past. Hurricane damage could occur unexpectedly in the future. Were NTWS to experience \$208,850 in hurricane damage today, NTWS would have insufficient capital to make the repairs and would have nowhere to look for outside capital to make up the shortfall. Despite Public Staff claims to the contrary, a VISA card and credit with a few vendors are not adequate sources of capital to meet these very real contingencies.

Additionally, the Public Staff recommends that the connection fees be reduced to \$1,200 on average. The \$1,200 is established to recover only the costs of connection and the cost of the fourth lagoon.<sup>2</sup> If the connection fees are reduced prospectively to \$1,200, there will be no new source of uncommitted capital for any unanticipated future needs or to serve as a source of working capital that can be borrowed for noncapital repairs.

Public Staff testimony and conclusion that NTWS is not a financially-troubled system are without adequate foundation. The Public Staff ignores the pendency of the bankruptcy proceedings and NTWS's inability to obtain outside capital. Not once does the Public Staff in its testimony and conclusions on NTWS's financial viability even mention the Bostic bankruptcy and the fact that the bankruptcy prevents NTWS from obtaining any outside capital.

The support for the Public Staff conclusion is also questionable for other reasons. The Public Staff supports its conclusion that NTWS is financially viable with Public Staff Exhibits 5 and 6. Exhibit 5 relies upon "Viability Policies and Assessment Methods for Small Water Utilities" measurements of financial distress. According to the exhibit, a distressed system has a distress score of 2.78 or below. For 1998, according to the exhibit, NTWS had a score of 2.94, only 1.6 above the distress score. However, the Public Staff included no score for the profit trend. The profit trend is based on the ratio of retained earnings over common stock equity. For 1994, the profit trend was (0.374), determined by comparing retained earnings of (302,005) to common stock equity of 807,042. The profit trend for 1998 was considerably worse -- retained earnings of (1,550,714) and total common equity of (1,450,714). By including no score for profit trend in 1998, the Public Staff overstated the measurement of NTWS's financial health and

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<sup>2</sup> The \$1,200 assumes the cost of the fourth lagoon is \$1 million. Mr. Floyd testified that the cost of the fourth lagoon is \$1.5 million.

distorted NTWS's distress score. Even assuming no deterioration from 1994, thus using the (0.374) for profit trend, the total distress score for NTWS becomes 2.57, below the distress score threshold of 2.78.

When he was cross-examined on Public Staff Exhibit 5, Public Staff witness Hinton backtracked on the Public Staff conclusion that NTWS is financially viable. With respect to the 2.94 distress score for NTWS for 1998, Mr. Hinton testified that "while it doesn't say it's a viable system, nor does it say it's a distressed system." Witness Hinton also testified that "In sum, the distress score shows that it is not a distressed system but nonetheless it's also showing that it's not a viable system. It is in that gray area."

In Exhibit 6 the Public Staff relies on the Standard and Poor's (S&P) financial benchmarks to conclude that NTWS has an attractive level of cash flow coverage. Of a potential 25 ratios for the five years of financial data the exhibit measures, 12 have "no meaningful figure." The reason that the exhibit has so little ostensibly meaningful data and otherwise shows that there is cash flow coverage is that NTWS cannot borrow and therefore has no meaningful debt or interest expense. Without debt or interest expense, no one should be surprised that net income is sufficient to cover the nominal level of interest expense that exists. Also, the net income from continuing operations cannot legitimately be used to cover any interest expense because net income must be paid into another escrow fund to repay judgments obtained by state agencies for NTWS's failure to pay environmental fines.

NTWS is a financially-troubled sewer utility because its owner/operator has been replaced and regulatory officials have been forced to serve as surrogates to fill many of the traditional roles of management. NTWS has been forced to look to the Commission-established connection fee escrow fund as its source of funding both for operation and maintenance items and improvements. Before NTWS can use the escrow fund, however, NTWS must obtain regulatory approval. Under the procedure established by the Commission, NTWS must consult with and apply to the Public Staff to use any portion of the escrow fund. After the Public Staff completes its analysis, the request is brought to the Commission. The Commission must resolve any differences between the Public Staff and NTWS and otherwise determine whether the requested expenditures should be authorized. All of these steps occur before the expenditures from the escrow fund are made.

UI argues that NTWS is a troubled sewer utility from an operations perspective. Both parties indicated that NTWS is effectively on a sewer permit moratorium. This moratorium was made effective by DWQ, which issues the sewer expansion permits and has jurisdiction over compliance with these permits. DWQ has issued numerous sewer extension permits that provide for a fixed number of connections based upon the design flows anticipated from the users connecting to the system. The capacity of the aggregate sewer extension permits is approximately 629,000 gallons per day, which is the permitted

flow of the wastewater treatment facility. This effectively places a moratorium on new sewer extension permits, not new customer connections. NTWS has continued to connect new customers to its collection system. It has done so by reallocating flows and connections from previously issued sewer extension permits, under permission granted to NTWS by DWQ and this Commission. Records of NTWS clearly indicate that its customer base had continued to expand, without threat of punitive action by DWQ. Based on the foregoing, the Commission is of the opinion that the sewer collection system is adequately serving the needs of the customers who are using the collection system.

It is clear that prior to 1994, NTWS was in a state of noncompliance with its environmental permit issued by DWQ. Since 1994, however, NTWS management has operated its facilities in a sound and reasonable manner. Further, customers testifying at the hearing on October 12, 1999, also indicated that service by the current management of NTWS is satisfactory. Only one customer mentioned a problem, which was an occasional odor from the island pumping station at the NC 210 bridge. The rest were complimentary.

The evidence supports the conclusion that NTWS management routinely makes prudent use of its available capital resources to provide an adequate quality of service to its customers. Furthermore, the NTWS system does not suffer from various system deficiencies, ongoing environmental regulatory violations and frequent customer complaints that typify operationally-troubled systems. The Commission finds and concludes that the facilities owned and operated by NTWS are in satisfactory condition and are currently sufficient to provide sewer utility service to the customers. Without some evidence of inadequate service currently or in the recent past, the Commission cannot conclude that NTWS is operationally troubled. The record in this case is devoid of such evidence. Accordingly, the Commission concludes that NTWS is not an operationally-troubled system.

The record clearly establishes that the "public convenience and necessity" would be served by the transfer of North Topsail to an owner other than its current stockholders. At this point, the stock of North Topsail is still owned by Marlow Bostic and Roger Page, neither of whom were able to ensure the operation of North Topsail in an acceptable manner. A sale of North Topsail is inevitable given the necessity for the United States Bankruptcy Court for the Eastern District of North Carolina to utilize the stock in North Topsail owned by Mr. Bostic and Mr. Page to satisfy the claims of their creditors. A sale of North Topsail to an adequately-capitalized owner will clearly serve the public interest by eliminating the unusual procedures which have been utilized to finance the operation, maintenance, and expansion of the North Topsail system and ensuring that sufficient resources will be available to ensure the provision of adequate service to current and future North Topsail customers. UI is clearly a competent, adequately-capitalized, professionally-operated water and sewer utility.

Accordingly, the Commission concludes that UI possesses the financial and operational expertise and wherewithal to receive and operate the franchise and assets of NTWS. The transfer proposed herein will benefit the customers of NTWS by ensuring the long-term viability of their sewer system, in that it will be owned and operated by a professional utility company with the technical, managerial and financial capability to ensure the long-term provision of adequate service. Accordingly, the Commission approves UI's request to obtain the franchise and assets of NTWS. Such approval furthers the goal of promoting transfers of troubled systems to professional, well-capitalized owners.

With regard to the position taken by Onslow County that the public interest would be best served if the County rather than UI acquires NTWS, the Commission notes that the County did not participate in the bankruptcy bidding process to acquire NTWS and that there is no request to transfer NTWS to the County pending before the Commission. UI is the only transfer applicant.

#### **The Benefits of UI's Ownership Do Not Outweigh the Costs of Including the Purchase Price in Rate Base**

Notwithstanding the fact that NTWS is a financially-troubled system, the Commission determines that UI's purchase price should not be included in rate base because the benefits to NTWS's ratepayers from UI's ownership do not outweigh any costs that may result from establishing rate base in this fashion. Although reaching the same result as that advocated by the Public Staff with respect to this issue, the Commission cannot adopt either the Public Staff's conclusion that North Topsail is not a "troubled" utility or the analysis which both UI and the Public Staff have utilized to support their ultimate conclusions with respect to the acquisition adjustment issue. After examining the relevant policy considerations and the prior decisions of the Commission, the Commission concludes that the outcome in an acquisition adjustment case should hinge upon whether the party seeking rate base treatment for an acquisition adjustment has established by the greater weight of the evidence that the purchase price which the purchaser has agreed to pay is prudent and that the benefits of including the acquisition adjustment in rate base outweigh any resulting burden to ratepayers. After conducting such an analysis, the Commission concludes that inclusion of the acquisition adjustment in North Topsail's rate base would be inappropriate because UI is obligated to purchase North Topsail regardless of our decision with respect to the acquisition adjustment issue and because UI has failed to meet its burden of proving that the benefits to affected customers from the inclusion of the acquisition adjustment in rate base outweigh the resulting harm.

The Commission's evaluation of utility mergers is governed by G.S. 62-111(a), which provides, in pertinent part, that "[n]o franchise now existing or hereafter issued under the provisions of this Chapter. . .shall be sold, assigned, pledged or transferred. . .

except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity." G.S. 62-111(a) requires the Commission to "inquire into all aspects of anticipated service and rates occasioned and engendered by the proposed transfer, and then determine whether the transfer will serve the public convenience and necessity." State ex rel. Utilities Commission v. Village of Pinehurst, 99 N.C. App. 224, 299, 393 S.E.2d 111 (1990), aff'd 331 N.C. 278, 415 S.E.2d 199 (1992). As a result, the Commission must determine on the basis of an examination of all relevant facts and circumstances whether the proposed transfer, either as proposed by the applicant or as modified to reflect the imposition of conditions as authorized by G.S. 62-113, is in the best interest of the relevant members of the using and consuming public.

The Commission establishes the rate base of North Carolina utilities by ascertaining "the reasonable original cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service to the public within the State, less that portion which has been consumed by previous use recovered by depreciation," plus, to a limited extent not applicable here, construction work in progress. G.S. 62-133(b)(1). Although the appellate courts have apparently never had the opportunity to determine the meaning of the reference to "reasonable original cost" in G.S. 62-133(b)(1) in an instance when property previously dedicated to the public service is purchased by another public utility at a premium over net book value, the Commission has dealt with this issue on numerous occasions. We do not, however, appear to have ever enunciated a single, specific method for determining whether requests such as that advanced by UI in connection with this transfer application should be granted or denied.

The appropriateness of including an acquisition adjustment in rate base came before a Commission Hearing Examiner in In re Carolina Water Service, Inc., of North Carolina, Docket Nos. W-354, Subs 39, 40, 41, Seventy-Sixth Report of the North Carolina Utilities Commission: Orders and Decision 739 (1986) (Carolina Water I); the Hearing Examiner's decision became that of the Commission after no party excepted to his proposed resolution of the acquisition adjustment issue. In re Carolina Water Service, Inc., of North Carolina, Docket No. W-354, Subs 39, 40, 41, Seventy-Sixth Report of the North Carolina Utilities Commission: Orders and Decisions 769 (1986). After noting that requests for rate base treatment of acquisition adjustments should be dealt with on a case-by-case basis, the Hearing Examiner opined that "the benefits of the acquisition to the acquired customers and to existing customers [may] merit the inclusion of the debit acquisition adjustment" in rate base in some instances. Carolina Water I 739, 756 (1986). The Hearing Examiner approved inclusion of an acquisition adjustment associated with the Mecklenburg systems in rate base because the prior owner had failed to operate the systems properly, existing customers had better prospects for receiving adequate service as a result of the transfer, the sale price for the systems had been negotiated at arms length and was prudent, and the inclusion of the Mecklenburg systems in Carolina Water Service's rate base would tend to decrease rates for all other Carolina Water Service



customers. Carolina Water I 739, 756-757 (1986). The Hearing Examiner reached the opposite conclusion with respect to the Chapel Hills and High Meadows systems since the record did not establish that the prior owner would have failed to make necessary system improvements in the absence of a transfer, the amount which Carolina Water Service had spent on service improvements was unclear, there had been no violations assessed against the High Meadows system, the record did not demonstrate that the sales had been conducted at arms length and that the purchase prices were reasonable, the circumstances surrounding the transfers were unclear, the purchases had been effectuated without prior Commission approval, and it was doubtful that the benefits to customers outweighed the costs. Carolina Water I 739, 757-758 (1986). The Hearing Examiner finally noted that a blanket refusal to allow the inclusion of acquisition adjustments in rate base might provide an undue stimulus to utility construction in lieu of asset purchases; that the potential harm from the inclusion of an acquisition adjustment in rate base could be minimized by carefully scrutinizing each "transaction to ensure that it is prudent, at arms length, and that the benefits accruing to the customers outweigh the costs of inclusion in rate base of the excess purchase price;" and that allowing the inclusion of acquisition adjustments in rate base might encourage the transfer of small, poorly-operated systems to more qualified operators. Carolina Water I 739, 758 (1986).

The Commission subsequently discussed the acquisition adjustment issue in a 1990 Carolina Water Service general rate case, where it stated that, "[a]s a general proposition, when a public utility buys assets that have previously been dedicated to public service as utility property, the acquiring utility is entitled to include in rate base the lesser of the purchase price or the net original cost of the acquired facilities in the hands of the transferor at the time of the transfer." In re Carolina Water Service, Inc., of North Carolina, Docket Nos. W-354, Subs 74, 79, 81, Eightieth Report of the North Carolina Utilities Commission: Orders and Decisions 342, 394 (1990) (Carolina Water II). The Commission adopted this general principle on the grounds "that the investor in utility property should only be entitled to recover his own investment" and that "public utility ratepayers normally should only be responsible for reimbursing an investor once for the cost of public utility property through depreciation expense recovered through rates and through payment of a return on the unrecovered investment." Carolina Water II 342, 394 (1990). After making this initial statement, the Commission analyzed the facts and circumstances surrounding each acquisition adjustment challenged by the Public Staff, generally refusing to allow the inclusion of these amounts in rate base on the grounds that "the developers contributed the system, and presumably intended to recover their costs through lot sales;" that the extent to which "they actually recovered their utility system investment through lot sales, or are still doing so, is irrelevant at this point for regulatory purposes;" and that the record did not reflect whether any other system improvements had, in fact, been made. Carolina Water II 342, 395-396 (1990). As a result, the Commission indicated a strong general policy against the inclusion of acquisition adjustments in rate base subject to exceptions in appropriate instances. See also: In re Transylvania Utilities, Inc., Docket No. W-1012, Sub 2, 3 (1995) (Transylvania) ("the Commission agrees with the

Hearing Examiner that the Company has not carried the burden of proof that the benefits to ratepayers outweigh the cost of inclusion in rate base of the excess purchase price or that system deficiencies would have gone unaddressed if not for the acquisition by the acquiring company”).

The Commission recently considered an acquisition adjustment issue in connection with an application by Heater Utilities, Inc., to purchase a water utility system in the Hardscrabble Plantation subdivision. In that case, the Public Staff argued that, under a “three prong” test allegedly established in Carolina Water I, Heater should not be allowed to include an acquisition adjustment in rate base unless “[t]he benefits to ratepayers. . . outweigh. . . the cost of inclusion in rate base of the excess purchase price,” “[s]ystem deficiencies would have gone unaddressed if not for the acquisition by the acquiring company,” and “[t]he acquisition was the result of arms’ length bargaining.” In re Heater Utilities, Inc., Docket No. W-274. Sub 122, 9 (1997) (Hardscrabble). In rejecting the Public Staff’s argument, the Commission noted that the Hearing Examiner “discussed a large number of specific facts” in Carolina Water I, “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” and pointed out that “[t]he three-prong test” upon which the Public Staff relied “does not appear, verbatim, in [the Hearing Examiner’s] order.” Hardscrabble 10 (1997).

Heater, on the other hand, claimed that the test adopted by the Hearing Examiner in Carolina Water I focused on “whether the purchase price was prudent, whether the purchase price resulted from arms’ length bargaining, and whether the “benefits to consumers. . . outweigh[ed] the cost of including the purchase price in rate base.” Hardscrabble 10-11 (1997). Although the Commission concluded that the entire cost of the Hardscrabble system had been recovered through fees paid to the developers of the system, Hardscrabble 9 (1997), and that there were no deficiencies in the Hardscrabble system, Hardscrabble 11 (1997), it refused to treat these facts as dispositive since “it. . . 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.” Hardscrabble 11 (1997). After concluding that the purchase price that Heater paid for the Hardscrabble system was lower than its existing per-customer investment, that the Hardscrabble system was in good condition and located near other Heater-owned systems, that the purchase of the Hardscrabble system would tend to reduce rates for other Heater customers, and that the transfer of the Hardscrabble system to Heater would allow customers located on that system to receive service from a professionally-operated utility and prior to refusing to allow Heater to change its uniform rates to customers of the Hardscrabble system, the Commission concluded “that Heater should be allowed to make the requested debit acquisition adjustment to rate base” since

"[t]he 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 since "its decision herein, based on the facts and circumstances presented, promotes and serves the public interest and is in the public interest." Hardscrabble 11 (1997).

The Commission Orders discussed above do not clearly state a single, definitive test for resolving acquisition adjustment issues in water and sewer transfer cases. Carolina Water I does not, for example, explicitly mention the three-prong test upon which the Public Staff relied in Hardscrabble or establish the appropriateness of using an eight-factor test like that emphasized by the Public Staff at one point in this case. Although Carolina Water I does recite the three factors upon which Heater relied in Hardscrabble, that test does not neatly cover or place equal emphasis upon all of the factors mentioned by the Hearing Examiner in Carolina Water I or explicitly place the burden of proof in acquisition adjustment cases upon the applicant utility as apparently required by Carolina Water II and Transylvania. The lack of clarity in the nature of the test which should be employed in resolving acquisition adjustment issues is heightened when one compares the language of Carolina Water II, which expresses a strong skepticism about allowing rate base treatment of acquisition adjustments, and the equally clear language of Hardscrabble, which stresses the benefits of transferring small water and sewer utilities to larger, more professional operations. As a result, it is appropriate for the Commission to begin its analysis in this case by developing a test for identifying the circumstances in which rate base treatment of acquisition adjustments is appropriate based upon the relevant provisions of North Carolina law and considerations of sound regulatory policy.

A majority of regulatory agencies in the United States have decided that, all other things being equal, acquisition adjustments should not be afforded rate base treatment. According to Bonbright, "most commissions are skeptical of transfers between utilities at excess costs, so rate base adjustments are generally not made unless the utility can demonstrate actual, distinct and substantial benefits to all affected ratepayers." J. Bonbright, A. Danielson, and D. Kamerschen, Principles of Public Utility Rates 286 (1987). See also: 1 A. Priest, Principles of Public Utility Regulation 189 (1969) (although the majority of regulatory commissions have refused to include acquisition adjustments in rate base, such treatment has been allowed where "the transaction was at arm's-length," "resulted in operating efficiencies," "received regulatory approval as having been in the public interest," or "made possible a desirable integration of facilities"). The adoption of such a general rule is clearly appropriate, for the routine inclusion of acquisition adjustments in rate base would tend to create an incentive for purchasers to pay a high price to acquire utility assets, confident in the knowledge that such payments would be recouped from ratepayers. As a result, the approach the Commission should adopt ought to place the burden of proof on the acquiring utility to demonstrate the appropriateness of including an acquisition adjustment in rate base.



Assuming the appropriateness of adopting a general rule prohibiting the inclusion of acquisition adjustments in rate base in the absence of a showing of special circumstances justifying a contrary decision, the next question becomes one of identifying the circumstances under which rate base treatment of acquisition adjustments should be deemed proper. As should be apparent from an analysis of the Commission's previous Orders concerning this subject, a wide range of factors have been considered relevant in attempting to resolve this question, including the prudence of the purchase price paid by the acquiring utility; the extent to which the size of the acquisition adjustment resulted from an arms length transaction; the extent to which the selling utility is financially or operationally "troubled;" the extent to which the purchase will facilitate system improvements; the size of the acquisition adjustment; the impact of including the acquisition adjustment in rate base on the rates paid by customers of the acquired and acquiring utilities; the desirability of transferring small systems to professional operators; and a wide range of other factors, none of which have been deemed universally dispositive. Although the number of relevant considerations seems virtually unlimited, all of them apparently relate to the question of whether the acquiring utility paid too much for the acquired utility and whether the customers of both the acquired and acquiring utilities are better off after the transfer than they were before that time. This method of analysis is consistent with sound regulatory policy since it focuses on the two truly relevant questions which ought to be considered in any analysis of acquisition adjustment issues. It is also consistent with the construction of G.S. 62-111(a) adopted in State ex rel. Utilities Commission v. Village of Pinehurst, 99 N.C. App. 224, 393 S.E.2d 111 (1990), aff'd 331 N.C. 278, 415 S.E.2d 199 (1992), which seems to indicate that all relevant factors must be considered in analyzing the appropriateness of utility transfer applications. As a result, contrary to the approaches advocated by both UI and the Public Staff, the Commission should refrain from allowing rate base treatment of an acquisition adjustment unless the purchasing utility establishes, by the greater weight of the evidence, that the price the purchaser agreed to pay for the acquired utility was prudent and that both the existing customers of the acquiring utility and the customers of the acquired utility would be better off [or at least no worse off] with the proposed transfer, including rate base treatment of any acquisition adjustment, than would otherwise be the case.

Although the Public Staff attempted to show that the purchase price which UI agreed to pay for the North Topsail system was imprudent, the Commission concludes that UI has met its burden of proof with respect to this issue. The Commission takes judicial notice that the North Topsail system is located in an area which is experiencing or is likely to experience significant growth. G.S. 62-65(b). A prudent purchaser might well elect to pay more than net book value for a sewer utility with no immediate operational problems, such as North Topsail, on the assumption that acquiring the right to operate that utility's system had independent value over and above the net book value of the acquired utility's assets. In addition, the purchase price which UI agreed to pay was established at an auction conducted under the auspices of the United States Bankruptcy Court for the Eastern District of North Carolina which was intended, for obvious reasons, to maximize

the purchase price obtained for the North Topsail system. The price at which UI purchased North Topsail was only \$50,000 greater than the last bid submitted by its principal rival during the auction. According to the bidding procedures followed during the auction process, additional bids were required to be submitted in \$50,000 increments. As a result of the fact that the purchase price paid by UI was clearly established through an arms length bidding process and the fact that the price which UI ultimately agreed to pay was the minimum amount apparently necessary to prevail in the bidding process, the Commission is satisfied that the purchase price which UI agreed to pay for the North Topsail system was prudent.

In addition to its relevancy to a determination of whether approval of the transfer is in the public interest as previously discussed above, the issue of whether North Topsail should be labeled a "troubled" utility, is also undoubtedly relevant to a proper resolution of the acquisition adjustment issue. The Commission does not, on the other hand, agree that a determination of whether North Topsail is "troubled" should be deemed dispositive of the acquisition adjustment issue as both UI (Tr. Vol. 2, p. 115) (the ultimate issue is whether North Topsail is a "troubled" system and, if so, whether the benefits associated with the proposed acquisition outweigh the cost so as to justify inclusion of the acquisition adjustment in rate base) and the Public Staff (Public Staff Proposed Order, pp. 15, 19-27) (the Commission should analyze the acquisition adjustment issue utilizing the test enunciated by UI) seem to suggest. To the contrary, treating the question of whether North Topsail is a "troubled" utility in this manner is inconsistent with Commission's decision in Hardscrabble and effectively eliminates the necessity for the Commission to consider all relevant factors as required by G.S. 62-111(a).

The fervor of the parties' advocacy with respect to the "troubled" system issue should not obscure the relative clarity of the record with respect to this question. The evidence which the parties used to debate this point included considerable discussion of North Topsail's past travails. The Commission disagrees with UI's contention that our determination of whether North Topsail is a "troubled" system should rest, to an apparently large extent, on North Topsail's indubitably checkered history. The Commission is required to decide whether a transfer of the North Topsail system to UI, including the extent to which the acquisition adjustment should be included in rate base, is currently in the public interest. An analysis of past events is relevant to this issue to the extent that earlier developments impact North Topsail's current situation.

Nevertheless, the customers of North Topsail are not plagued with any serious operational problems at the present time. No customers advanced any serious service quality complaints at the October 12, 1999 public hearing. As a result, the Commission is persuaded that, barring any unforeseen emergency such as another major hurricane, the North Topsail system is currently being operated in a satisfactory manner. In addition, the record does not suggest that an acquisition by UI will have any immediate impact on the quality of the service which North Topsail provides to its customers. That

determination, however, does not end the inquiry. The long-term prospects for North Topsail under current ownership and management are not unclouded. The record reveals the existence of potential long-term operational problems arising from limitations upon the capacity of North Topsail's system, including restrictions upon its ability to add new customers. Although the Public Staff may well be correct in asserting that these problems will ultimately be resolved even without a change in ownership or management, the simple fact remains that the limitations in question do exist now. In addition, the record shows that North Topsail does not have access to adequate capital. Although current management has undoubtedly improved North Topsail's ability to serve customers, restored the system to good working order after several major hurricanes, and operated the system well given existing resource constraints, the undisputed evidence of record establishes that, all other things being equal, North Topsail customers would be better off in the event that the system was owned and operated by an adequately-capitalized and professionally-run entity. As a result, the Commission has concluded that North Topsail is a financially-troubled utility. Nevertheless, that conclusion, considered in isolation, is not dispositive of the acquisition adjustment issue.

In that regard, the Commission notes that UI's willingness to purchase the North Topsail system was not conditioned on inclusion of the acquisition adjustment in rate base. Instead, the contract between UI and the Bankruptcy Trustee clearly obligates UI to purchase North Topsail whether or not the Commission approves inclusion of the proposed acquisition adjustment in rate base. At least one other adequately-capitalized utility attempted to buy North Topsail without seeking rate base treatment for an acquisition adjustment. Under this set of circumstances, the customers of North Topsail will get the benefit of ownership and operation by an adequately-capitalized and professionally-run utility regardless of whether the Commission approves inclusion of the acquisition adjustment in rate base or not. For this reason, much of the argument advanced by UI is less than compelling. As a result, the Commission concludes that we should decide the acquisition adjustment issue on the basis of an assumption that current North Topsail customers will receive service from an adequately-capitalized, professionally-run utility regardless of our decision with respect to the acquisition adjustment issue and that the benefits to customers necessary to justify inclusion of the acquisition adjustment in rate base must be found elsewhere.

The fact that UI's obligation to purchase North Topsail is not conditioned on approval of the proposed acquisition adjustment distinguishes this case from the numerous recent Commission decisions upon which UI places emphasis. For example, the Commission expressly noted in In re Heater Utilities, Inc., Docket No. W-274, Sub 215, 2 (1999), that "[t]he contracts for transfer filed with the application are conditioned upon Heater's obtaining Commission approval of an acquisition adjustment allowing Heater to receive rate base treatment of the full \$520,000 purchase price." Similarly, in In re Heater Utilities, Inc., Docket Nos. W-274, Subs 233, 234, 235, 236, and 237 (1999), the Commission approved the transfer of various water and sewer utility systems from

MidSouth to Heater under a contract which conditioned this transaction "upon Heater obtaining an acquisition adjustment to allow Heater to receive future rate making treatment as [sic] rate base for the full purchase price." Furthermore, the contract for the transfer of the Bragg Estates subdivision from Water, Inc., to Brookwood Water Corporation at issue in In re Brookwood Water Corporation, Docket No. W-177, Sub 46 (1999), expressly provided that the purchase price to be paid by Brookwood to Water, Inc., for the Bragg Estates subdivision was to be the greater of the net original cost investment which Water Inc., had in the Bragg Estates system as determined by the Commission or \$15,000 and that the proposed transfer was "null and void" in the event that "the Commission [did] not approve the entire purchase price as rate base." Finally, the Commission's decision in In re Brookwood Water Corporation, Docket No. W-177, Sub 47, 2 (1999), noted that Brookwood's agreement to purchase the Wrightsboro system from Scotsdale Water & Sewer, Inc., "was conditioned on Commission approval of full rate base treatment of the purchase price," which, in turn, included an acquisition adjustment. As a result of the fact that all of these cases involved sale agreements in which the benefits resulting from the proposed transfer were contingent upon Commission approval of the proposed acquisition adjustment, none of these cases support approval of an acquisition adjustment in this case.

Admittedly, the Hardscrabble decision cannot be distinguished on this basis, since the record in Hardscrabble reflects that Heater expressed the intention to consummate the purchase of the Hardscrabble system regardless of the Commission's resolution of the acquisition adjustment issue. Nevertheless, the facts at issue there are sufficiently different from those at issue here to support a different result. At the same time that the Commission approved Heater's request for rate base treatment of an acquisition adjustment in Hardscrabble, it refused to allow Heater to charge its uniform rates, saving Hardscrabble customers from a substantial increase. The Commission also noted in that case that, even after the inclusion of the acquisition adjustment in rate base, Heater's \$100 per-customer investment in the Hardscrabble system was substantially less than the \$575 per-customer investment which Heater had in the rest of its systems. Finally, the Commission emphasized that the likely effect of encouraging the transfer of the Hardscrabble system to Heater through a decision to approve the inclusion of the acquisition adjustment in rate base would be to place downward pressure on Heater's uniform rates. In this case, on the other hand, inclusion of the acquisition adjustment in rate base would increase North Topsail's per-customer investment from \$503 to \$1,390, more than eight times the per-customer acquisition adjustment approved in Hardscrabble. In addition, unlike Hardscrabble, the effect of allowing the inclusion of the acquisition adjustment in rate base in this instance would be to place upward pressure on the uniform rates charged by UI's largest North Carolina subsidiary in the event that the two systems were to be consolidated. As a result, the fact that the per-customer impact of including the acquisition adjustment at issue here in rate base is so much greater than was the case in Hardscrabble and the fact that another potential purchaser was willing to forgo inclusion of the acquisition adjustment in rate base makes the two cases fundamentally different.

The only additional benefit which may flow to North Topsail customers from inclusion of the acquisition adjustment in rate base in this case stems from UI's offer to withdraw North Topsail's pending application for a general rate increase and to refrain from seeking to increase rates for affected customers for three years. Although such an offer might, under some circumstances, suffice to justify inclusion of an acquisition adjustment in rate base, the Commission is not persuaded that such is the case in this instance. In analyzing this issue, one should remember that the burden of proof is on UI to establish that the benefits of the proposed transfer, including rate base treatment of the acquisition adjustment, outweigh the associated burdens. The undisputed evidence establishes that, all other things remaining equal, inclusion of the acquisition adjustment in rate base would support a \$12.00 per month or 38% increase in North Topsail's ordinary residential rates. Although UI has argued that a number of factors, such as customer growth, increased efficiencies, and economies of scale, could well offset some or all this rate increase, the extent to which such factors would have that effect is, at best, uncertain. In the absence of a decision to include the proposed acquisition adjustment in rate base, UI would, presumably, pursue the application for a 22% rate increase which North Topsail filed with the Commission in 1999. Although the record is not entirely clear on this point, the Commission assumes that many of the same factors which allegedly support a 22% increase now would still be present at the time that UI's self-imposed rate increase moratorium expires (a change in the treatment of the overcollected CIAC gross-up may have some impact on the validity of this statement), so that the proper basis for comparison is whether customers are better off with a 22% increase now or a 60% (modified as necessary to reflect the passage of time) increase at the end of three years. Assuming an 8.5% discount rate and a twenty-year calculation period, North Topsail's ratepayers are better off with an immediate 22% increase than with a 60% increase in three years on a net present value basis.

Moreover, the extent to which North Topsail is entitled to a 22% increase at the present time is unclear. The Public Staff contends that North Topsail is only entitled to a 1.67% increase at present; at an absolute minimum, observers of the regulatory process in North Carolina can safely assume that North Topsail's request for increased rates is unlikely to be approved without at least some modification. On the other hand, there does not appear to be any dispute that, all else remaining equal, the inclusion of the proposed acquisition adjustment in rate base will result in a 38% increase for North Topsail's customers separate and apart from other factors. Once again, if one assumes that North Topsail is entitled to either a 1.67% increase or a 10% increase now, the net present value of such an increase calculated over the next twenty years using an 8.5% discount rate is less than the net present value of a 39.67% or a 48% increase, respectively, three years from now calculated using the same assumptions. As a result, the Commission is simply not persuaded that North Topsail's customers are better off, over the long term, with a 38% increase plus any currently justifiable increase, adjusted to reflect the passage of time, three years from now compared to any currently-justified increase implemented in the near future. As a result, given that the immediate improvement in service conditions is not



likely to be of overwhelming significance, that the benefits of having an adequately-capitalized owner will be available to North Topsail customers regardless of our decision with respect to this issue, and that the rate impact of the inclusion of the acquisition adjustment in rate base is likely to be greater than the alternatives, the Commission cannot conclude that the benefits of the proposed transfer as outlined by UI outweigh the costs.

In apparent recognition of this problem, UI also indicated that, following completion of the transfer, it would consider consolidating the North Topsail system with its Carolina Water Service systems and charging North Topsail's customers on the basis of the uniform rates currently in effect for Carolina Water Service's customers. The Commission is not persuaded that this proposal overcomes the difficulties outlined above. First, the implementation of this proposal would require Commission authorization at the conclusion of a separate proceeding. As of the present date, UI has not applied for the authority to consolidate North Topsail with Carolina Water Service; there is no guarantee that the Commission would give its blessing to such a transaction if it were to be proposed. Second, the record reflects that substitution of Carolina Water Service's uniform rates for those currently charged by North Topsail would still result in a rate increase for those North Topsail customers with individual pump stations who pay their own pumping expense. Third, and most important, the effect of implementing this proposal would simply be to transfer the burden resulting from the inclusion of the acquisition adjustment in rate base from current North Topsail customers to all customers served by Carolina Water Service. It thus appears that Carolina Water Service customers would receive absolutely no benefit whatsoever in return for the assumption of this burden. As a result, the Commission is unable to conclude that, in the event that UI decides to consolidate the North Topsail system with its Carolina Water Service subsidiary, all affected customers will be better off following a Commission decision to approve the transfer as proposed by UI than would otherwise be the case.

Although UI argues that there are a number of other benefits which it believes will accrue to customers from a transfer of North Topsail to UI, including the ability to reduce connection fees prospectively to costs, UI's ability to post the required bond, the likelihood that UI will be able to refund the overcollected CIAC gross-up, and the Commission's ability to relinquish its role in managing NTWS to UI, all of these additional benefits simply reflect the fact that the new owner of North Topsail will be a financially-viable entity and that such a financially-viable owner will require less Commission supervision and have more financial resources than are currently available to North Topsail. In essence, UI would have the Commission conclude that the benefits which would accrue to customers from transferring ownership of North Topsail to a solvent, competent utility such as UI are sufficient to justify inclusion of the acquisition adjustment in rate base. Nevertheless, at bottom, it appears to the Commission that all of the benefits which would accrue to North Topsail customers from an acquisition by UI will exist whether or not the acquisition adjustment is included in rate base. For that reason, the Commission cannot approve the proposed transfer coupled with rate base treatment of the proposed

acquisition adjustment. A decision refusing to approve the transfer in the manner requested by UI is consistent with the Commission's prior acquisition adjustment decisions and with considerations of sound regulatory policy. On the other hand, approval of UI's proposal would, in effect, amount to a decision that an acquisition adjustment would be included in rate base any time that a large, professionally-operated utility acquires a smaller system, an approach which is inconsistent with this Commission's precedent and considerations of sound regulatory policy.

### **Connection Fees Should Be Established at \$1,200**

Connection fees should be reduced to \$1,200 per residential equivalent unit, equal to 360 gpd, with a minimum of \$1,200 for each connection or dwelling unit. Commercial customers would pay a connection fee based on design flow of the business to be served, with a minimum of \$1,200. Multi-unit construction would pay \$1,200 times the number of units served.

Currently, residential connection fees are \$2,000 for a new service connection not requiring the installation of a pumping station and \$3,000 for a connection that requires the installation of a pumping station. In its application, UI proposed no change in connection fees. The Public Staff proposes to reduce connection fees to the cost of labor and materials to make the connections plus the \$1,000,000 cost of a fourth lagoon. The Public Staff maintains that connection fees at this level would provide UI with the same level of CIAC and is consistent with the connection fees authorized for UI's other affiliated companies.

At the hearing and in its proposed order, UI agreed with the Public Staff recommendation that connection fees charged after the transfer should be reduced. The Commission determines that the level of connection fees agreed to by the parties should be approved prospectively without altering the rights of those who have prepaid connection fees prior to the transfer.

### **Bond Should be Established at \$200,000**

The bond for UI with respect to NTWS required pursuant to G.S. 62-110.3(a) should be established at \$200,000. The Public Staff addressed the five criteria that must be considered by the Commission in setting the bond amount pursuant to G.S. 62-110(a). In summary, the Public Staff determined that UI is affiliated with companies providing water and sewer utility service in North Carolina; UI's record of operation is satisfactory; there is projected growth of 3%; there is no need to construct new facilities, as the existing facilities were capable of accommodating the flows anticipated for at least the next 15 years; that the NTWS facilities are in excellent condition; and that NTWS has made expenditures to repair damage caused by adverse weather events. The Public Staff recommended a bond of \$200,000, which is the largest amount of damage NTWS has

suffered as a result of a single hurricane. UI does not object to the bond. The Commission agrees with the parties as to the size of the bond.

NTWS was initially franchised prior to September 1987, when the bonding legislation was enacted. G.S. 62-110.3(b), however, imposes a bonding requirement on contiguous extensions regardless of when a franchise was issued. Furthermore, G.S. 110.3(c) authorizes the Commission, at any time, to reevaluate the amount of a bond based on changed circumstances. The Commission is of the opinion that the proposed transfer is such a change.

### **UI Should Refund Overcollected CIAC Gross-Up**

The sum of \$337,200, representing the overcollection of gross-up on CIAC, that NTWS has been unable or unwilling to refund, should be refunded by UI. In Docket No. W-754, Sub 12, the Commission ordered NTWS to refund \$241,150 plus accrued interest to customers for overcollection of the gross-up for income taxes on CIAC by filing a refund plan and beginning repayment in July 1992. On August 20, 1992, in response to a motion of the Public Staff, the Commission found that NTWS had failed to file a plan and make refunds as ordered. At a Show Cause Hearing on September 23, 1992, in Docket No. W-754, Sub 12, NTWS submitted financial information prepared by its accountant and testified about the financial problems it was experiencing. The Commission approved a Joint Stipulation in Docket No. W-754, Subs 12 and 14 treating the gross-up as cost-free capital and deducting it from rate base. The Commission stated that if NTWS were transferred or sold, the gross-up should be refunded to the CIAC contributor as originally stipulated by NTWS and as ordered by the Commission.

In this docket, the Public Staff recommends that \$337,200 be refunded to the CIAC contributors as originally ordered by the Commission. Also, the Public Staff recommended that UI file a refund plan.

At an earlier proceeding in this docket, Joseph N. Callaway, Bankruptcy Trustee in the Mr. Bostic bankruptcy proceeding, asserted that the unclaimed portion of the \$337,200, if any, was part of the assets of the bankruptcy estate that should be included within the funds to be distributed to creditors.

Although UI does not wish to become embroiled in the dispute over the disposition of the CIAC gross-up, UI does not contest refunding the \$337,200 to the contributors to the extent these funds are released by the Bankruptcy Trustee and are provided from the preexisting fund. UI submitted a refund plan with its proposed order. The refund plan outlines a procedure to identify contributors, make refunds, and treat unclaimed refunds as cost-free capital.



The Commission concludes that the amount of \$337,200 should be refunded to the contributors of the CIAC; provided, however, that any unclaimed refunds will be retained by UI as cost-free capital. With support from the Public Staff, UI will be expected to obtain records from NTWS and proceeds from the Trustee with which to make refunds.

**UI Should Maintain the Connection Fee Escrow  
Account for Capital Improvements**

In Docket Nos. W-754, Subs 12 and 14, the Commission established a connection fee escrow account. Connection fee receipts are placed in this escrow account, and specific Commission approval is required before spending any of the funds in the account. Since the escrow account was set up, the Commission has allowed NTWS to use the funds to upgrade the sewer system and purchase land, building, vehicles and other utility assets.

In this docket, the Public Staff recommends that the balance in the connection fee escrow account on the date NTWS is sold be maintained by UI for the purposes of capital improvements for use only to upgrade and improve NTWS's sewer system. The Public Staff recommends that UI be required to file annually a report with the Commission listing the balance in the account, investment income received and expenditures made from the account. The Public Staff recommends that the balance in the escrow account will only affect rate base once expenditures are made from it and that UI increase both plant in service and CIAC for any amount spent out of the escrow fund.

UI expresses no objection to the Public Staff proposal. However, UI expresses its willingness to administer the escrow account in accordance with the Commission's wishes and directives without the need to file an annual report. UI is willing for the Commission to rely upon UI to use the escrow account funds reasonably and prudently and for the Commission to assess the prudence of UI's administration of the escrow fund in subsequent rate cases.

The Commission approves the recommendation for UI to maintain the connection fee escrow account to upgrade and improve the NTWS sewer system and to account for funds expended from the account. As connection fees are being reduced and UI will be responsible for funding most capital additions through its own resources, UI is released from the responsibility of placing connection fees collected after the transfer into the escrow account. The Commission concludes that it is unnecessary for UI to file an annual report, but the Commission will require UI to demonstrate its prudence in managing the escrow account in subsequent general rate cases.

**UI's Management Plan is Acceptable**

At the Public Staff's request, the Commission in its Order establishing hearing required UI to provide a proposed management plan for NTWS after UI's acquisition. In

his direct testimony UI witness Wenz stated that a detailed plan could be formulated only after UI gains experience in operating the system. Mr. Wenz testified that UI had no immediate plans for cutbacks, but if UI can operate the system more efficiently, UI will do so. Mr. Wenz testified that if North Topsail can be operated with fewer people, after giving reasonable notice, UI would look for opportunities for current North Topsail employees elsewhere in the UI organization.

The Public Staff encourages UI to retain the current NTWS personnel, based on the Public Staff's belief that such employees will be critical to the continued satisfactory operation of the system. The Public Staff recommends that four months' notice be required prior to termination of any employee for any reason other than nonfeasance or malfeasance of duties.

The Commission concludes that UI's willingness not to make any immediate cutback in NTWS employees and to provide notice and seek to place such employees elsewhere in the UI system is adequate protection. The Commission finds good cause to approve UI's management plan.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the franchise to provide sewer utility service in North Topsail Beach, North Carolina, from North Topsail Water and Sewer Inc., to Utilities, Inc., be, and the same is hereby, approved, contingent upon Utilities, Inc., complying with decretal paragraph 2 below.
2. That Utilities, Inc., shall complete one of the attached bonds (Appendices A-1, A-2, or A-3) and return said bond to the Commission. If the bond selected is Appendix A-1, UI shall deposit the appropriate surety in the amount of \$200,000 with Branch Banking & Trust Company, Attention: Julia Percivall, Trust Administrator, 3605 Glenwood Avenue, Raleigh, North Carolina 27612. If the bond selected is Appendix A-2 or Appendix A-3, UI shall file the appropriate surety and commitment letter (see Filing Requirement for Bonding, Appendix A-4) with the Commission.
3. That the request by Utilities, Inc., that the amount it is paying in excess of NTWS's original cost net investment be placed in its rate base as a debit plant acquisition adjustment be, and the same is hereby, denied.
4. That connection fees to be collected subsequent to the transfer shall be reduced to \$1,200 per residential equivalent unit, equal to 360 gpd, with a minimum of \$1,200 for each connection or dwelling unit. Commercial customers shall pay a connection fee based on the design flow of the business to be served, with a minimum of \$1,200. Multi-unit construction shall pay \$1,200 times the number of units served.

5. That, not later than 30 days from the date of this Order, the Public Staff shall review UI's refund plan for the refund of the overcollection of gross-up on CIAC and file its comments. The Commission will approve a refund plan by further Order.

6. That the connection fee escrow account established by the Commission in Docket Nos. W-754, Subs 12 and 14 shall be transferred to Utilities, Inc., as a source of funds used to upgrade the sewer system and Utilities, Inc., shall be relieved of the responsibility to place future connection fees into the escrow account.

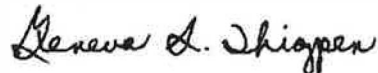
7. That Utilities, Inc., shall follow the management plan approved herein.

8. That, upon Commission approval of the bond, surety and commitment letter, a further Order shall be issued granting a Certificate of Public Convenience and Necessity, approving a Schedule of Rates, and requiring public notice.

ISSUED BY ORDER OF THE COMMISSION.

This 6th day of January, 2000.

NORTH CAROLINA UTILITIES COMMISSION



Geneva S. Thigpen, Chief Clerk

mh010700.03

Commissioner Judy Hunt concurring and dissenting.

Chairman Jo Anne Sanford and Commissioner Robert V. Owens, Jr., did not participate in this decision.

**DOCKET NO. W-1000, SUB 5**

**COMMISSIONER JUDY HUNT, CONCURRING AND DISSENTING:** I agree with the Commission in approving the transfer, but disagree with the decision to deny acquisition adjustment.

The acquisition adjustment should be allowed for the following reasons:

- 1) Good public policy - encourages larger, more efficient, well-capitalized water companies to acquire smaller under-capitalized, troubled water companies.
- 2) Commission precedent - Commission has in recent past allowed acquisition adjustment in certain cases such as financially troubled; this company certainly qualifies as financially troubled because it is in bankruptcy.

  /s/  Judy Hunt    
Judy Hunt, Commissioner

NCUC DOCKET NO. W-1000, SUB 5

APPENDIX A-1

**BOND**

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

THE CONDITION OF THIS BOND IS:

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

\_\_\_\_\_  
(describe utility)

\_\_\_\_\_ and,

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

WHEREAS, the Principal has delivered to the Commission \_\_\_\_\_

\_\_\_\_\_  
(description of security)

with an endorsement as required by the Commission, and,

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

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

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

This the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
(Name)

NCUC DOCKET NO. W-1000, SUB 5

APPENDIX A-2

**BOND**

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

THE CONDITION OF THIS BOND IS:

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

\_\_\_\_\_  
(describe utility)  
\_\_\_\_\_ and,

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

WHEREAS, the Principal has delivered to the Commission an Irrevocable Letter of Credit from \_\_\_\_\_  
(Name of Bank)

with an endorsement as required by the Commission, and,

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

WHEREAS, if for any reason, the Irrevocable Letter of Credit is not to be renewed upon its expiration, the Bank shall, at least 60 days prior to the expiration date of the Irrevocable Letter of Credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, that the Irrevocable Letter of Credit will not be renewed beyond the then current maturity date for an additional period, and

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

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

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

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

This the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_

NCUC DOCKET NO. W-1000, SUB 5

APPENDIX A-3

**BOND**

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

THE CONDITION OF THIS BOND IS:

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

\_\_\_\_\_  
(Describe utility)

\_\_\_\_\_ and,

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

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

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

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration,  
the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide  
written notification by means of certified mail, return receipt requested, to the Chief Clerk  
of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina  
27626-0510, that the Surety Bond will not be renewed beyond the then current maturity  
date for an additional period, and



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

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

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

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

This the \_\_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Corporate Surety)

BY: \_\_\_\_\_

APPENDIX A-4

Filing Requirements for Bonding

Type of Bond

	Cash / Certificate of Deposit Bond	Irrevocable Letter of Credit Bond	Commercial Surety Bond
Bond A-1	X <sup>1/</sup>		
Bond A-2		X <sup>1/</sup>	
Bond A-3			X <sup>1/</sup>
Cash / CD	X <sup>2/</sup>		
Letter of Credit		X <sup>3/</sup>	
Surety Bond			X <sup>4/</sup>
Commitment Letter		X <sup>5/</sup>	X <sup>5/</sup>

(To be filed with the Chief Clerk - where applicable)

- <sup>1/</sup> Copy of the Original Bond - Preferably on the forms prescribed in the Commission Order dated July 19, 1994, in Docket No. W-100, Sub 5 (Bond forms are usually attached to Order Requiring Bond for each specific franchise).
- <sup>2/</sup> Notification from Branch Banking & Trust Company (BB&T is the Commission's custodian for bond sureties) that cash or CD surety has been received for a given bond.
- <sup>3/</sup> Copy of Original Non-Perpetual Irrevocable Letter of Credit [Letter of Credit must comply with Rule R7-37 New Section (e)(4) as adopted by the Commission in its Order dated July 19, 1994, in Docket No. W-100, Sub 5.]
- <sup>4/</sup> Copy of Original Non-Perpetual Commercial Surety Bond [See No. 3 above]
- <sup>5/</sup> Copy of Commitment Letter
  - (a) This letter need only contain a statement indicating whether the utility is required to pledge utility company assets (collateral and type) to secure the bond or irrevocable letter of credit; and
  - (b) The premium paid by the utility (if any) to the bank and/or lending institution for their accommodation of the borrower.

**Inferred Parking Revenue Requirement**

6	Purchase Price of Parking	\$	22,901,938	Source = Exhibit KWO-6 Docket No. A-41 Sub 22 Page 6 of 6
7	Regulated Rate of Return		8.33%	Source = Taylor Testimony Table 1 at page 10
8	Inferred Net Income	\$	1,907,731	Line 6 x Line 7
	2021 Operating Expenses Excluding Income Taxes	\$	1,490,493	
9	Less: Interest Expense	\$	761,489	Line 6 x 50% x 6.65%
10	Income Subject to Tax	\$	2,636,735	Line 8 - Line 9
11	Composite Income Tax Rate		22.98%	Source = Exhibit KWO-3 Docket No. A-41 Sub 22 Page 1 of 1
12	Income Taxes	\$	605,790	(Line 10 / (1 - Line 11)) - Line 10
13	2021 Operating Expenses Excluding Income Taxes	\$	1,490,493	Source = Exhibit KWO-4 Docket No. A-41 Sub 22 Page 11 of 22
14	Inferred Parking Revenue Requirement	\$	4,004,014	Line 8 + Line 12 + Line 13
	2021 Barge Revenues	\$	3,976,447	
	Difference		0.69%	

*Parking***Inferred Barge Revenue Requirement**

6	Purchase Price of Barge	\$	8,358,150	Source = Exhibit KWO-6 Docket No. A-41 Sub 22 Page 6 of 6
7	Regulated Rate of Return		8.33%	Source = Taylor Testimony Table 1 at page 10
8	Inferred Net Income	\$	696,234	Line 6 x Line 7
	2021 Operating Expenses Excluding Income Taxes	\$	714,913	
9	Less: Interest Expense	\$	277,908	Line 6 x 50% x 6.65%
10	Income Subject to Tax	\$	1,133,238	Line 8 - Line 9
11	Composite Income Tax Rate		22.98%	Source = Exhibit KWO-3 Docket No. A-41 Sub 22 Page 1 of 1
12	Income Taxes	\$	260,362	(Line 10 / (1 - Line 11)) - Line 10
13	2021 Operating Expenses Excluding Income Taxes	\$	714,913	Source = Exhibit KWO-4 Docket No. A-41 Sub 22 Page 11 of 22
14	Inferred Barge Revenue Requirement	\$	1,671,508	Line 8 + Line 12 + Line 13
	2021 Barge Revenues	\$	1,535,195	
	Difference		8.88%	

**Bald Head Island Transportation, Inc.**  
**Docket No. A-41, Sub 7**  
**Settlement Computation of Parking Revenue Contribution**  
**For the Test Year Ended December 31, 2009**

Line No.	Description	Amount	
1	<u>Annual pass revenue:</u>		
2	General	\$520,602	1/
3	Overnight parking @ BHI	43,062	1/
4	Contractor	31,702	1/
5	Interdepartmental	160,207	1/
6	Subtotal - annual passes	755,573	
7	<u>Daily parking revenues:</u>		
8	General	1,086,011	2/
9	Contractor	96,583	2/
10	Interdepartmental	17,925	2/
11	Subtotal - daily parking	1,200,519	
12	Actual parking revenues - 12 months ended June 30, 2010	\$1,956,092	
13	Less: Overnight parking @ BHI	(43,062)	
14	Add: Imputed Shoals' Club member discounts	46,200	3/
15	Adjusted DP parking revenues - 12 months ended June 30, 2010	\$1,959,230	
16	Revenue required for cost recovery @ BHIT authorized ROR	1,436,133	4/
17	Parking revenue above BHIT authorized ROR	\$523,097	
18	Ferry parking revenue as percent of total fee parking @ Deep Point	100.0%	5/
19	<b>Parking revenue contribution to BHIT</b>	<b>\$523,097</b>	

Footnotes:

- 1/ Response to DR 3-17.
- 2/ Response to DR 3-16.
- 3/ Response to BHI Club DR 2-11.
- 4/ Settlement levelized payment computation.
- 5/ Per Settlement.

Bald Head Island Transportation, Inc.  
Deep Point Parking Facility  
Computation of Levelized Payment

	Tax	Book
<u>Parking Facilities by tax class and method:</u>		
Non-Depreciable	0	0
3 year property	751	
5 year property - S/L	14,727	
5 year property - 200 DDB	269,877	
7 year property - S/L	38,934	
7 year property	290,083	
15 year property SL		6,130,035
15 year property 150 DB	5,515,663	
25 year property		3,345,262
39 year property	3,345,262	
Total Cost	<u>9,475,297</u>	<u>9,475,297</u>

Other Rate Base

Book Depreciation Rates

Depreciable life in years	40	
O&M Expenses	311,540	Actual 12 ME Jun 2010 per PS DR 3-14 plus \$6000 adjustment for pot hole repairs
Growth rate O&M + pay taxes	0%	
Payroll taxes	8,540	Annualized Jan - Jun 2010 per PS DR 3-14
Property taxes rate	0.08%	Annualized Jan - Jun 2010 per PS DR 3-14 as a percent of plant
Property tax escalator	0%	

Contract Information

Inception	6/1/2009
Termination Date	5/31/2049

Income Tax Rates:

State Income Tax Rate	6.9%
Federal Inc Tax Rate	34.0%
Composite Inc Tax Rate	38.554%

Cost of Capital and Discount Rate:

Debt % of Capital	50.000%
Equity % of Capital	50.000%
Debt Cost Rate	6.650%
Equity Cost Rate	10.000%
Overall Rate of Return	8.325%
Pre-Tax ROR	11.462%
Net of Tax ROR	7.0431% Discount rate

Bald Head Island Transportation, Inc.  
Deep Point Parking Facility  
Computation of Levelized Payment

Rate Base Treatment of Facilities															Payment Schedule			Cumulative Discounted Cash Flows			
Plant	Book Depreciation	Depreciation Reserve	Net Plant	ADIT	Net Rate Base	Pre-Tax				Payroll Taxes	Property Taxes	Revenue Reqmnt	Discount Factor	Discounted Cash Flows	Annual Payment	Discount Factor	Discounted Cash Flows	Levelized Payment	Rate Base Treatment	Over (Under) Req'd Req'd ROR	
						Average Rate Base	Return on RB	O&M Expense	Book Depreciation												
1	9,475,297	271,240	(271,240)	9,204,057	(56,762)	9,147,295	9,311,296	1,067,282	311,540	271,240	8,540	7,600	1,666,202	0.96654	1,610,454	1,436,133	0.96654	1,388,083	1,388,083	1,610,454	(222,371)
2	9,475,297	542,479	(813,719)	8,661,578	(146,763)	8,514,814	8,831,055	1,012,235	311,540	542,479	8,540	7,600	1,882,395	0.90295	1,699,702	1,436,133	0.90295	1,296,752	2,684,834	3,310,156	(625,321)
3	9,475,297	542,479	(1,356,199)	8,119,098	(203,245)	7,915,853	8,215,334	941,660	311,540	542,479	8,540	7,600	1,811,820	0.84354	1,528,335	1,436,133	0.84354	1,211,430	3,896,264	4,838,491	(942,226)
4	9,475,297	542,479	(1,898,678)	7,576,619	(222,657)	7,353,962	7,634,907	875,130	311,540	542,479	8,540	7,600	1,745,290	0.78803	1,375,348	1,436,133	0.78803	1,131,722	5,027,986	6,213,838	(1,185,852)
5	9,475,297	542,479	(2,441,158)	7,034,139	(216,256)	6,817,884	7,085,923	812,204	311,540	542,479	8,540	7,600	1,682,364	0.73618	1,238,529	1,436,133	0.73618	1,057,258	6,085,244	7,452,367	(1,367,124)
6	9,475,297	542,479	(2,983,637)	6,491,660	(188,408)	6,303,252	6,560,568	751,987	311,540	542,479	8,540	7,600	1,622,147	0.68775	1,115,624	1,436,133	0.68775	987,694	7,072,938	8,567,991	(1,495,054)
7	9,475,297	542,479	(3,526,116)	5,949,180	(146,982)	5,802,199	6,052,725	693,777	311,540	542,479	8,540	7,600	1,563,937	0.64249	1,004,820	1,436,133	0.64249	922,707	7,995,645	9,572,811	(1,577,167)
8	9,475,297	542,479	(4,068,596)	5,406,701	(101,174)	5,305,526	5,553,862	636,596	311,540	542,479	8,540	7,600	1,506,756	0.60022	904,385	1,436,133	0.60022	861,996	8,857,641	10,477,196	(1,619,556)
9	9,475,297	542,479	(4,611,075)	4,864,221	(50,561)	4,813,660	5,059,593	579,942	311,540	542,479	8,540	7,600	1,450,101	0.56073	813,112	1,436,133	0.56073	805,279	9,662,920	11,290,308	(1,627,388)
10	9,475,297	542,479	(5,153,555)	4,321,742	52	4,321,794	4,567,727	523,563	311,540	542,479	8,540	7,600	1,393,723	0.52383	730,079	1,436,133	0.52383	752,295	10,415,215	12,020,387	(1,605,172)
11	9,475,297	542,479	(5,696,034)	3,779,262	50,666	3,829,928	4,075,861	467,184	311,540	542,479	8,540	7,600	1,337,344	0.48937	654,452	1,436,133	0.48937	702,796	11,118,011	12,674,839	(1,556,828)
12	9,475,297	542,479	(6,238,514)	3,236,783	101,279	3,338,062	3,583,995	410,806	311,540	542,479	8,540	7,600	1,280,965	0.45717	585,617	1,436,133	0.45717	656,555	11,774,566	13,260,456	(1,485,890)
13	9,475,297	542,479	(6,780,993)	2,694,303	151,893	2,846,196	3,092,129	354,427	311,540	542,479	8,540	7,600	1,224,586	0.42709	523,006	1,436,133	0.42709	613,355	12,387,921	13,783,462	(1,395,541)
14	9,475,297	542,479	(7,323,473)	2,151,824	202,506	2,354,330	2,600,263	298,048	311,540	542,479	8,540	7,600	1,168,208	0.39899	466,100	1,436,133	0.39899	572,999	12,960,920	14,249,562	(1,288,642)
15	9,475,297	542,479	(7,865,952)	1,609,345	253,120	1,862,464	2,108,397	241,669	311,540	542,479	8,540	7,600	1,111,829	0.37274	414,418	1,436,133	0.37274	535,297	13,496,217	14,663,980	(1,167,762)
16	9,475,297	338,145	(8,204,097)	1,271,200	287,048	1,558,248	1,710,356	196,045	311,540	338,145	8,540	7,600	861,870	0.34821	300,112	1,436,133	0.34821	500,077	13,996,294	14,964,092	(967,798)
17	9,475,297	133,810	(8,337,908)	1,137,389	305,567	1,442,956	1,500,602	172,002	311,540	133,810	8,540	7,600	633,493	0.32530	206,075	1,436,133	0.32530	467,173	14,463,467	15,170,167	(706,700)
18	9,475,297	133,810	(8,471,718)	1,003,579	324,087	1,327,665	1,385,311	158,787	311,540	133,810	8,540	7,600	620,278	0.30390	188,500	1,436,133	0.30390	436,435	14,899,902	15,358,667	(458,765)
19	9,475,297	133,810	(8,605,529)	869,768	342,606	1,212,374	1,270,020	145,573	311,540	133,810	8,540	7,600	607,063	0.28390	172,345	1,436,133	0.28390	407,719	15,307,621	15,531,012	(223,391)
20	9,475,297	133,810	(8,739,339)	735,958	361,125	1,097,083	1,154,728	132,358	311,540	133,810	8,540	7,600	593,848	0.26522	157,501	1,436,133	0.26522	380,892	15,688,513	15,688,513	-
21	9,475,297	133,810	(8,873,150)	602,147	379,644	981,791	1,039,437	119,143	311,540	133,810	8,540	7,600	580,633	0.24777	143,863	1,436,133	0.24777	355,831	16,044,344	15,832,376	211,967
22	9,475,297	133,810	(9,006,960)	468,337	398,164	866,500	924,146	105,928	311,540	133,810	8,540	7,600	567,418	0.23147	131,339	1,436,133	0.23147	332,418	16,376,762	15,963,715	413,047
23	9,475,297	133,810	(9,140,771)	334,526	416,683	751,209	808,855	92,713	311,540	133,810	8,540	7,600	554,203	0.21624	119,840	1,436,133	0.21624	310,546	16,687,308	16,083,555	603,753
24	9,475,297	133,810	(9,274,581)	200,716	435,202	635,918	693,563	79,498	311,540	133,810	8,540	7,600	540,988	0.20201	109,285	1,436,133	0.20201	290,113	16,977,421	16,192,840	784,581
25	9,475,297	133,810	(9,408,391)	66,905	453,721	520,626	578,272	66,283	311,540	133,810	8,540	7,600	527,773	0.18872	99,601	1,436,133	0.18872	271,025	17,248,446	16,292,441	956,006
26	9,475,297	66,905	(9,475,297)	-	446,446	446,446	483,536	55,424	311,540	66,905	8,540	7,600	450,009	0.17630	79,337	1,436,133	0.17630	253,192	17,501,639	16,371,778	1,129,861
27	9,475,297	-	(9,475,297)	-	413,376	413,376	429,911	49,277	311,540	-	8,540	7,600	376,957	0.16470	62,085	1,436,133	0.16470	236,533	17,738,172	16,433,863	1,304,308
28	9,475,297	-	(9,475,297)	-	380,306	380,306	396,841	45,487	311,540	-	8,540	7,600	373,167	0.15386	57,417	1,436,133	0.15386	220,970	17,959,142	16,491,280	1,467,861
29	9,475,297	-	(9,475,297)	-	347,236	347,236	363,771	41,696	311,540	-	8,540	7,600	369,376	0.14374	53,094	1,436,133	0.14374	206,431	18,165,573	16,544,375	1,621,198
30	9,475,297	-	(9,475,297)	-	314,166	314,166	330,701	37,906	311,540	-	8,540	7,600	365,586	0.13428	49,092	1,436,133	0.13428	192,848	18,358,421	16,593,467	1,764,954
31	9,475,297	-	(9,475,297)	-	281,096	281,096	297,631	34,115	311,540	-	8,540	7,600	361,795	0.12545	45,386	1,436,133	0.12545	180,160	18,538,581	16,638,853	1,899,728
32	9,475,297	-	(9,475,297)	-	248,025	248,025	264,560	30,325	311,540	-	8,540	7,600	358,005	0.11719	41,956	1,436,133	0.11719	168,306	18,706,886	16,680,809	2,026,077
33	9,475,297	-	(9,475,297)	-	214,955	214,955	231,490	26,534	311,540	-	8,540	7,600	354,214	0.10948	38,780	1,436,133	0.10948	157,232	18,864,118	16,719,589	2,144,529
34	9,475,297	-	(9,475,297)	-	181,885	181,885	198,420	22,743	311,540	-	8,540	7,600	350,423	0.10228	35,841	1,436,133	0.10228	146,886	19,011,005	16,755,430	2,255,574
35	9,475,297	-	(9,475,297)	-	148,815	148,815	165,350	18,953	311,540	-	8,540	7,600	346,633	0.09555	33,121	1,436,133	0.09555	137,222	19,148,227	16,788,551	2,359,676
36	9,475,297	-	(9,475,297)	-	115,745	115,745	132,280	15,162	311,540	-	8,540	7,600	342,842	0.08926	30,603	1,436,133	0.08926	128,193	19,276,420	16,819,154	2,457,266
37	9,475,297	-	(9,475,297)	-	82,675	82,675	99,210	11,372	311,540	-	8,540	7,600	339,052	0.08339	28,273	1,436,133	0.08339	119,758	19,396,178	16,847,427	2,548,751
38	9,475,297	-	(9,475,297)	-	49,605	49,605	66,140	7,581	311,540	-	8,540	7,600	335,261	0.07790	26,118	1,436,133	0.07790	111,879	19,508,057	16,873,545	2,634,512
39	9,475,297	-	(9,475,297)	-	16,535	16,535	33,070	3,791	311,540	-	8,540	7,600	331,471	0.07278	24,123	1,436,133	0.07278	104,517	19,612,574	16,897,668	2,714,906
40	9,475,297	-	(9,475,297)	-	0	0	8,268	948	311,540	-	8,540	7,600	328,628	0.06799	22,343	1,436,133	0.06799	97,641	19,710,215	16,920,011	2,790,203



**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Bald Head Island	)	
Transportation, Inc. for a General Increase	)	ORDER GRANTING
in its Rates and Charges Applicable to Ferry	)	PARTIAL RATE INCREASE
Service Between Southport, North Carolina	)	AND REQUIRING NOTICE
and Bald Head Island, North Carolina	)	

HEARD: Friday, July 23, 2010, at 10:00 a.m., Ocean Room, Bald Head Island Club,  
301 Salt Meadow Trail, Bald Head Island, North Carolina

Wednesday, October 20, 2010, at 9:00 a.m., Commission Hearing Room  
2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Edward S. Finley, Jr., Presiding, and Commissioners Bryan E.  
Beatty and Lucy T. Allen

APPEARANCES:

For Bald Head Island Transportation, Inc.:

M. Gray Styers, Jr. and Charlotte Mitchell, Styers & Kemerait PLLC,  
1001 Haynes Street, Suite 101, Raleigh, North Carolina 27604

For Bald Head Island Club:

Daniel C. Higgins, Burns, Day & Presnell, P.A., P.O. Box 10667, Raleigh,  
North Carolina 27605

For Bald Head Association, Inc.:

Odes L. Stroupe, Jr., Bode, Call and Stroupe, LLP, 3105 Glenwood  
Avenue, Suite 300, Raleigh, North Carolina 27612

For The Village of Bald Head Island:

Mary Lynne Grigg, McGuire Woods, LLP, 2600 Two Hannover Square,  
Raleigh, North Carolina 27601



For the Using and Consuming Public:

Dianna Downey, Staff Attorney, and Antoinette Wike, Chief Counsel,  
Public Staff-North Carolina Utilities Commission, 4326 Mail Service  
Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: On May 5, 2010, Bald Head Island Transportation, Inc. (BHIT or Company) filed an application for a general rate increase, pursuant to G.S. 62-133 and G.S. 62-134 and Commission Rules R1-4, R1-5, and R1-17, along with the direct testimony and exhibits of James W. Fulton, Jr., Vice President of BHIT and Director of Operations for Bald Head Island Limited, LLC (BHIL); Shirley A. Mayfield, Secretary/Treasurer of BHIT and Chief Financial Officer of BHIL; and Fredrick W. Hering, outside consultant who is providing regulatory accounting services to BHIT. In its application, BHIT requested an increase in rates, fares, and operating revenues designed to produce an overall increase of \$2,767,548 in annual ferry operating revenues. On May 28, 2010, BHIT filed an amendment and/or clarification to its petition for a general rate case seeking to clarify the date rates were to become effective.

Motions to Intervene were filed by Bald Head Island Club (Club) on May 12, 2010, by The Village of Bald Head Island (Village) on May 19, 2010 and by Bald Head Association (BHA or Association) on June 7, 2010. The Commission granted intervention in this proceeding to the Club, the Village, and the Association (the Customer Group) by Orders dated June 3, 2010 and June 10, 2010.

On June 3, 2010, the Commission entered an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, Requiring Public Notice, and Granting Petitions for Leave to Intervene. In accordance with that Order, a public hearing was conducted at the Bald Head Island Club on Bald Head Island on July 23, 2010. At the hearing, the following persons testified: Suzanne Dorsey, Brenda Quanstrom, Richard Mesaris, Sylvia Poole, Marilyn Ridgeway, Jane Johnson, John Earle, Harry Aylor, Barbara McQuaide, Patricia Garrett, Wendie Walker, Clark Pennell, Douglas Ledgett, Donna Finley, Donna Jarmusz, Norm Coryell, Timothy O'Brien, Erica Grantmyre, Bob Liesegang, Joseph Elrod, Larry Lammert, William Waddell, Patricia Barnard, Larry Patterson, Darren Witt, David Adcock, Nancy Giacci, and Sandra Hall.

On July 8, 2010, the Company provided notice of its filing of affidavits of publication of public notice of hearings as required by the Commission's June 3, 2010 Order.

On August 9, 2010, BHA filed a motion to reschedule the date for the hearing set for September 28, 2010, and on August 11, 2010, BHIT filed its response to BHA's motion. On August 11, 2010, the Village filed a motion for extension of time regarding the deadlines for the filing of testimony and for conducting discovery and BHIT filed a motion requesting to amend the schedule for taking depositions. On August 12, 2010, the Customer Group filed a joint reply to the response of BHIT. On August 13, 2010, BHIT filed its supplemental response to the motions to reschedule the hearing date. On

August 17, 2010, the Commission entered an Order Rescheduling Hearing, Requiring Public Notice, and Ruling On Motion to Compel that rescheduled the September 28, 2010 hearing to October 20, 2010, and directed the Public Staff and other intervenors to file direct testimony on or before Monday, September 20, 2010, and BHIT to file rebuttal testimony and exhibits on or before Monday, October 4, 2010.

On September 16, 2010, the Public Staff filed a motion for extension of time to file testimony. In its motion, the Public Staff notified the Commission that the Public Staff and BHIT had reached an agreement and required additional time to file a stipulation and supporting testimony. On September 20, 2010, the Commission entered an Order granting the Public Staff's motion, extending the time to file testimony to September 27, 2010, and the time to file rebuttal testimony to October 11, 2010. On September 27, 2010, the Customer Group filed a motion for extension of time to file testimony, indicating that discussions were ongoing for a global settlement and requesting an extension to September 30, 2010 to file testimony and to October 14, 2010 to file rebuttal testimony. On September 28, 2010, the Commission entered an Order granting the extension of time requested by the Customer Group.

On September 30, 2010, the Public Staff filed an Agreement and Stipulation of Settlement (Agreement) between BHIT and the Public Staff and the testimony of James G. Hoard, Assistant Director, Public Staff Accounting Division. On that same date, the Customer Group filed the testimony of Dr. Julius A. Wright, President of J.A. Wright & Associates, Inc. On October 14, 2010, BHIT filed the rebuttal testimony of Shirley A. Mayfield, Frederick W. Hering, and James W. Fulton, Jr. On October 15, 2010, BHIT filed its proposed order of witnesses and estimate of cross-examination times and also filed the amended rebuttal testimony of Shirley A. Mayfield and Frederick W. Hering. On October 18, 2010, the Customer Group filed a response to BHIT's proposed order of witnesses. On October 19, 2010, the Commission entered an Order Determining Order of Witnesses.

The hearing resumed in Raleigh on October 20, 2010 as scheduled. No public witnesses appeared to testify. Upon becoming informed that substantive negotiations were still underway between the Customer Group, BHIT, and the Public Staff and at the request of all the parties, the Commission adjourned the hearing until October 21, 2010, if needed, to allow the parties additional time to discuss and conclude the ongoing settlement negotiations. On October 21, 2010, the Customer Group, the Public Staff, and BHIT (the Stipulating Parties) entered and filed a Revised Agreement and Stipulation of Settlement (Stipulation) and the late-filed revised exhibits of James G. Hoard. Additionally, BHIL also entered into the Stipulation for the purpose of acknowledging its agreement with its obligations under Section 2.C.i. (Deep Point parking facilities) and Section 8 (Accounting Policies) of the Stipulation. The foregoing Stipulation comprehensively resolved all issues in this proceeding among all of the parties; therefore, the October 21, 2010 hearing was not reconvened. Pursuant to Section 12 of the Stipulation, the Stipulating Parties agreed that all prefiled testimony and exhibits may be received into evidence without objection, and each Stipulating Party waived all rights to cross-examine any witness except to affirm the provisions of

the Stipulation and to explain and clarify testimony consistent with the Stipulation. Consequently, the Commission receives into evidence the prefiled direct and rebuttal testimony and exhibits of Shirley A. Mayfield, Frederick W. Hering, and James W. Fulton, Jr.; the prefiled direct testimony and exhibits of James G. Hoard and Dr. Julius A. Wright; and the amended joint rebuttal testimony and exhibits of Company witnesses Mayfield and Hering. Further, the Commission receives into evidence the Stipulation and Stipulation Exhibits, and the late-filed revised exhibits of Public Staff witness Hoard.

After the Stipulation was filed, the Commission received a total of seven emails<sup>1</sup> from customers indicating, among other things, that the proposed rate increase in the Stipulation was unfair and unreasonable and that the Commission should reject the Stipulation and proceed to a further hearing and final ruling on all issues.

On November 22, 2010, the Stipulating Parties filed a Joint Proposed Order.

WHEREUPON, based upon consideration of the verified application, the prefiled direct and rebuttal testimony and exhibits, the amended rebuttal testimony and exhibits, the late-filed revised exhibits, the Stipulation, the Stipulation exhibits, and the record as a whole, the Commission now makes the following

#### FINDINGS OF FACT AND CONCLUSIONS

1. BHIT is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission pursuant to G.S. 62-3(23)a.3. The Company is engaged in the business of transporting passengers and their personal effects by ferry to and from Deep Point Marina terminal in Southport, North Carolina and the Bald Head Island terminal on Bald Head Island, North Carolina. BHIT is a wholly-owned subsidiary of BHIL.

2. The Commission has jurisdiction over the rates and charges, rate schedules, classifications, and practices of public utilities operating in North Carolina, including BHIT, under Chapter 62 of the General Statutes of North Carolina. BHIL is subject to the jurisdiction of the Commission to the extent provided for in G.S. 62-3(23)c, and BHIL joined in the Stipulation for the purpose of and only to the extent of approving BHIL's obligations under Section 2.C.i. (Deep Point parking facilities) and Section 8 (Accounting Policies) of the Stipulation and incorporating those obligations in this Order.

3. BHIT is lawfully before the Commission based upon its application for a general rate increase in its ferry ticket rates pursuant to G.S. 62-133, G.S. 62-134, and Commission Rule R1-17.

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<sup>1</sup> Four emails were received on October 28, 2010; one email was received on November 2, 2010; and two emails were received on November 15, 2010.

4. The appropriate test period for use in this proceeding, is the 12-month period ended December 31, 2009, updated with actual changes to revenues, expenses, rate base, and cost of capital.

5. In its application, BHIT requested approval of an increase in total annual ferry ticket revenues of \$2,767,548 to permit BHIT to earn income of \$342,453. The increase requested in the application would have resulted in an overall rate of return per BHIT of 9.25%, a 10.00% return on common equity, and a 8.50% cost of long-term debt, based on an imputed capital structure of 50% long-term debt and 50% common equity.

6. The Stipulation filed on October 21, 2010 included revisions to several of the provisions set forth in the September 30, 2010 Agreement and Stipulation between BHIT and the Public Staff and also set forth new provisions that, as revised and expanded, comprehensively resolved all issues in this proceeding among all of the parties. Having carefully reviewed the Stipulation and all of the evidence of record, the Commission finds and concludes that the provisions of the Stipulation are just and reasonable to all parties under the circumstances of this proceeding and should be approved in their entirety. The provisions of the Stipulation are addressed in the following findings of fact and conclusions.

7. Consistent with the Stipulation, the Commission finds and concludes that it is appropriate for BHIT to adjust its rates, fares, and charges to produce annual revenues of \$5,094,164 from its ferry operations, which will result in total annual revenues of \$5,966,508, including \$872,344 of other operating revenues. The Stipulating Parties agreed that these revenues are intended to provide BHIT, through sound management, the opportunity to earn an overall rate of return of 8.33% on a rate base of \$3,943,335, with BHIT's long-term debt cost of 6.65% and a rate of return of 10.00% on the member's equity component of the following imputed capital structure:

Long-Term Debt..... 50%  
Member's Equity..... 50%

The Commission finds and concludes that this aspect of the Stipulation is just and reasonable.

8. Exhibits A and B of the Stipulation summarize the gross revenues, operating revenue deductions, rate base, and rate of return agreed upon by the Stipulating Parties.

9. With respect to the parking operations and facilities at the Deep Point ferry terminal and the property formerly used for parking and ferry operations at Indigo Plantation, the Stipulating Parties agreed as follows:

- a. BHIL, the parent affiliate of BHIT, owns certain parking facilities adjacent to the BHIT ferry terminal in Southport (the Deep Point parking facilities). The imputation of the revenues of the Deep Point parking facilities, as

described in the testimony and shown in the exhibits of Public Staff witness James G. Hoard, is limited to this case and establishes no binding precedent for future cases, and shall not be binding in future cases as a reason for or against imputation of parking revenues or any other regulatory treatment of parking operations. However, the Stipulating Parties agreed that:

- i. Seasonal/Non-Seasonal Daily Parking: BHIL agrees not to increase the price of the Seasonal/Non-Seasonal Daily Parking rates currently in effect (\$10 Seasonal; \$8 Non-Seasonal) in any one 12-month period in an amount greater than the percentage change in inflation (inflation shall be defined as the Consumer Price Index for All Urban Consumers (CPI-U) as calculated by the U.S. Bureau of Labor Statistics), rounded to the nearest whole 25¢. Any increase in rates due to the CPI-U shall not exceed the compound average growth rate from January 1, 2011. BHIL agrees to be bound by this provision for a period beginning on January 1, 2011, and ending on December 31, 2016. This limitation shall apply through December 31, 2016, to any successor entity that owns, operates, or leases the Deep Point parking facilities.
- ii. Annual Parking: BHIL and the Village have a pre-existing understanding and commitment regarding accommodations afforded by BHIL associated with Annual Parking patrons. The understanding between BHIL and the Village is reflected in a letter dated April 24, 2009, attached as Exhibit C to the Stipulation. BHIL agrees to comply with the limitations set forth in the letter of April 24, 2009 with the following amendments: (i) the term "inflation" shall be defined as CPI-U as calculated by the U.S. Bureau of Labor Statistics and (ii) the term set forth in the letter shall be extended through December 31, 2016 and the following additional language shall be added: *"2015 Rates increase not to exceed annual inflation experienced during 2014, and 2016 Rates increase not to exceed annual inflation experienced during 2015."* Any increase in rates due to the CPI-U shall not exceed the compound average growth rate from January 1, 2011. These limitations shall apply through December 31, 2016, to any successor entity that owns, operates, or leases the Deep Point parking facilities.
- iii. BHIL will provide notice to the Public Staff and the Commission of any sale or lease of the Deep Point parking facilities or any part of those facilities not less than 90 days prior to the scheduled closing date for the sale or lease.
- iv. BHIL will include, in any contract for the sale or lease of the Deep Point parking facilities, the parking rate limitations described in the Stipulation and in this Order.

- v. Any gain or loss on the sale or lease of parking facilities owned by BHIL shall not be assigned, credited, or attributed for ratemaking purposes to BHIT.
- b. The applicability of the treatment of the gain on the transfer of the Indigo Plantation property from utility to nonutility property is limited to this case and establishes no precedent in future cases for the regulatory treatment of any property owned by BHIL and leased by BHIT.
- c. Notwithstanding the foregoing provisions, nothing in the Stipulation shall be construed to imply any limitation on the Commission's regulatory jurisdiction or ability to exercise its statutory powers and discharge its statutory duties to protect the public interest with respect to the rates charged and service rendered by BHIT pursuant to its grant of common carrier authority from the Commission.

The Commission finds and concludes that these provisions are just and reasonable and should be approved in this Order.

10. As agreed in the Stipulation, in Section 2.D., BHIT's revenues from its ferry operations for the 12 months ended December 31, 2009 (the test period), by customer class under current base rates, and as approved herein, will be as follows:

Type of Passenger	Annual Revenues	
	Current Rates	Approved Rates
Class I General	\$1,605,825	\$2,462,265
Class II Bulk/Bulk40	272,663	464,415
Class III Group Purchase/Bulk 80	252,150	71,055
Class IV Government Employees	77,211	-
Class V Special Event	21,750	-
Class VI No Frills	110,900	155,260
Class VII Contractor	345,950	484,330
Class VIII Corporate Guest	28,024	-
Class IX Employee	387,128	1,081,822
Class X Children	148,704	225,624
Class XI Annual Pass	33,000	33,300
Class XII Senior Citizen Annual Pass	15,750	-
Class XIII Excess Baggage	65,550	100,510
Class XIV Student Ticket	856	-
Class XV Lost/One-Way Ticket	6,775	15,583
Total	\$3,372,236	\$5,094,164

The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

11. The Stipulating Parties agreed that the Schedule of Rates and Charges attached as Exhibit D to the Stipulation should be approved, and the Commission finds and concludes that this Schedule of Rates and Charges is just and reasonable.

12. The effective date of the rate change (Effective Date) is January 1, 2011. With respect to issues relating to the renewal and expiration of current tickets held by customers, the Stipulating Parties agreed to the following, as set forth in the Joint Proposed Order:

- a. Currently issued Class XI Annual Passes sold at the current rate will continue to be honored for passage until they expire, but no Class XI Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. Annual passes held by agencies or nonresidential property owners that expire after December 31, 2010, will not be renewed. There shall be no proration in value of either a currently issued annual pass or new/renewed annual pass.
- b. Currently issued Class XII Senior Citizen Annual Passes will continue to be honored for passage until they expire, but shall not be renewed upon expiration after December 31, 2010. No Class XII Senior Citizen Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. There shall be no proration in value of either a currently issued annual pass or new/renewed annual pass.
- c. All other tickets (except Class II Bulk Fare, Class XV Lost Tickets, and Class VI No Frills tickets) shall be honored when used and/or may be presented for refund or credit towards purchase of another ticket through March 31, 2011, but shall expire and have no value after that date. Class II Bulk Fare tickets issued on or before December 31, 2010, will be honored for passage only when used through March 31, 2011, but will be accepted for refund or credit towards purchase of other ticket(s) when presented or returned at any time up to and including June 30, 2011, and will have no value after that date.

The Commission finds and concludes that the foregoing agreement by the Stipulating Parties regarding ticket renewal and expiration dates is just and reasonable.

13. The Stipulating Parties agreed upon the following regarding the rate design changes proposed by BHIT:

- a. BHIT shall cancel the Class IV Government Employees; Class V Special Event; Class VIII Corporate Guest; Class XII Senior Citizen Annual Pass; and Class XIV Student Ticket classes, as recommended by BHIT witness Fulton.
- b. BHIT shall establish new Bulk 40 and Bulk 80 ticket classes as proposed by BHIT witness Fulton at the rates and as described in the rate schedule and tariff attached to the Stipulation as Exhibits D and E.

The Commission finds and concludes that these rate design changes are just and reasonable.

14. The Stipulating Parties agreed that BHIT's fuel surcharge shall be set at zero as of the Effective Date but agreed that the difference between fuel collections and fuel expenses should continue to be tracked in the fuel tracker account and reported to the Commission on a quarterly basis consistent with present procedures. The revised fuel component of rates recomputed based on the cost of service and billing units from this proceeding is set forth in Exhibit F of the Stipulation. A fuel surcharge adjustment may be requested in the future pursuant to the Commission's January 29, 2009 Order in Docket No. A-100, Sub 0. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

15. The Stipulating Parties agreed that the depreciation rates for regulatory accounting purposes shall, with the exception of the assets listed on Exhibit G of the Stipulation, be determined by the Company based on the straight-line method and the life of the asset used for federal income tax purposes. The Commission finds and concludes that the depreciation rates applicable to the specific assets listed on Exhibit G are just and reasonable and shall be the rates set forth thereon.

16. In the Stipulation, BHIT agreed that it will, within 30 days after the date of issuance of this Order, file with the Commission amendments to its affiliate agreements with BHIL that reflect any changes necessary to conform the affiliate agreements with this Order. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

17. BHIT operates on a calendar year basis ending December 31. In the Stipulation, the Company agreed to submit to the Commission and Public Staff a quarterly financial report of monthly information within 45 days after the end of each quarter. The report shall contain a calendar year-to-date income statement in a format presently produced for internal management purposes, information on the Company's month-end balances of plant, accumulated depreciation, and accumulated deferred taxes by plant category, monthly book depreciation expense by plant category, the number of customers by fare class for each month, and the number of tram riders by month. The quarterly reports to be provided in this regard should be filed with the Commission as "non-confidential" filings available to the public. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.



18. The Stipulation provides that the Public Staff shall perform an audit (in accordance with the scope and process generally employed in connection with this docket) of BHIT, and file a report with the Commission regarding the earnings of BHIT and a recommendation as to whether the Public Staff believes there are grounds for requiring BHIT to show cause why its rates should not be reduced or increased for service rendered thereafter. The audit shall be commenced on the earlier of the following: (1) six years from the entry of the Approval Order or (2) the date BHIT's ferry ticket revenues as reported in BHIT's quarterly reports for any Reporting Period are 5% greater than the immediately preceding Reporting Period or the date BHIT's ferry ticket revenues as reported in BHIT's quarterly reports for any Reporting Period are 5% less than the immediately preceding Reporting Period. For purposes of this subsection, the Reporting Period shall be defined as the 12-month period ending with the quarterly report most recently filed with the Commission. The Stipulating Parties agreed that nothing contained in the Stipulation shall prevent BHIT from filing a general rate case or the Public Staff, any Stipulating Party, or any person from initiating a proceeding with the Commission regarding BHIT's rates, earnings, or service at any time. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

19. The Company employs a modified tax basis of accounting for regulatory reporting purposes. The financial statements produced by the Company for internal management purposes are prepared on a tax basis of accounting. The tax-basis financial statements are modified for regulatory reporting purposes to reflect book depreciation expense. The Company agreed in the Stipulation that it will use the same asset capitalization and asset retirement policies for regulatory reporting purposes that it uses for tax purposes. The Company and BHIL also agreed that consistent with codes of conduct governing transactions between other utilities regulated by the Commission and their unregulated affiliates, charges to the Company from affiliates will be priced at the lower of cost or fair market value and that charges by the Company to affiliates will be priced at the higher of cost or fair market value. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

20. Consistent with Section 9 of the Stipulation, the Commission finds and concludes that the overall quality of service provided by BHIT is good.

21. The Stipulation provided that, except as provided in the Stipulation, the Stipulation shall not be construed to allow, support, confer, or provide a basis for Commission regulation or jurisdiction over rates, service, or complaints regarding parking services provided by BHIL, or the assets utilized for those services, in this rate case. The Commission finds and concludes that this provision of the Stipulation is just and reasonable.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT  
AND CONCLUSIONS NOS. 1 THROUGH 3

The evidence supporting these findings of fact and conclusions is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding. These findings and conclusions are informational, procedural, and jurisdictional in nature and are not contested by any party.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT  
AND CONCLUSIONS NOS. 4 THROUGH 6

The evidence supporting these findings of fact and conclusions is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Agreement (filed September 30, 2010), the Stipulation (filed October 21, 2010), the Stipulation Exhibits, and the entire record in this proceeding.

The Stipulation, among all of the parties, entered and filed on October 21, 2010, included revisions to several of the provisions set forth in the September 30, 2010 Agreement between BHIT and the Public Staff, and also set forth new provisions that, as revised and expanded, comprehensively resolved all issues in this proceeding among all of the parties. In particular, the revisions and additions included in the October 21, 2010 Stipulation are briefly summarized as follows:

(1) Exhibit A attached to the Stipulation provided that the Stipulating Parties have agreed to a revenue increase of \$1,721,928, which incorporated a revenue decrease of \$144,133 from the revenue increase that had been reflected in the Agreement; and it is \$1,045,620, or 38% less than the increase that BHIT requested in its application. An "Other revenue adjustment" column was added to Hoard Exhibit 1, Schedule 3 Revised, which was filed on October 21, 2010, to reflect such agreed-upon annual revenue decrease.

(2) Stipulation Section 2.C.i.a., regarding Seasonal/Non-Seasonal Daily Parking was added as an entirely new (additional) provision. This Section imposed limitations (tied to the percentage change in inflation) on the amount by which BHIL may increase the prices of the Seasonal/Non-Seasonal Daily Parking rates currently in effect (\$10.00 Seasonal and \$8.00 Non-Seasonal); and it was agreed that BHIL shall be bound to this provision for the period beginning January 1, 2011 and ending December 31, 2016.

(3) In Stipulation Section 2.C.i.b., Annual Parking, BHIL agreed to be bound to certain limitations (tied to the percentage change in inflation) on the amount by which it may increase the prices of the annual parking rates through December 31, 2016.

Whereas, in the Agreement, BHIL had agreed to similar provisions, but it would be bound for five years from the date of the Commission's Order adopting the Stipulation, rather than six years. Additionally, language was added referencing a letter dated April 24, 2009, which was attached to the Stipulation as Exhibit C, which addresses an understanding between the Village and BHIL, as to BHIL's annual parking rate commitment regarding changes in rates through 2014. As a result of the Stipulation, the terms of the letter were extended through December 31, 2016.

(4) Stipulation Section 2.C.i.c. included a modification to the timeframe for providing notice that BHIL is required to provide to the Commission and the Public Staff of any sale or lease of the Deep Point parking facilities or any part of those facilities. In the Agreement, BHIL had agreed to 30 days notice; whereas, the Stipulation provides that BHIL shall provide notice to the Commission and the Public Staff not less than 90 days prior to the scheduled closing date.

(5) Stipulation Section 7.B. regarding financial reporting was added as an entirely new (additional) provision. This Section establishes a requirement for a future audit by the Public Staff to be commenced on the earlier of (1) six years from the entry of the approval order or (2) the date BHIT's ferry ticket revenues for a quarterly reporting period (12-month period) are 5% greater than or 5% less than the immediately preceding quarterly reporting period. Once such audit is completed, the new provision requires the Public Staff to file a report with the Commission and a recommendation as to whether the Public Staff believes there are grounds for requiring BHIT to show cause why its rates should not be increased or decreased for service rendered thereafter.

(6) Some clarifying language regarding the tram service was added to Tracked Tariff NCUC No. 6 and certain admissibility language originally included in Section 10.B was excluded.

(7) As a result of the Stipulation, rates were reduced below previously stipulated rates for some customer classes and other rates remained unchanged from the previously stipulated rates; and the stipulated rates were lower than what the Company had initially requested as indicated in the following table:

<u>Type of Passenger<sup>2</sup></u>	<u>Initially Requested Rates</u>	<u>9/30/2010 Stipulated Rates</u>	<u>10/21/2010 Stipulated Rates</u>
1. Class I General	\$ 28.00	\$ 23.00	\$ 23.00
2. Class II Bulk 40	\$ 22.00	\$ 19.65	\$ 17.50
3. Class III Bulk 80	\$ 18.00	\$ 17.50	\$ 15.00
4. Class VI No Frills	\$ 18.00	\$ 17.00	\$ 14.00
5. Class VII Contractor	\$ 16.00	\$ 14.00	\$ 14.00
6. Class IX Employee	\$ 16.00	\$ 14.00	\$ 14.00
7. Class X Children	\$ 15.00	\$ 14.00	\$ 12.00
8. Class XI Annual Pass	\$2,800.00	\$2,100.00	\$1,850.00
9. Class XIII Excess Baggage	\$ 28.00	\$ 23.00	\$ 23.00
10. Class XV Lost/One-Way Ticket	\$ 14.00	\$ 11.50	\$ 11.50

These findings and conclusions are not contested by any party.

#### EVIDENCE IN SUPPORT OF FINDINGS OF FACT AND CONCLUSIONS NOS. 7 AND 8

The evidence supporting these findings of fact and conclusions is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding. Public Staff witness Hoard testified concerning certain adjustments reflected in the Stipulation, including the following:

- a. An adjustment that reduces the revenue requirement by \$73,683 for the gain on the transfer of the former ferry terminal located at Indigo Plantation from utility to nonutility property. Prior to June 2, 2009, BHIT conducted its ferry operations from facilities located at Indigo Plantation. Hoard Exhibit 1, Schedule 3-1, presented the computation of the gain amount and an adjustment that amortizes the gain over a five-year period.
- b. An adjustment to include the Bald Head Island terminal in rate base at its depreciated net book value of \$363,503, as computed on Hoard Exhibit 1, Schedule 2-2. The impact of including the terminal in rate base at the rate of return reflected in the Stipulation, in lieu of including the lease payment as an operating expense as originally proposed by BHIT, resulted in a reduction in revenue requirement of \$278,438.
- c. An adjustment to increase operating expenses by \$213,338 to reflect the annual impact of reformulating the lease of the Deep Point terminal as a levelized cost-based lease for the BHIT portion of the facility. The computation of the levelized payment was presented on Hoard Exhibit 4.

<sup>2</sup> The "Class" roman numerals are provided prior to the renumbering of rate classes and eliminated classes are not presented in the table.

- d. An adjustment to reflect the cost of debt to BHIT at 6.65%. The combination of this cost of debt with the stipulated imputed capital structure composed of 50% long-term debt and 50% member's equity, and a return on equity (ROE) of 10% produces an overall rate of return of 8.33% and a pretax interest coverage ratio of 3.4 times.

These findings and conclusions are not contested by any party.

The following schedules summarize the gross revenues and the rate of return that the Company should have a reasonable opportunity to achieve based upon the determinations made herein. These schedules, illustrating the Company's gross revenue requirement incorporate the findings and conclusions made by the Commission in this Order. As reflected in Schedule I, and as impacted by the other findings in this Order, BHIT is authorized to increase its annual level of ferry ticket revenues by \$1,721,928 based upon the updated test year level of operations:

SCHEDULE I  
BALD HEAD ISLAND TRANSPORTATION, INC.  
North Carolina Operations  
Docket No. A-41, Sub 7  
STATEMENT OF OPERATING INCOME  
Twelve Months Ended December 31, 2009  
(000s Omitted)

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues:			
Ferry tickets	\$3,372,236	\$1,721,928	\$5,094,164
Other operating revenues	<u>872,344*</u>	<u>-</u>	<u>872,344</u>
Total operating revenues	<u>\$4,244,579~</u>	<u>\$1,721,928</u>	<u>\$5,966,508</u>
Operating revenue deductions:			
Operations and maintenance	5,014,442	-	5,014,442
Depreciation	315,314	-	315,314
Property taxes	41,214	-	41,214
Payroll taxes	140,622	-	140,622
Regulatory fee	4,049	2,066	6,115
State income tax	0	21,920	21,920
Federal income tax	<u>0</u>	<u>98,598</u>	<u>98,598</u>
Total operating revenue deductions	<u>\$5,515,640~</u>	<u>\$ 122,585~</u>	<u>\$5,638,225</u>
Net Operating Income	<u>(\$1,271,061)</u>	<u>\$1,599,344~</u>	<u>\$ 328,283</u>

Notes:

\* Other operating revenues is composed of the following:

<u>Item</u>	<u>Amount</u>
Intercompany tram	\$100,545
Other tram	4,615
Parking revenues	523,097
Gain on transfer of Indigo Plantation	73,683
Other miscellaneous	<u>170,404</u>
Total other operating revenues	<u>\$872,344</u>

~ Denotes rounding per Stipulation.

SCHEDULE II  
BALD HEAD ISLAND TRANSPORTATION, INC.  
North Carolina Operations  
Docket No. A-41, Sub 7  
STATEMENT OF RATE BASE AND RATE OF RETURN  
Twelve Months Ended December 31, 2009  
(000s Omitted)

Item	Amount
Plant in service	\$6,656,972
Accumulated depreciation	<u>(2,402,645)</u>
Net plant in service	4,254,326~
Cash working capital	626,805
Average tax accruals	(44,044)
Deferred income taxes	<u>(893,752)</u>
Original Cost Rate Base	<u><u>\$3,943,335</u></u>
Overall Rate of Return on Rate Base:	
Present rates	(32.23%)
Approved rates	8.33%

Note: ~ Denotes rounding per Stipulation.

SCHEDULE III  
BALD HEAD ISLAND TRANSPORTATION, INC.  
North Carolina Operations  
Docket No. A-41, Sub 7  
STATEMENT OF RATE BASE AND RATE OF RETURN  
Twelve Months Ended December 31, 2009  
(000s Omitted)

Present Rates – Original Cost Rate Base

Item	Capitalization Ratio	Original Cost Rate Base	Embedded Cost or ROE	Net Operating Income
Long-term debt	50.00%	\$1,971,668	6.65%	\$ 131,116
Member's equity	<u>50.00%</u>	<u>1,971,668</u>	(71.12%)	<u>(1,402,177)</u>
Total	<u>100.00%</u>	<u>\$3,943,335~</u>		<u>(\$1,271,061)</u>

Approved Rates – Original Cost Rate Base

Item	Capitalization Ratio	Original Cost Rate Base	Embedded Cost or ROE	Net Operating Income
Long-term debt	50.00%	\$1,971,668	6.65%	\$ 131,116
Member's equity	<u>50.00%</u>	<u>1,971,668</u>	10.00%	<u>197,167</u>
Total	<u>100.00%</u>	<u>\$3,943,335~</u>		<u>\$ 328,283</u>

Note: ~ Denotes rounding per Stipulation.

EVIDENCE IN SUPPORT OF FINDING OF FACT AND CONCLUSION NO. 9

The evidence supporting this finding of fact and conclusion is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding.

Public Staff witness Hoard testified that the parking revenue adjustment of \$523,097 reflects a compromise that considers projected operating results of the parking facility over a period of years. He testified that neither the investment nor the operating expenses associated with the Deep Point parking facilities are reflected in the revenue requirement computation on a fully rolled-in basis, and thus the entire amount of the parking revenue adjustment results in a direct reduction in the amount of the rate



increase. Further, witness Hoard explained that had the parking facility been reflected in revenue requirement on a fully rolled-in basis, the full amount of parking revenues would have been offset by the pretax rate of return on the parking facility rate base investment, depreciation expense, operation and maintenance expenses, property taxes, and payroll taxes. Witness Hoard opined that the revenue requirement impact of reflecting the parking facility on a fully rolled-in basis would have been considerably less favorable for ratepayers than the stipulated adjustment. This finding and conclusion is not contested by any party.

**EVIDENCE IN SUPPORT OF FINDINGS OF FACT  
AND CONCLUSIONS NOS. 10 THROUGH 13**

The evidence supporting these findings of fact and conclusions is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, the Joint Proposed Order, and the entire record in this proceeding. These findings and conclusions are not contested by any party.

**EVIDENCE IN SUPPORT OF FINDINGS OF FACT  
AND CONCLUSIONS NOS. 14 THROUGH 19**

The evidence supporting these findings of fact and conclusions is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding. These findings and conclusions are not contested by any party.

**EVIDENCE IN SUPPORT OF FINDING OF FACT AND CONCLUSION NO. 20**

The evidence supporting this finding of fact and conclusion is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding. This finding and conclusion is not contested by any party.

**EVIDENCE IN SUPPORT OF FINDING OF FACT AND CONCLUSION NO. 21**

The evidence supporting this finding of fact and conclusion is contained in the verified general rate case application, BHIT's direct and rebuttal testimony and exhibits, the testimony and exhibits of Dr. Julius A. Wright, the testimony, exhibits, and revised exhibits of James G. Hoard, the Stipulation, and the entire record in this proceeding. This finding and conclusion is not contested by any party.

Customer emails were received between October 28, 2010 and November 15, 2010, wherein such customers expressed, among other things, that the

stipulated rate increase was unfair and unreasonable and that the Commission should reject the Stipulation and proceed to a further hearing and final ruling on all issues. The Commission has reviewed such correspondence and appreciates all the customer participation in this matter. The Commission acknowledges that there has been significant involvement by consumer interests in this proceeding which has greatly influenced the outcome of this rate case. In particular, the three Customer Group Intervenor - BHA, the Club, and the Village - played a very active and important role in asserting the interests of the specific consumer groups they represented; and they endeavored to support their recommendations through the submission of expert testimony. The Commission believes that the Customer Group Intervenor represented the vast majority of the consumers that will ultimately be affected by the final determinations made in this proceeding.

Furthermore, according to information provided in their respective petitions to intervene - BHA is a NC non-profit corporation, organized for the purposes of providing for beautification, maintenance, and architectural control of the exterior of homes and common areas of Stage 1 of BHI, to promote the health, safety, and welfare of the residents and act as an advocate for approximately 1,200 property owners; the Club is a NC non-profit corporation, organized for social and recreational purposes on BHI and its facilities include restaurants, a golf course, tennis courts, a swimming pool, and other sports and social facilities; and the Village is a municipal corporation, governed by an elected Village Council which exists, in part, to help property owners maintain the Island's unique qualities and to ensure that the Island is an accessible and enjoyable place to live, visit, and work. Further, the Public Staff, an independent agency from the Commission that represents the using and consuming public in all Commission proceedings affecting rates or service, was also very actively involved in the ultimate resolution of the issues in this proceeding.

The Commission believes that the compromises and ultimate settlement that was reached in this proceeding fairly acknowledged the interests represented by the various consumer groups in large measure. Unfortunately, it is not unusual for some affected consumers to be partially or completely dissatisfied with the final resolution of various opposing issues in a general rate case proceeding. However, the Commission is of the opinion that, in light of the various provisions set forth in the Stipulation that were agreed upon by the opposing parties, particularly those provisions such as the imputation of the revenues related to the Deep Point parking facilities (Stipulation Section 2.C.i.) and the limitations and the terms of such limitations agreed to by BHI regarding price increases with respect to seasonal/non-seasonal daily parking rates and annual parking (Stipulation Section 2.C.i.a. and Section 2.C.i.b.), that opening up the hearing to obtain further evidence for review and consideration would not be productive or beneficial in this proceeding. Additionally, the Commission finds and concludes that the agreed-upon quarterly financial reporting (Stipulation Section 7.A.) as well as the future Public Staff audit (Stipulation Section 7.B.) should effectively apprise the Commission in a timely manner of any rate issues regarding the operations of BHIT that may need to be further investigated in the future.

The Commission has carefully reviewed the Stipulation and Stipulation Exhibits. The revenue requirement and allocation, accounting treatment, and other issues addressed and resolved in the Stipulation are the result of negotiations among the parties to this proceeding and are not opposed by any party. The Commission finds and concludes that the Stipulation provides a just and reasonable resolution of all of the issues necessary to be addressed in this proceeding and that its adoption will result in rates that are just and reasonable to all customer classes in consideration of all of the evidence presented in this proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation is hereby received into evidence in this proceeding and is approved in its entirety. The provisions of the Stipulation are incorporated herein by reference as if set out in full in this Order. Pursuant to Section 12 of the Stipulation regarding the receipt of testimony, the prefiled direct and rebuttal testimony and exhibits of Shirley A. Mayfield, Frederick W. Hering, and James W. Fulton, Jr., the prefiled direct testimony and exhibits of James G. Hoard and Dr. Julius A. Wright, and the amended joint rebuttal testimony and exhibits of Company witnesses Mayfield and Hering are received into evidence in this proceeding. Further, the Commission receives into evidence the Stipulation Exhibits and the late-filed revised exhibits of Public Staff witness Hoard.

2. That the Schedule of Rates and Charges (Tariff NCUC No. 6) attached as Exhibit D to the Stipulation with an effective date of January 1, 2011, shall be, and hereby is approved. In addition, the following provisions regarding ticket renewal and expiration dates of current tickets held by customers are approved:

- a. Currently issued Class XI Annual Passes sold at the current rate will continue to be honored for passage until they expire, but no Class XI Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. Annual passes held by agencies or nonresidential property owners that expire after December 31, 2010, will not be renewed. There shall be no proration in value of either a currently issued annual pass or new/renewed annual pass.
- b. Currently issued Class XII Senior Citizen Annual Passes will continue to be honored for passage until they expire, but shall not be renewed upon expiration after December 31, 2010. No Class XII Senior Citizen Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. There shall be no proration in value of either a currently issued annual pass or new/renewed annual pass.
- c. All other tickets (except Class II Bulk Fare, Class XV Lost Tickets, and Class VI No Frills tickets) shall be honored when used and/or may be presented for refund or credit towards purchase of another ticket through March 31, 2011, but shall expire and have no value after that date. Class II

Bulk Fare tickets issued on or before December 31, 2010, will be honored for passage only when used through March 31, 2011, but will be accepted for refund or credit towards purchase of other ticket(s) when presented or returned at any time up to and including June 30, 2011, and will have no value after that date.

3. That prior to implementing Tariff NCUC No. 6, BHIT shall provide the Public Staff's Transportation Rates Division with its revised tariff sheets, incorporating the increased rates and ferry operation changes approved herein. Further, upon review and acceptance by the Public Staff, that the increased rates and ferry operation changes approved herein have been properly reflected in the Company's revised tariff, BHIT shall file with the Commission a copy of its new Tariff NCUC No. 6.

4. That within 30 days of the date of this Order, BHIT shall file with the Commission all amendments to BHIT's affiliate agreements with BHIL that reflect any changes necessary to conform the affiliate agreements with this Order.

5. That BHIT (and BHIL, as applicable,) shall comply with the Stipulation, including the provision that BHIT shall file with the Commission the quarterly financial reports described in Finding of Fact and Conclusion No. 17.

6. That, not later than Friday, December 31, 2010, BHIT shall, at its own expense, publish in newspapers having general coverage in its service area, the Notice to Customers attached hereto as Appendix A, once a week for two consecutive weeks. The Notice shall cover no less than one-fourth of a page. In addition, within 10 days after the date of this Order and until January 30, 2011, BHIT shall post a copy of the Notice to Customers at the Deep Point and Bald Head Island ferry terminals.

7. That, BHIT shall file no later than Monday, January 17, 2011, an affidavit of publication and a certificate of service showing that it provided notice as required herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 17<sup>th</sup> day of December, 2010.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. A-41, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Bald Head Island Transportation, Inc.	)	NOTICE TO CUSTOMERS
for a General Increase in its Rates and Charges	)	OF RATE INCREASE
Applicable to Ferry Service Between Southport,	)	EFFECTIVE
North Carolina and Bald Head Island, North	)	JANUARY 1, 2011
Carolina	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission (Commission) issued an Order on December 17, 2010, authorizing Bald Head Island Transportation, Inc. (BHIT), to increase and adjust its rates and rate design for ferry transportation service to and from Southport, North Carolina and Bald Head Island, North Carolina, effective on January 1, 2011, as explained below.

Pursuant to the Commission's Order, there are certain changes in rate design, classifications, fares, and tariffs for the ferry transportation service. The number of classes of tickets will be reduced from 15 to 10, eliminating six of the current classes and adding one new class. The classes that will be eliminated will be Class III Group Purchases; Class IV Government Employees; Class V Special Event; Class VIII Corporate Guest; Class XII Senior Citizen Annual Pass; and Class XIV Student Ticket. A new Bulk 80 ticket class will be created. The following table presents the rate changes and the classes that will be eliminated and created effective January 1, 2011:

<u>Type of Passenger</u>	<u>Current Rate*</u>	<u>Approved Rate</u>
General	\$16.00	\$23.00
Bulk 40	\$13.50	\$17.50
Bulk 80	N/A	\$15.00
No Frills	\$11.00	\$14.00
Contractor	\$11.00	\$14.00
Employee	\$9.00	\$14.00
Children, ages 3-12	\$9.00	\$12.00
Annual Pass	\$1,665.00	\$1,850.00
Excess Baggage	\$15.00	\$23.00
One-Way	\$5.00	\$11.50

<b><u>Eliminated Classes</u></b>	<b><u>Eliminated Rates</u></b>
Group Purchases	\$13.50
Government Employees	\$10.00
Special Event	\$11.00
Corporate Guest	\$ 9.00
Senior Citizen Annual Pass	\$842.00
Student Ticket	\$5.00

**General** - Available to all persons traveling to Bald Head Island (BHI) from Southport who do not qualify for any other fare.

**Bulk 40** - Available to persons or organizations who purchase packages of 40 ferry tickets at one time.

**Bulk 80** - Available to persons or organizations who purchase packages of 80 tickets at one time. The Bulk 80 ticket will be issued via a durable plastic, photo ID bar-coded ticket, specific to each customer, valid for 80 round trips. No tram service is provided.

**No Frills** - Round trip tickets available for purchase only on BHI by persons living or staying on BHI and valid only on day of purchase. No baggage service or tram service available with this ticket and hand-held parcels only.

**Contractor** - Available to bona fide contractors traveling to BHI to provide service. Not available on Saturday or Sunday. Contractor ferry must be used unless otherwise noted. Shuttle bus only is included. No baggage handling or tram services are included.

**Employee** - Available to employees of governments, governmental agencies, commercial, and non-profit businesses on BHI who are traveling in the course of their employment. Allowed to board after all other fares have boarded. No tram or baggage included.

**Children** - For ages 3-12 traveling with an adult. No charge for children under age 3.

**Annual Pass** - Available only to persons whose primary residence is on BHI who are residential property owners of record or persons leasing residential property. Tram service is not included.

**Excess Baggage** - Applicable to each bicycle or other non-carry-on item deemed too large to fit into baggage containers.

**One-Way** - Available only on BHI to persons who cannot present a valid ticket for passage on the second leg of their round trip under any fare described above except No Frills.

\*The current rate includes a \$1.00 fuel surcharge previously approved by Order of the Commission in Docket No. A-41, Sub 5, on December 16, 2008. The approved rate does not include a fuel surcharge.

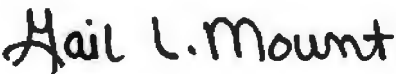
On and after January 1, 2011, currently issued Class XI Annual Passes sold at the current rate will continue to be honored for passage until they expire, but no Class XI Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. Annual passes held by agencies or nonresidential property owners and that expire after December 31, 2010, will not be renewed. In addition, currently issued Class XII Senior Citizen Annual Passes will continue to be honored for passage until they expire, but shall not be renewed upon expiration, if such pass expires after December 31, 2010. No Class XII Senior Citizen Annual Passes sold or renewed at the current rate will be honored after December 31, 2011. All other tickets (except Class II Bulk Fare, Class XV Lost Tickets, and Class VI No Frills tickets) shall be honored when used and/or may be presented for refund or credit towards purchase of

another ticket through March 31, 2011, but shall expire and have no value after that date. Class II Bulk Fare tickets issued on or before December 31, 2010, will be honored for passage only when used through March 31, 2011, but will be accepted for refund or credit towards purchase of other ticket(s) when presented or returned at any time up to and including June 30, 2011, and will have no value after that date. Refunds or credits are allowed only upon presentation of the two-part round trip ticket. A single part will not be refunded or credited. There shall be no proration in value of either a currently issued annual pass or new/renewed annual pass.

A complete copy of the Commission's Order authorizing these new rates and approving this rate design can be obtained from the offices of BHIT or may be viewed and printed from the Commission's website at [www.ncuc.net](http://www.ncuc.net). Click on "Docket Search" and type in the docket (A-41) and sub (7) numbers. Detailed ferry information including hours of operation may be viewed at [www.ferrytobhi.com](http://www.ferrytobhi.com) or [www.baldheadisland.com/contact/ferry\\_information.aspx](http://www.baldheadisland.com/contact/ferry_information.aspx).

This the 17<sup>th</sup> day of December, 2010.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

A-41 Sub 22

Hoard Exhibit 2  
Schedule 1  
Revised

**BALD HEAD ISLAND TRANSPORTATION, INC.**

Docket No. A-41, Sub 7

**STATEMENT OF NET OPERATING INCOME FOR RETURN, RATE BASE AND OVERALL RETURN**

For The Test Year Ended December 31, 2009

Line No.	Item	Per Company (a)	Settlement Adjustments <sup>1/</sup> (b)	After Settlement Adjustments (c)	Rate Increase (d)	After Rate Increase (e)
1	<b>NET OPERATING INCOME FOR RETURN</b>					
2	<u>Operating Revenues:</u>					
3	Ferry Tickets	\$3,368,017 <sup>2/</sup>	\$4,219	\$3,372,236 <sup>4/</sup>	\$1,721,928 <sup>5/</sup>	\$5,094,164 <sup>6/</sup>
4	Other operating revenues	100,684 <sup>2/</sup>	771,680	872,344 <sup>4/</sup>		872,344 <sup>6/</sup>
5	Total operating revenues	<u>\$3,468,701</u>	<u>\$775,878</u>	<u>\$4,244,578</u>	<u>\$1,721,928</u>	<u>\$5,966,508</u>
6	<u>Operating Expenses:</u>					
7	Operating and maintenance	5,318,938 <sup>2/</sup>	(304,496)	5,014,442 <sup>4/</sup>		5,014,442 <sup>6/</sup>
8	Depreciation	282,977 <sup>2/</sup>	32,337	315,314 <sup>4/</sup>		315,314 <sup>6/</sup>
9	Property taxes	25,702 <sup>2/</sup>	15,512	41,214 <sup>4/</sup>		41,214 <sup>6/</sup>
10	Payroll taxes	147,469 <sup>2/</sup>	(8,847)	140,622 <sup>4/</sup>		140,622 <sup>6/</sup>
11	Regulatory fee	4,043 <sup>2/</sup>	8	4,049 <sup>4/</sup>	2,066 <sup>7/</sup>	6,115 <sup>8/</sup>
12	State income tax	0 <sup>2/</sup>	0	0 <sup>4/</sup>	21,920 <sup>7/</sup>	21,920 <sup>8/</sup>
13	Federal income tax	0 <sup>2/</sup>	0	0 <sup>4/</sup>	98,598 <sup>7/</sup>	98,598 <sup>8/</sup>
14	Total operating expenses	<u>5,778,129</u>	<u>(263,489)</u>	<u>5,515,640</u>	<u>122,585</u>	<u>5,638,225</u>
15	Net operating income for return	<u>(\$2,310,428)</u>	<u>\$1,039,387</u>	<u>(\$1,271,061)</u>	<u>\$1,599,344</u>	<u>\$328,283</u>
16	<b>RATE BASE</b>					
17	Plant in service	\$8,020,592 <sup>2/</sup>	\$838,380	\$8,858,972 <sup>4/</sup>		\$8,858,972 <sup>6/</sup>
18	Accumulated depreciation	<u>(2,085,249)</u> <sup>2/</sup>	<u>(317,396)</u>	<u>(2,402,645)</u> <sup>4/</sup>		<u>(2,402,645)</u> <sup>6/</sup>
19	Net plant in service	3,935,343	318,983	4,254,326	0	4,254,326
20	Cash working capital	664,867 <sup>2/</sup>	(38,062)	626,805 <sup>4/</sup>		626,805 <sup>6/</sup>
21	Average tax accruals	(37,429) <sup>2/</sup>	(8,815)	(44,044) <sup>4/</sup>		(44,044) <sup>6/</sup>
22	Deferred income taxes	<u>(860,584)</u> <sup>2/</sup>	<u>(33,168)</u>	<u>(893,752)</u> <sup>4/</sup>		<u>(893,752)</u> <sup>6/</sup>
23	Original cost rate base	<u>\$3,702,197</u>	<u>\$241,138</u>	<u>\$3,943,335</u>	<u>\$0</u>	<u>\$3,943,335</u>
24	Overall Rate of Return on Rate Base	-62.41%		-32.23%		8.33%

**Footnotes:**

- 1/ Mayfield Exhibit 1, Schedule 3.
- 2/ Mayfield Exhibit 1, Schedule 2.
- 3/ Column (c) minus column (a).
- 4/ Hoard Exhibit 2, Schedule 3.
- 5/ Column (a) minus column (d).

6/ Column (e) minus column (c).

7/ Line 5 x .0012%.

8/ Hoard Exhibit 1, Schedule 1 Revised, column(f).

9/ Hoard Exhibit 1, Schedule 3 Revised.

10/ Hoard Exhibit 1, Schedule 7.



**BHI TRANSPORTATION**  
**Docket No. A-41, Sub 7**  
**ORIGINAL COST RATE BASE**

**Mayfield Exhibit 1**  
**Schedule 2**

Line No.	Item	Per Books (a)	Company Adjustments (b)	After Proposed Increase (c)
1	Plant in Service	\$6,020,592 1/	\$0 3/	\$6,020,592
2	Accumulated Depreciation	(2,085,249) 2/	0 3/	(2,085,249)
3	Net Plant in Service	3,935,344	0	3,935,344
4	Cash Working Capital	619,732 4/	45,136	664,867 4/
5	Deferred Tax Benefit		(860,584)	(860,584) 5/
6	Average Tax Accruals	(40,996)	3,567	(37,429) 6/
7	Original Cost Rate Base	<u>\$4,514,079</u>	<u>(\$811,882)</u>	<u>\$3,702,198</u>

**Notes:**

- 1/ Mayfield Exhibit 1, Schedule 2-1, Column (c), line 213
- 2/ Mayfield Exhibit 1, Schedule 2-1, Column (f), line 213
- 3/ No adjustments as the asset list is trued up to straight line for Schedule 2-1
- 4/ Exhibit 1, Schedule 2(a), Column (a) and Column (b), line 3
- 5/ Tax deferred benefit, Exhibit 1, Schedule 2-1, Column (j), line 213
- 6/ One-half of property taxes, Exhibit 1, Schedule 3, Column (e), line 73 plus one-sixth of payroll taxes, Exhibit 1, Schedule 3, Column (e), line 74

BHIT Perry Corss Ex. 4  
A-41, Sub 7 Application - Mayfield Ex. 1, Schedule 2 and 2-1  
A-41 Sub 22

BH TRANSPORTATION  
Docket No. A-41, Sub 7  
PLANT IN SERVICE, ACCUMULATED DEPRECIATION  
& DEPRECIATION EXPENSE

Mayfield Exhibit 1  
Schedule 2-1

Yr End: 12/31/2008		Deprec Solutions Amount	Line No.	Description (4)	Date In Service (5)	Cost (6)	Service Life (7)	Annual Depreciation (8)	Accumulated Depreciation 12/31/00 (9)	Net Book Value (10)	Net Tax Value (11)	Book Less Tax Value (12)	Deferred Taxes @ 38.59% (13)	3/ 4/
	275	214	1	2004 Ford F250 Truck	11/15/04	23,112.35	12.0	1,926.03	8,981.15	13,161.20	-	13,161.20	5,074	
	275	229	2	Truck - Ford F-250 Pickup	2/20/05	25,518.99	12.0	2,126.58	8,149.21	17,369.78	4,408.23	12,961.55	4,983	
	275	230	3	Truck - Ford F-250 Pickup	2/18/05	28,518.99	12.0	2,126.58	8,149.21	17,369.78	4,408.23	12,961.55	4,983	
Subtotal Dept 275 Vehicles						74,130.33		6,177.79	25,279.57	47,850.76	8,816.46	39,034.30	15,060.52	
	275	5	4	Aluminum Dolly - 1	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	6	5	Aluminum Dolly - 2	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	7	6	Aluminum Dolly - 3	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	8	7	Aluminum Dolly - 4	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	9	8	Aluminum Dolly - 5	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	10	9	Aluminum Dolly - 6	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	11	10	Aluminum Dolly - 7	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	12	11	Aluminum Dolly - 8	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	13	12	Aluminum Dolly - 9	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	14	13	Aluminum Dolly - 10	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	15	14	Aluminum Dolly - 11	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	16	15	Aluminum Dolly - 12	7/1/89	1,300.00	18.0	0.00	1,300.00	0.00	0	0.00	0	
	275	20	16	Aluminum Dolly - 13	11/6/90	1,589.17	18.0	0.00	1,589.17	0.00	0	0.00	0	
	275	21	17	Aluminum Dolly - 14	11/6/90	1,589.17	18.0	0.00	1,589.17	0.00	0	0.00	0	
	275	22	18	Aluminum Dolly - 15	11/6/90	1,589.17	18.0	0.00	1,589.17	0.00	0	0.00	0	
	275	23	19	Aluminum Dolly - 16	11/6/90	1,589.17	18.0	0.00	1,589.17	0.00	0	0.00	0	
	275	24	20	Aluminum Dolly - 17	11/6/90	1,589.17	18.0	0.00	1,589.17	0.00	0	0.00	0	
	275	25	21	Aluminum Dolly - 18	11/6/90	1,589.15	18.0	0.00	1,589.15	0.00	0	0.00	0	
	275	26	22	Aluminum Dolly - 19	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	29	23	Aluminum Dolly - 20	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	30	24	Aluminum Dolly - 21	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	31	25	Aluminum Dolly - 22	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	32	26	Aluminum Dolly - 23	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	33	27	Aluminum Dolly - 24	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	34	28	Aluminum Dolly - 25	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	35	29	Aluminum Dolly - 26	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	36	30	Aluminum Dolly - 27	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	37	31	Aluminum Dolly - 28	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	38	32	Basic Station VHF Radio	7/1/81	1,287.00	18.0	0.00	1,287.00	0.00	0	0.00	0	
	275	43	33	Basic Station VHF Radio	4/2/82	825.00	5.0	0.00	825.00	0.00	0	0.00	0	
	275	46	34	Luggage Dolly-29	2/28/84	1,033.48	18.0	57.41	808.88	124.41	0	124.41	48	
	275	47	35	Luggage Dolly-30	2/28/84	1,033.48	18.0	57.41	808.88	124.41	0	124.41	48	
	275	48	36	Luggage Dolly-31	2/28/84	1,033.48	18.0	57.41	808.88	124.41	0	124.41	48	
	275	49	37	Luggage Dolly-32	2/28/84	1,033.48	18.0	57.41	808.88	124.41	0	124.41	48	
	275	50	38	Luggage Dolly-33	2/28/84	1,033.48	18.0	57.41	808.88	124.41	0	124.41	48	
	275	56	39	Basic Station Radio	4/2/84	4,218.00	5.0	0.00	4,218.00	0.00	0	0.00	0	
	275	78	40	Waste Oil 600 Gallon Drum	9/1/89	800.00	15.0	40.00	533.33	86.67	0	86.67	33	
	275	82	41	Aluminum Dolly-34	7/1/87	1,985.83	18.0	87.80	1,985.83	478.45	0	478.45	184	
	275	84	42	Aluminum Dolly-35	7/1/87	1,985.83	18.0	87.80	1,985.83	478.45	0	478.45	184	
	275	86	43	Aluminum Dolly-36	7/1/87	1,985.83	18.0	87.80	1,985.83	478.45	0	478.45	184	
	275	88	44	Aluminum Dolly-37	7/1/87	1,985.83	18.0	87.80	1,985.83	478.45	0	478.45	184	
	275	87	45	Aluminum Dolly-38	7/1/87	1,985.83	18.0	87.80	1,985.83	478.45	0	478.45	184	
	275	90	46	Marine Maintenance Tool	7/1/87	658.34	7.0	0.00	658.34	0.00	0	0.00	0	
	275	90	47	Specialty Tools	7/1/87	578.62	7.0	0.00	578.62	0.00	0	0.00	0	
	275	98	48	Waste Oil Collection Equipment	7/1/87	1,337.00	15.0	102.47	1,280.87	256.13	0	256.13	99	
	275	99	49	Waste Oil Collection Equipment	7/1/87	7,213.38	20.0	360.68	4,508.88	2,705.08	0	2,705.08	1,043	
	275	100	50	Aluminum Roster	7/1/87	8,140.46	15.0	407.80	5,098.50	1,041.96	0	1,041.96	393	
	275	101	51	Seasound Radio	7/1/87	8,140.34	5.0	0.00	8,140.34	0.00	0	0.00	0	
	275	114	52	VHF Mobile Radio T-23	7/1/89	584.38	5.0	0.00	584.38	0.00	0	0.00	0	
	275	115	53	VHF Mobile Radio T-4	7/1/89	584.38	5.0	0.00	584.38	0.00	0	0.00	0	
	275	116	54	VHF Mobile Radio T-22	7/1/89	584.38	5.0	0.00	584.38	0.00	0	0.00	0	
	275	118	55	SON Driveway Generator	6/28/95	582.54	5.0	0.00	582.54	0.00	0	0.00	0	
	275	120	56	Aluminum Dolly-39	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	121	57	Aluminum Dolly-40	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	122	58	Aluminum Dolly-41	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	123	59	Aluminum Dolly-42	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	124	60	Aluminum Dolly-43	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	125	61	Aluminum Dolly-44	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	
	275	126	62	Aluminum Dolly-45	12/8/98	1,727.58	18.0	95.98	957.80	758.78	0	758.78	293	

BHIT Perry Corss Ex. 4  
A-41, Sub 7 Application - Mayfield Ex. 1, Schedule 2 and 2-1  
A-41 Sub 22

BHT TRANSPORTATION  
Detail No. A-41, Sub 7  
PLANT IN SERVICE, ACCUMULATED DEPRECIATION  
& DEPRECIATION EXPENSE

Mayfield Exhibit 1  
Schedule 2-1

Yr End: 12/31/2009		Deprec Schedule Amount	Line No.	Description	Date in Service	Cost	Service Life	Annual Depreciation	Accumulated Depreciation 12/31/09	Net Book Value	Net Tax Value	Book Less Tax Value	Deferred Taxes @ 38.5%	
Date Disposed	Dist			(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
275		127	83	Aluminum Caddy-46	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		128	84	Aluminum Caddy-47	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		129	85	Aluminum Caddy-48	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		130	86	Aluminum Caddy-49	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		131	87	Aluminum Caddy-50	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		132	88	Aluminum Caddy-51	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		133	89	Aluminum Caddy-52	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		134	70	Aluminum Caddy-53	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		135	71	Aluminum Caddy-54	12/6/99	1,727.59	18.0	95.98	867.80	758.79	0	758.79	293	
275		143	72	VHF 6 CH Portable Radio	7/1/00	2,404.06	18.0	95.98	867.80	758.79	0	758.79	293	
275		147	73	Engine Fuel Strainer	10/1/01	8,028.09	7.0	0.00	2,404.06	0.00	0	0.00	0	
275		148	74	Model M20CL Marine Diesel	10/1/01	13,727.23	15.0	401.74	3,714.33	2,711.74	0	2,711.74	1,045	
275		149	75	Garmin 200SC Chart Plotter	2/11/02	2,676.09	10.0	915.15	7,549.89	6,177.24	0	6,177.24	2,381	
275		150	76	Garmin 200SC Chart Plotter	2/11/02	2,676.09	10.0	207.81	1,843.54	432.51	0	432.51	167	
275		152	77	Purvis 1942 KI Radar	2/15/02	2,076.09	10.0	207.81	1,843.54	432.51	0	432.51	167	
275		153	78	3500 Power Pressure Washer	2/15/02	5,863.18	15.0	392.21	3,105.00	2,778.18	0	2,778.18	1,071	
275		158	79	Mitsumi UC120 Wheelbarrow	2/15/02	1,804.00	10.0	180.40	1,401.88	407.02	0	407.02	157	
275		163	80	Ferry Pump Station	5/14/02	2,082.29	15.0	138.82	1,884.28	1,018.03	0	1,018.03	382	
275		176	81	Purvis 1942 KI Radar	5/29/02	2,076.09	10.0	207.81	1,843.54	432.51	0	432.51	167	
275		181	82	Aluminum Luggage Caddy-55	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		182	83	Aluminum Luggage Caddy-56	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		183	84	Aluminum Luggage Caddy-57	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		184	85	Aluminum Luggage Caddy-58	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		185	86	Aluminum Luggage Caddy-59	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		187	87	Aluminum Luggage Caddy-60	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		188	88	Aluminum Luggage Caddy-61	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		189	89	Aluminum Luggage Caddy-62	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		190	90	Aluminum Luggage Caddy-63	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		191	91	Aluminum Luggage Caddy-64	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		192	92	Aluminum Luggage Caddy-65	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		193	93	Aluminum Luggage Caddy-66	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		194	94	Aluminum Luggage Caddy-67	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		195	95	Aluminum Luggage Caddy-68	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		196	96	Aluminum Luggage Caddy-69	7/28/03	1,886.50	18.0	104.81	672.53	1,214.03	0	1,214.03	468	
275		218	98	Mobile Pump Out Station	5/1/08	5,458.00	15.0	363.87	4,243.15	1,214.85	0	1,214.85	468	
275		224	99	Pro Extruder for Blue Board	5/20/02	2,432.53	5.0	0.00	2,432.53	0.00	0	0.00	0	
275		231	100	Welding Machine	2/20/06	6,020.67	10.0	552.06	2,116.23	3,404.34	1724.33	1,680.01	648	
275		239	101	Emergency Generator (1 of 3)	8/24/06	2,047.88	10.0	204.80	682.67	1,365.31	338.88	1,011.42	390	
275		240	102	Emergency Generator (2 of 3)	8/24/06	2,047.88	10.0	204.80	682.67	1,365.31	338.88	1,011.42	390	
275		241	103	Emergency Generator (3 of 3)	8/24/06	2,047.88	10.0	204.80	682.67	1,365.31	338.88	1,011.42	390	
275		242	104	Wiring for Emergency Generator	12/1/08	3,240.00	8.0	648.00	1,847.00	1,543.00	626.47	988.83	379	
275		1732	105	FEMA Grant - Costs for Assets 1733-1738	7/23/08	24,785.00	10.0	2,478.50	24,134.46	2,650.54	7378.02	19,126.52	7,379	
275		1733	106	Ranger - Automatic ID System	7/23/08	5,004.74	10.0	500.47	708.09	4,296.65	1,532.00	2,764.65	1,065	
275		1734	107	Police - Automatic ID System	7/23/08	6,978.92	10.0	697.89	1,271.84	7,704.68	2,747.85	4,956.83	1,911	
275		1735	108	Gene Board - Automatic ID System	7/23/08	5,102.58	10.0	510.26	722.87	4,379.72	1,562.01	2,817.71	1,088	
275		1738	109	Advantage - Automatic ID System	7/23/08	6,422.12	10.0	642.31	1,163.27	7,229.85	2,578.51	4,651.34	1,793	
Subtotal Dist 275 Machinery & Equipment						211,810.88		18,430.65	140,980.30	70,830.58	4,458.88	66,173.78	25,506.60	
275		212	110	Cell Computer for Transportation	6/30/04	1,086.31	5.0	0.00	1,086.31	0.00	0.00	0.00	0	
275		218	111	Cell Computer	12/19/04	1,025.07	5.0	0.00	1,025.07	0.00	0.00	0.00	0	
275		1981	112	RTP Machine - Compression	12/14/05	27,888.18	4.0	6,969.24	22,988.88	5,909.30	2,969.88	2,939.42	1,015	
275		1982	113	RTP Machine - Transportation	12/14/05	2,640.00	5.0	508.00	2,032.00	508.00	265.00	241.50	85	
275		1983	114	RTP Machine - Transportation	12/14/05	13,828.82	5.0	2,765.76	11,141.44	2,785.38	1,470.25	1,315.13	507	
275		1981	115	Printer - Boca PC Serial	8/1/07	1,633.44	5.0	388.69	782.28	871.18	470.43	400.75	154	
275		1732	116	Computers & Peripherals - Data Point	5/1/08	13,094.94	5.0	2,618.99	10,475.95	10,475.95	10,475.95	(0.01)	(0)	
275		1734	117	OP Ticket Printer	5/1/08	3,407.98	5.0	681.51	681.51	2,726.47	2,726.47	0.00	0	
275		1736	118	OP Cell POS System - (2) Outbox	6/1/08	6,843.58	5.0	1,328.71	1,328.71	5,514.85	5,514.85	0.00	0	
275		1737	120	OP Cell Workstation-Operator 780	5/1/08	2,287.18	5.0	457.44	458.44	1,829.74	1,829.74	(0.01)	(0)	
275		1738	121	OP Printer, Operator	5/1/08	1,294.43	5.0	258.88	262.88	1,011.54	1,011.54	0.00	0	
Subtotal Dist 275 Computer Hardware						75,428.82		16,867.50	43,872.32	31,556.53	26,688.40	4,588.13	1,791.02	

**BHITransportation**  
Doclet No. A-41, Sub 7  
**PLANT IN SERVICE ACCUMULATED DEPRECIATION  
& DEPRECIATION EXPENSE**

Mayfield Exhibit 1  
Schedule 2-1

Yr End: 12/31/2008		Deprec Schedule	Line No.	Description	Date in Service	Cost	Service Life	Annual Depreciation	Accumulated Depreciation 12/31/08	Net Book Value	Net Tax Value	Book Less Tax Value	Deferred Taxes @ 38.5%	
Date Disposed		Asset		(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
	2/75	251	122	RTP Baggage Ticket Configuration	3/1/07	1,250.00	3.0	480.00	1,275.00	75.00	75.00	0.00	0	
	2/75	1543	123	RTP Baggage - Transportation	12/01/05	27,748.00	3.0	0.00	27,748.00	0.00	0.00	0.00	0	
	2/75	1584	124	RTP Initial Setup - cash transportation	12/01/05	7,184.00	3.0	0.00	7,184.00	0.00	0.00	0.00	0	
	2/75	1738	125	Ferry Reservation Software	12/01/02	17,204.63	3.0	0.00	17,204.63	0.00	0.00	0.00	0	
	2/75	1738	126	DP Server Software - Office & Windows	3/1/08	2,570.35	3.0	783.18	783.18	1,886.37	1,886.37	0.00	0	
	2/75	1761	127	RTP POS Software (2)	6/1/08	11,250.00	3.0	3,750.00	3,750.00	7,500.00	6,062.50	1,437.50	(1,437.50)	(558.22)
Subtotal Dept. 275 Computer Software						67,887.18		4,883.18	57,825.61	8,101.37	10,864.39	(1,638.89)	(706.27)	
	2/75	36	128	Sam Sound	7/1/01	482,284.00	20.0	24,114.20	448,112.70	38,171.30	0	38,171.30	13,844	
	2/75	40	129	Sam Sound Refurb	5/1/02	68,888.00	20.0	3,294.75	58,207.25	7,887.75	0	7,887.75	2,894	
	2/75	57	130	Adventure	8/2/05	542,448.00	25.0	21,697.94	316,428.83	226,019.17	0	226,019.17	87,130	
	2/75	99	131	Sam Sound Oil Filter System	8/2/05	2,784.00	5.0	0.00	2,784.00	0.00	0	0.00	0	
	2/75	174	132	Windows - Adventure	12/01/02	3,788.70	10.0	378.87	2,880.75	1,107.95	0	1,107.95	427	
	2/75	179	133	Adventure Repower	6/1/03	217,040.18	20.0	10,852.01	73,251.07	143,789.09	0	143,789.09	55,431	
	2/75	190	134	Fuel Repair to the Sam Sound	8/22/03	91,136.18	20.0	4,556.78	29,859.48	62,275.70	0	62,275.70	24,007	
Subtotal Dept 275 Buses						1,405,983.04		84,885.43	679,342.08	477,640.96	0.00	477,640.96	183,903.15	
	2/80	81	135	1981 F-350 Ford Truck 300-1	7/1/87	11,411.75	12.0	0.00	11,411.75	0.00	0	0.00	0	
	2/80	197	136	Tram Trailer	5/01/02	15,808.00	15.0	1,040.81	7,881.28	7,717.79	0	7,717.79	2,875	
	2/80	198	137	Tram Trailer	5/01/02	15,808.00	15.0	1,040.81	7,881.28	7,717.79	0	7,717.79	2,875	
	2/80	199	138	Tram Trailer	5/01/02	15,808.00	15.0	1,040.81	7,881.28	7,717.79	0	7,717.79	2,875	
	2/80	199	139	2004 Metro NDA Tram Truck	5/01/02	15,808.00	15.0	1,040.81	7,881.28	7,717.79	0	7,717.79	2,875	
	2/80	199	140	12 Passenger T-Case	5/01/02	14,431.01	10.0	1,443.10	11,088.18	3,342.83	0	3,342.83	1,283	
	2/80	199	141	Aluminum Handicap T-Case	6/01/02	10,000.00	15.0	1,070.38	8,118.86	7,940.07	0	7,940.07	3,081	
	2/80	197	142	Material for Trams	7/15/02	8,678.10	15.0	581.74	4,458.05	4,458.05	0	4,458.05	1,711	
	2/80	199	143	T-Case	7/23/02	2,907.71	5.0	0.00	2,907.71	0.00	0	0.00	0	
	2/80	199	144	Material for Trams	8/13/02	7,875.00	5.0	0.00	7,875.00	0.00	0	0.00	0	
	2/80	170	145	1986 Ford E-450 Shuttle Bus	8/13/02	2,907.71	5.0	0.00	2,907.71	0.00	0	0.00	0	
	2/80	171	146	1988 Ford E-450 Shuttle Bus	12/18/02	21,885.00	8.0	2,735.63	18,874.41	2,710.59	0	2,710.59	1,046	
	2/80	173	147	Tiger Star Truck	12/18/02	18,906.00	8.0	1,938.13	13,588.91	1,838.09	0	1,838.09	747	
	2/80	187	148	Flatbed T-Case	12/28/02	14,249.19	8.0	1,781.15	12,468.05	1,781.14	0	1,781.14	687	
	2/80	188	149	Flatbed T-Case	7/28/03	18,186.21	15.0	1,278.88	8,211.28	10,963.83	0	10,963.83	4,234	
	2/80	290	150	Flatbed T-Case	7/28/03	18,186.21	15.0	1,278.88	8,211.28	10,963.83	0	10,963.83	4,234	
	2/80	290	151	T-Case Truck	12/31/03	15,381.88	10.0	1,538.20	8,383.47	6,998.40	0	6,998.40	2,334	
	2/80	293	152	Material for Trailer 6 x 12	12/31/03	2,500.00	10.0	250.00	1,520.00	8,028.49	0	8,028.49	2,334	
	2/80	298	153	Cargo Trailer 6 x 12	12/18/03	3,088.00	10.0	308.80	1,831.00	1,254.40	0	1,254.40	478	
	2/80	215	154	2 (12) Passenger Trams	7/1/84	31,158.10	15.0	2,077.21	11,424.85	19,733.45	0.00	19,733.45	7,607	
	2/80	217	155	(4) Tiger Star Pickup	12/28/04	81,548.40	10.0	8,154.84	30,773.20	30,773.20	0.00	30,773.20	11,883	
	2/80	218	156	(1) T-Case	12/28/04	25,688.67	15.0	1,570.57	7,882.85	15,785.72	0.00	15,785.72	6,056	
	2/80	227	157	1999 Ford E-450 Bus	2/22/04	32,038.00	8.0	4,004.75	15,350.50	16,687.50	5,335.02	11,448.00	4,290	
	2/80	232	158	Cashman Super Truck - 1 of 4	3/2/08	14,888.70	10.0	1,488.87	5,623.39	9,265.31	2,534.83	6,511.38	2,510	
	2/80	233	159	Cashman Super Truck - 2 of 4	3/2/08	14,888.70	10.0	1,488.87	5,623.39	9,265.31	2,534.83	6,511.38	2,510	
	2/80	234	160	Cashman Super Truck - 3 of 4	3/2/08	14,888.70	10.0	1,488.87	5,623.39	9,265.31	2,534.83	6,511.38	2,510	
	2/80	235	161	Cashman Super Truck - 4 of 4	3/2/08	14,888.70	10.0	1,488.87	5,623.39	9,265.31	2,534.83	6,511.38	2,510	
	2/80	236	162	Four (4) T-Case Trailers	5/24/08	89,288.00	15.0	5,952.53	21,328.90	67,959.10	15,428.86	52,530.14	20,259	
	2/80	243	163	Cashman Super Truck	3/22/07	14,536.15	10.0	1,453.62	4,118.59	10,417.56	4,186.41	6,231.15	2,402	
	2/80	244	164	Cashman Super Truck	3/22/07	14,536.15	10.0	1,453.62	4,118.59	10,417.56	4,186.41	6,231.15	2,402	
	2/80	245	165	Cashman Super Truck	3/22/07	14,536.15	10.0	1,453.62	4,118.59	10,417.56	4,186.41	6,231.15	2,402	
	2/80	246	166	Cashman Super Truck	3/22/07	14,536.15	10.0	1,453.62	4,118.59	10,417.56	4,186.41	6,231.15	2,402	
	2/80	252	167	Four (4) Trams	4/20/07	102,372.45	15.0	6,824.83	18,189.73	84,182.72	29,483.58	54,699.14	21,083	
	2/80	1882	168	1988 Ford E450 Bus	2/17/08	37,088.00	8.0	4,133.25	15,859.75	17,408.25	3,713.87	13,694.38	5,278	
	2/80	1883	169	2007 Versage Tram Truck T-32	6/24/08	14,080.01	10.0	1,408.00	2,543.33	11,718.88	3,374.40	8,344.48	3,216	
	2/80	1884	170	2007 Versage Tram Truck T-32	6/24/08	14,080.01	10.0	1,408.00	2,543.33	11,718.88	3,374.40	8,344.48	3,216	
	2/80	1885	171	12 Passenger T-Case Trailer TR-32	4/24/08	25,045.83	15.0	1,672.39	2,787.30	22,298.53	6,026.55	16,271.98	6,275	
	2/80	1886	172	12 Passenger T-Case Trailer TR-32	4/24/08	25,045.83	15.0	1,672.39	2,787.30	22,298.53	6,026.55	16,271.98	6,275	
	2/80	1731	173	2008 Versage Truck T-086	5/6/08	14,753.24	10.0	1,475.32	1,475.32	13,277.92	11,802.60	1,475.32	568	
	2/80	1732	174	2008 Versage Truck T-086	5/6/08	14,753.24	10.0	1,475.32	1,475.32	13,277.92	11,802.60	1,475.32	568	
Subtotal Dept 280 Vehicles						635,342.37		70,380.88	338,729.34	508,612.78	123,442.99	385,169.80	147,711.99	

BHIT Perry Corss Ex. 4  
A-41, Sub 7 Application - Mayfield Ex. 1, Schedule 2 and 2-1  
A-41 Sub 22

BHIT TRANSPORTATION  
Docket No. A-41, Sub 7  
PLANT IN SERVICE, ACCUMULATED DEPRECIATION  
& DEPRECIATION EXPENSE

Mayfield Exhibit 1  
Schedule 2-1

Yr End 12/31/2009		Deprec Sub/Asset	Life No.	Description (A)	Date In Service (B)	Cost (C)	Service Life (D)	Annual Depreciation (E)	Accumulated Depreciation 12/31/09 (F)	Net Book Value (G)	Net Tax Value (H)	Book Less Tax Value (I)	Deferred Taxes @ 36.55% (J)	3/	4/
	280	41	175	VHF Radio	5/8/92	720.50	8.0	0.00	720.50	0.00	0	0.00	0		
	280	42	176	VHF Radio	5/8/92	720.50	8.0	0.00	720.50	0.00	0	0.00	0		
	280	77	177	Radio - School Buses	9/1/86	2,285.00	5.0	0.00	2,285.00	0.00	0	0.00	0		
	280	91	178	Radio	7/1/97	508.20	8.0	0.00	508.20	0.00	0	0.00	0		
	280	92	179	Radio	7/1/97	508.20	8.0	0.00	508.20	0.00	0	0.00	0		
	280	93	180	Radio	7/1/97	508.20	8.0	0.00	508.20	0.00	0	0.00	0		
	280	94	181	Radio	7/1/97	508.20	8.0	0.00	508.20	0.00	0	0.00	0		
	280	95	182	Radio	7/1/97	508.20	8.0	0.00	508.20	0.00	0	0.00	0		
	280	176	183	Kumaco TK-750-CKX 148 MHz	2/5/03	881.42	5.0	0.00	881.42	0.00	0	0.00	0		
	280	177	184	Kumaco TK-750-CKX 148 MHz	2/5/03	578.42	5.0	0.00	578.42	0.00	0	0.00	0		
Subtotal Dept 280 Machinery & Equipment						7,524.84		0.00	7,524.84	0.00	0.00	0.00	0.00		
	280	138	185	Dell 800 Computer	6/7/00	1,393.91	8.0	0.00	1,393.91	0.00	0	0.00	0		
	280	206	186	2 Dell Optiplex Computers	12/16/03	2,098.65	5.0	0.00	2,098.65	0.00	0	0.00	0		
	280	221	187	Dell P512 Computer	8/24/02	855.20	5.0	0.00	855.20	0.00	0	0.00	0		
	280	222	188	Dell P512 Computer	8/24/02	855.20	5.0	0.00	855.20	0.00	0	0.00	0		
	280	223	189	Dell P512 Computer	8/24/02	855.20	5.0	0.00	855.20	0.00	0	0.00	0		
	280	225	190	Dell Optiplex G5320	12/31/05	1,395.82	6.0	241.16	954.72	241.20	116.48	125.72	48		
Subtotal Dept 280 Computer Hardware						7,594.08		241.16	7,322.88	241.20	116.48	125.72	48.47		
	280	204	191	Office Pro 2003 Eng Bus B.O	12/1/03	893.50	3.0	0.00	893.50	0.00	0	0.00	0		
	280	213	192	Office Pro 2003 B.O Fair Assets	9/9/04	431.22	3.0	0.00	431.22	0.00	0	0.00	0		
	280	235	193	Dell D1 Compaq Software	12/9/05	431.79	8.0	0.00	431.79	0.00	0	0.00	0		
Subtotal Dept 280 Computer Software						1,726.47		0.00	1,726.47	0.00	0.00	0.00	0.00		
	Patriot, LLC	1999	194	Winch Installation (Patriot)	5/31/04	1,841.54	20.0	92.08	514.11	1,327.43	357.95	969.50	352		
	Patriot, LLC	1997	195	Patriot Ferry (with additional cost)	9/1/03	1,892,255.78	20.0	54,409.58	343,841.87	1,288,508.11	580,423.18	698,184.95	330,108		
	Patriot, LLC	1999	196	Ranger Ferry	7/1/09	1,700,682.79	20.0	59,682.43	1,86,413.00	1,802,269.78	1,147,339.81	364,929.98	186,628		
Subtotal Patriot LLC Assets						3,334,781.11		111,180.07	842,574.78	2,762,208.33	1,538,150.80	1,294,056.43	487,293.57		
	197	Total Ferry Plant				1,400,853.50									
	198	Annual Depreciation Expense						101,164.58							
	199	Accumulated Depreciation							1,197,378.03						
	200	Net Grand Total Ferry Plant				1,833,853.53		101,164.58	1,197,378.03	838,283.90	51,250.00	585,033.50	225,530.41		
	201	Total Island Transportation				852,157.78									
	202	Annual Depreciation Expense						70,822.08							
	203	Accumulated Depreciation							345,303.78						
	204	Net Grand Total Island Transportation				852,157.78		70,822.08	345,303.78	506,853.98	123,556.38	383,297.60	147,780.43		
	205	Total Patriot LLC Assets				3,334,781.11									
	206	Annual Depreciation Expense						111,180.07							
	207	Accumulated Depreciation							842,574.78						
	208	Net Grand Total Patriot LLC				3,334,781.11		111,180.07	842,574.78	2,762,208.33	1,538,150.80	1,294,056.43	487,293.57		
	209	Grand Totals													
	210	Total Transportation				6,020,592.40									
	211	Annual Depreciation Expense						282,876.69							
	212	Accumulated Depreciation							2,045,348.50						
	213	Total Transportation				6,020,592.40		282,876.69	2,045,348.50	3,635,346					800,584.24

Notes:  
1/ Values per return detail  
2/ Column (G) - Column (F)  
3/ Computed tax rate, applicable to income \$353K to \$10MM  
4/ Column (I) X Computed tax rate = Column (J)

BALD HEAD ISLAND TRANSPORTATION, INC.

Docket No. A-41, Sub 7

STATEMENT OF NET OPERATING INCOME FOR RETURN, RATE BASE AND OVERALL RETURN

For The Test Year Ended December 31, 2009

Line No.	Item	Per Company (a)	Settlement Adjustments (b)	After Settlement Adjustments (c)	Rate Increase (d)	After Rate Increase (e)
1	NET OPERATING INCOME FOR RETURN					
2	<u>Operating Revenues:</u>					
3	Ferry Tickets	\$3,368,017	\$4,219	\$3,372,236	\$1,721,928	\$5,094,164
4	Other operating revenues	100,884	771,880	872,344		872,344
5	Total operating revenues	\$3,468,701	\$775,878	\$4,244,578	\$1,721,928	\$5,966,506
6	<u>Operating Expenses:</u>					
7	Operating and maintenance	5,318,938	(304,496)	5,014,442		5,014,442
8	Depreciation	282,977	32,337	315,314		315,314
9	Property taxes	25,702	15,512	41,214		41,214
10	Payroll taxes	147,489	(8,847)	140,622		140,622
11	Regulatory fee	4,043	6	4,049	2,068	6,115
12	State income tax	0	0	0	21,920	21,920
13	Federal income tax	0	0	0	88,598	88,598
14	Total operating expenses	5,779,129	(283,489)	5,515,640	122,585	5,838,225
15	Net operating income for return	(\$2,310,428)	\$1,039,367	(\$1,271,061)	\$1,589,344	\$328,283
16	RATE BASE					
17	Plant in service	\$6,020,592	\$838,380	\$6,858,972		\$6,858,972
18	Accumulated depreciation	(2,085,249)	(317,396)	(2,402,645)		(2,402,645)
19	Net plant in service	3,935,343	520,983	4,254,326	0	4,254,326
20	Cash working capital	684,867	(38,062)	626,805		626,805
21	Average tax accruals	(37,429)	(6,615)	(44,044)		(44,044)
22	Deferred income taxes	(880,584)	(33,188)	(913,752)		(913,752)
23	Original cost rate base	\$3,702,197	\$241,138	\$3,943,335	\$0	\$3,943,335
24	Overall Rate of Return on Rate Base	-62.41%		-32.23%		8.33%

**Rule R1-17. FILING OF INCREASED RATES, APPLICATION FOR  
AUTHORITY TO ADJUST RATES.**

(a) Application of Rule. — This rule does not apply to the establishment of a rate or charge for a new service, nor to an adjustment or a change of a particular rate or charge for the purpose of eliminating inequities, preferences, or discriminations. It does apply to all applications for or filings of a general increase in rates, fares, or charges for revenue purposes or to increase the rate of return on investment or to change transportation rates, fares, etc. All Class A and B electric, telephone, natural gas, water, and sewer utilities shall file written letters of intent to file general rate applications with the Commission thirty (30) days in advance of any filing thereof.

(b) Contents of Filing or Application. — The filing or application shall clearly set out the reasons or conditions which, in the opinion of the applicant, warrant an increase in applicant's rates, fares, or charges, whether such increase is to be brought about by a change in rate schedules, by a change in any classification, contract, practice, rule, regulation, or otherwise, and said application shall contain, among other things, the following data, either embodied in the application or attached thereto as exhibits:

- (1) Present Charges. — A statement (not necessarily in tariff form) showing the rates, fares, tolls, or other charges presently in effect which the applicant seeks to increase.
- (2) Proposed Charges. — A statement showing the rates, fares, tolls, or other charges which the applicant seeks to place in effect.
- (3) Original Cost. — A statement or exhibit showing the original cost of all property of the applicant used or useful in the public service to which such proposed increased rates relate. If the original cost of any such property cannot be accurately determined, such facts should be stated and the best estimate of the original cost given. In case such property consists of plants or facilities which have been devoted to the public use by some other person, municipality, or utility, and subsequently purchased by the applicant, the purchase price of such plants or facilities must be shown, and also the original cost and accrued depreciation at the time of purchase must be shown, if known.
- (4) Present Fair Value. — If applicant intends to offer proof as to the present fair value of its property, the application shall state the nature of such proof in such form and detail as to disclose fully the method used in obtaining such proof and the accuracy thereof. In the preparation of such data, it is recommended that the various property accounts be identified by the account numbers used in the Uniform System of Accounts.

- (5) Depreciation. — The application shall show the accrued depreciation on said property as shown on applicant's books and the rate or method used in computing the amount charged to depreciation.
- (6) Material and Supplies. — A statement showing the cost of material and supplies which the applicant had on hand on the closing date of the twelve months' period referred to in (8) below. If the amount on hand is more or less than reasonably necessary for efficient and economical operation of the business, an explanation should be made.
- (7) Cash Working Capital. — A statement showing the amount of cash working capital which the petitioner keeps on hand and finds necessary to keep on hand for the efficient, economical operation of the business.
- (8) Operating Experience. — A statement covering the last twelve consecutive months for which data are available, showing
  - a. The gross operating revenues received,
  - b. The expenses incurred, including operating expenses, depreciation, and taxes, and
  - c. The net operating income for return on investment.
- (9) Effect of Proposed Increase. — A statement showing the applicant's estimate of
  - a. The additional annual gross revenue which the proposed increase in rates and charges will produce,
  - b. The additional annual expenses anticipated by reason of such additional gross revenue,
  - c. The net additional revenue which the proposed increase in rates will produce, and
  - d. The rate of return which the applicant estimates it will receive on the value of its property after giving effect to the proposed increase in rates.
  - e. This statement is to include the total capital structure of the utility before and after the proposed increase. Ratios for each component of the capital structure are to be shown with the common stockholders' equity capital and the net income used in the rate of return on the common equity calculation clearly identifiable.
  - f. Every general rate application shall contain a one-page Summary of all proposed increases and changes affecting customers and such Summary shall appear as Appendix 1.
  - g. Rescinded by NCUC Docket No. M-100, Sub 82, 4/27/81.
- (10) Balance Sheet. — The application shall include a balance sheet and income statement for a recent representative period.



- (11) Working Papers to Be Available. — Supporting data and working papers underlying the above exhibits shall be made available promptly upon request in the offices of the Commission or Public Staff in Raleigh or in an office of the public utility in North Carolina designated by the Commission, for examination by all interested parties.
- (12) All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:
- For Class A and B Electric Utilities:
- (a) NCUC Form E-1, Rate Case Information Report — Electric Companies
- For Class A and B Telephone Utilities:
- (b) NCUC Form P-1, Rate Case Information Report — Telephone Companies
- For Class A and B Natural Gas Utilities:
- (c) NCUC Form G-1, Rate Case Information Report — Natural Gas Companies
- For Class A Water and Sewer Utilities:
- (d) NCUC Form W-1, Rate Case Information Report — Water and Sewer Companies
- (13) Repealed.

In the event any affected utility wishes to rely on G.S. 62-133 (c) and offer evidence on actual changes based on circumstances and events occurring up to the time the hearing is closed, such utility should file with any general rate application detailed estimates of any such data and such estimates should be expressly identified and presented in the context of the filed test year data and, if possible, in the context of a twelve (12) month period of time ending the last day of the month nearest and following 120 days from the date of the application. Said period of time should contain the necessary normalizations and annualizations of all revenues, expenses and rate base items necessary for the Commission to properly investigate the impact of any individual circumstance or event occurring after the test period cited by the applicant in support of its application. Any estimate made shall be filed in sufficient detail for review by the Commission.

(c) Supplemental Data. — The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

Information relating to the change(s) referred to above relied upon by the applicant shall be filed with the Commission ten (10) working days prior to the date that the testimony of the Public Staff and other intervenors is due to be filed to the extent said change(s) are known by the applicant at that time.

To the extent that additional information becomes available subsequent to ten (10) working days prior to the filing of testimony by the Public Staff and other intervenors, such information which will be offered to support change(s) shall be made available to the Commission and other parties as soon as practicable. Under such circumstances the Public Staff and other intervenors shall have the right to address said evidence through additional direct testimony, such option to be exercised at the discretion of the Public Staff and other intervenors.

(d) Notice of General Rate Application and Hearing. — Within thirty (30) days from the filing of any general rate case application by any electric, telephone, or natural gas utility, such utility should provide public notice to its customers in newspapers having general circulation in its service area as follows:

(Public Utility) filed a general rate application with the North Carolina Utilities Commission on (date) requesting an increase in additional annual revenues of approximately (Amount of proposed increase in dollars).

The Utilities Commission will set a public hearing on the rate application within six months from the date of filing and will require detailed Notice to the Public regarding the proposed rates in advance of the Hearing.

The Commission will thereafter prescribe the form of Notice to the Public in the Order scheduling the Hearing.

(e) Parties. — To the end that those affected by any proposed increase in rates or charges may have every opportunity to be heard, such persons may become parties to such proceedings as provided by Rule R1-6, or as provided by Rule R1-19, or without filing formal pleading by entering their appearances of record at the time the cause is called for hearing, as provided by Rule R1-23, but matters settled at prehearing conferences or by stipulations of parties, as provided in G.S. 62-69 will not ordinarily be set aside or changed at the instance of those not parties of record at the time.

(f) Denial of Filing or Application for Failure to Include Material Contents.

(1) The Commission on its own motion or at the request of the Commission Staff, Public Staff, or any party in interest in any general rate case shall review the filing or application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the filing under Rule R1-17, and give notice to the applicant of the remedy provided by this rule for securing such information, and give the applicant 5 days to file such additional information in satisfaction of said letter request.

- (2) If any material data or information required by Rule R1-17 (b) is not filed with the tariff or application for rate increase and is not secured after informal request as provided in Rule R1-17 (f) (1) above, the Commission on its own motion or on motion of the Commission Staff, Public Staff, or motion of any party having an interest in the proceeding made within 30 days after the filing of said tariff or application, may order the utility to appear and show cause within a period of 20 days after issuance of said order why said filing or application should not be denied for failure to comply with any material provision of this rule, including the filing of the contents of said application as prescribed under subsection (b) above.
- (3) Such order to appear and show cause why the tariff filing or application should not be dismissed for failure to file material contents thereof shall specify with particularity the alleged deficiency or deficiencies in said tariff filing or application.
- (4) Any utility company served with such a show cause order shall have the right to file all of the data and information and exhibits alleged as deficiencies in said show cause order at any time prior to the hearing on said show cause order or at the hearing on said show cause order and thus satisfy the show cause order, whereupon such show cause order shall be dismissed before or at the hearing set thereon, and the proceeding on the tariff filing or rate application shall proceed as in the case of a properly filed tariff or application for a general rate increase.
- (5) If the Commission shall find after notice and hearing that the filing or application is incomplete and does not contain material portions of the contents required under subsection (b) necessary for complete determination of the justness and reasonableness of the rates filed or applied for, and that the applicant has failed to file said material data and information necessary for determination of the justness and reasonableness of said rates after notice and opportunity to complete said filing as provided herein, the Commission shall deny said application or dismiss said tariff filing, without prejudice to the refiling of said application or tariff filing with the complete contents prescribed herein.
- (6) The Commission shall make its determination on such show cause order within ten (10) days after the show cause hearing provided in this subsection, and shall issue an order thereon dismissing the show cause proceeding where such deficiencies are satisfied and continuing the investigation of the application, or dismissing the filing or application for material and unsatisfied deficiencies therein as provided in this subsection.

(g) Procedure for Applications Under G.S. 62-133(f). — Repealed by NCUC Docket No. G-100, Sub 58, 2/17/92.

(h) Procedure for Participation in Exploration and Drilling Programs and Approval of Associated Changes in Natural Gas Rates. — Repealed by NCUC Docket No. G-100, Sub 79, 12/02/99.

(i) Procedure for Filings under G.S. 62-134(d). —

(1) Any public utility adopting the basic retail rates of its wholesale electricity supplier under the provisions of G.S. 62-134(d), including each subsequent adoption of modified basic retail rates of its wholesale supplier, shall within 30 days of such adoption file with the Commission a Report of Adoption. The Report shall include the following as a minimum:

- (a) A balance sheet as of a date within three months of the date of adoption.
- (b) An income statement for the twelve months ending at the date of the balance sheet.
- (c) An estimate of the revenues to be produced by rates that have been adopted.

(2) If the utility elects to adopt the monthly adjustments in the retail fuel charge of its wholesale supplier, then it must adopt decrease adjustments as well as increase adjustments. In such event, the utility shall file with the Commission a letter notice of each such adoption but is not required to file the Report of Adoption required under (i) (1) above.

(3) Filings of notice of adoption of basic rate changes under (i) (1) above shall be accompanied by the filing fee required for applications for rate increases but a filing fee is not required with monthly notices of adoption of adjustments to fuel charges.

(4) A new docket number shall be assigned to each filing under (i) (1) above. Subsequent monthly filings under (i) (2) above shall be made in the same docket until a new basic rate increase docket is established.

(j) Repealed.

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

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

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

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

- (b) "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including, but not limited to, all commodity/gas charges, all direct, transaction-related costs arising from an LDC's prudent efforts to stabilize or hedge commodity gas costs, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges, storage charges, service fees and transportation charges, and other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.
  - (c) "Suppliers" shall mean any person or entity, including affiliates of the LDC, who locates, produces, purchases, sells, stores and/or transports natural gas or its equivalent for or on behalf of an LDC, or who provides hedging tools, including, but not limited to financial tools, designed to stabilize the LDC's commodity prices. Suppliers may include, but not be limited to, interstate pipeline transmission companies, producers, brokers, marketers, associations, intrastate pipeline transmission companies, joint ventures, providers of Liquified Natural Gas, Liquified Petroleum Gas, Synthetic Natural Gas and other hydrocarbons used as feed stock, other LDCs and end-users.
  - (d) "Benchmark Commodity Gas Costs" shall mean an LDC's estimate of the City Gate Delivered Gas Costs for long-term gas supplies, excluding Demand Charges and Storage Charges as approved in the LDC's last general rate case or gas cost adjustment proceeding. The Benchmark Commodity Gas Costs may be amended from time to time as provided in Section (k)(3)(a).
  - (e) "City Gate Delivered Gas Costs" shall mean the total delivered Gas Costs to an LDC at its city gate.
  - (f) "Commodity and Other Charges" shall mean all Gas Costs other than Demand Charges and Storage Charges and any other gas costs determined by the Commission to be properly recoverable from sales customers.
  - (g) "Demand Charges and Storage Charges" shall mean all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers.
- (3) Rate Adjustments Under these Procedures.

- (a) Sales Rates. In the event an LDC anticipates a change in its City Gate Delivered Gas Costs, the LDC may apply and file revised tariffs in order to increase or decrease its rates to its customers as hereinafter provided. The Commission may issue an order allowing the rate change to become effective simultaneously with the effective date of the change or at any other time ordered by the Commission. If the Commission has not issued an order within 120 days after the application, the LDC may place the requested rate adjustment into effect. Any rate adjustment under this Section (k)(3)(a) is subject to review under Section (k)(6).
- (i) Demand Charges and Storage Charges. Whenever an LDC anticipates a change in the Demand Charges and Storage Charges, the LDC may (as hereinabove provided) change its rates to customers under all rate schedules by an amount computed as follows:
- $$\frac{[(\text{Total Anticipated Demand Charges and Storage Charges} - \text{Prior Demand Charges and Storage Charges}) \times \text{NC Portion}^*] / \text{Sales \& Transportation Volumes}^*}{\text{Increase (Decrease) Per Unit}}$$
- \*Established by the Commission in the last general rate case.
- (ii) Commodity and Other Charges. Whenever the LDC's estimate of its Benchmark Commodity Gas Costs changes, an LDC may (as hereinabove provided) change the rates to its customers purchasing gas under all of its sales rate schedules by an amount computed as follows:
- $$\frac{\{[\text{Volumes of gas purchased}^* (\text{excluding Company Use and Unaccounted For}) \times (\text{New Benchmark Commodity Gas Costs} - \text{Old Benchmark Commodity Gas Costs})] \times \text{NC Portion}^* / \{[\text{Volumes of gas purchased for System Supply}^* (\text{excluding Company Use and Unaccounted For}) \times \text{NC Portion}^*]\}}{\text{Increase (Decrease) Per Unit}}$$
- \*Established by the Commission in the last general rate case

- (b) **Transportation Rate.** Firm and/or interruptible transportation rates shall be computed on a per unit basis by subtracting the per unit Commodity and Other Charges included in the applicable firm or interruptible sales rate schedule from the applicable firm or interruptible rate schedule exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.
  - (c) **Other Changes in Purchased Gas Costs.** The intent of these procedures is to permit an LDC to recover its actual prudently incurred Gas Costs. If any other Gas Costs are incurred, they will be handled as in Section (3)(a)(i) if they are similar to Demand Charges and Storage Charges, or as in Section (3)(a)(ii) if they are similar to Commodity and Other Charges.
- (4) **True-up of Gas Costs.**
  - (a) **Demand Charges and Storage Charges.** On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate schedules and (b) the LDC's actual Demand Charges and Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges. Increments and decrements for this deferred account, including the portion of the Commodity and Other Charges true-up calculated under Section (4)(b) and apportioned to this deferred account, flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case.
  - (b) **Commodity and Other Charges.** On a monthly basis, each LDC shall determine with respect to gas sold (including company use and unaccounted for) during the month the difference between (a) the actual Commodity and Other Charges incurred and (b) the actual Commodity and Other Charges billed to customers. This difference shall be apportioned each month to the LDC's deferred account for commodity and other charges based on the ratio of volumes sold to the volumes purchased for that month. The residual

portion of the difference not apportioned to the LDC's deferred account for commodity and other charges shall be apportioned each month to the LDC's deferred account for Demand Charges and Storage Charges. Increments and decrements for Commodity and Other Charges flow to all sales rate schedules.

(c) Repealed.

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

(5) Other.

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

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

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

(d) Periodically, an LDC may file to adjust its rates to refund or collect balances in these deferred accounts through decrements or increments to current rates. In filing for an increment or decrement, the LDC shall state the amount in the deferred account, the time period during which the increment or decrement is expected to be in effect, the rate classes to which the increment or decrement is to apply, and the level of volumes estimated to be delivered to those classes.



Any such increments or decrements shall be made on a flat per dekatherm basis for all affected rate classes, unless otherwise ordered by the Commission.

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

(6) Annual Review.

- (a) Annual Test Periods and Filing Dates. Each LDC shall file and submit to the Commission the information required in Section (k)(6)(c) for an historical 12-month test period. This information shall be filed by Toccoa Natural Gas on or before September 1 of each year based on a test period ended June 30. This information shall be filed by Frontier Natural Gas, LLC, on or before December 1 of each year based on a test period ended September 30. This information shall be filed by Piedmont Natural Gas Company, Inc., on or before August 1 of each year based on a test period ended May 31. This information shall be filed by Public Service Company of North Carolina, Inc., on or before June 1 of each year based on a test period ended March 31.
- (b) Public Hearings. The Commission shall schedule an annual public hearing pursuant to G.S. 62-133.4(c) in order to compare each LDC's prudently incurred Gas Costs with Gas Costs recovered from all its customers that it served during the test period. The public hearing for Toccoa Natural Gas shall be on the first Wednesday of November. The public hearing for Frontier Natural Gas, LLC, shall be on the first Tuesday of March. The public hearing for Piedmont Natural Gas Company, Inc., shall be on the first Tuesday of October. The public hearing for Public Service Company of North Carolina, Inc., shall be on the second Tuesday of August. The Commission, on its own motion or the motion of any interested party, may change the date for the public hearing and/or consolidate the hearing required by this section with any other docket(s) pending before the Commission with respect to the affected LDC.
- (c) Information Required in Annual Filings. Each LDC shall file information and data showing the LDC's actual gas costs, volumes of purchased gas, weather-normalized sales volumes, sales volumes, negotiated sales volumes and transportation volumes and such

- other information as may be directed by the Commission. All such information and data shall be accompanied by workpapers and direct testimony and exhibits of witnesses supporting the information.
- (d) Notice of Hearings. Each LDC shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.4 and setting forth the time and place of the hearing.
  - (e) Petitions to Intervene. Persons having an interest in any hearing held under the provisions of this Section (k) may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.
  - (f) Filing of Testimony and Exhibits by the Public Staff and Intervenors. The Public Staff and other intervenors shall file direct testimony and exhibits of witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of witnesses the intervenor intends to offer at the hearing.
  - (g) Filing of Rebuttal Testimony. An LDC may file rebuttal testimony and exhibits within 10 days of the actual receipt of the testimony of the party to whom the rebuttal testimony is addressed.

(NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 29, 8/11/70; NCUC Docket No. G-100, Sub 14, 10/15/71; NCUC Docket No. M-100, Sub 46, 12/15/71; NCUC Docket No. G-100, Sub 22, 6/26/75; NCUC Docket No. M-100, Sub 58, 7/18/75; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 58, 2/3/76; NCUC Docket No. M-100, Sub 58, 8/4/77; NCUC Docket No. M-100, Sub 73, 9/12/77; NCUC Docket No. E-100, Sub 31, 10/4/77; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. G-100, Sub 22, 8/1/77; NCUC Docket No. M-100, Sub 82, 1/23/79; NCUC Docket No. G-100, Sub 22, 8/8/79; NCUC Docket No. G-100, Sub 40, 8/19/80; NCUC Docket No. M-100, Sub 82, 4/27/81; NCUC Docket No. M-100, Sub 88, 2/17/82; NCUC Docket No. G-100, Sub 40, 9/8/82; NCUC Docket No. M-100, Sub 90, 9/14/83; NCUC Docket No. M-100, Sub 101, 3/23/84; NCUC Docket No. M-100, Sub 90, 8/25/87; NCUC Docket No. W-100, Sub 12, 5/14/91; NCUC Docket No. G-100, Sub 22, 6/19/91; NCUC Docket No. W-100, Sub 12, 9/4/91; NCUC Docket No. G-100, Sub 58, 2/17/92; NCUC Docket No. G-100, Sub 58, 4/9/92; NCUC Docket No. W-100, Sub 12, 2/22/94; NCUC Docket No. G-100, Sub 58, 7/12/94; NCUC Docket No. W-100, Sub 12, 7/14/94; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. W-100, Sub 12, 3/13/96; NCUC Docket No. G-100, Sub 74, 12/4/97; NCUC Docket No. G-100, Sub 78, 06/30/99; NCUC Docket No. M-100, Sub 128, 10/27/99; NCUC Docket No. G-100, Sub 58, 4/18/00; NCUC Docket No. G-100, Sub 58, 10/02/01; NCUC Docket No. G-100, Sub 79, 10/28/03; NCUC Docket No. G-100, Sub 84, 02/11/04; NCUC Docket No. G-100, Sub 87, 07/08/09; NCUC Docket No. G-100, Sub 87, 07/17/09; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. W-100, Sub 58, 03/26/19.)