McCornac Support Documents

Daniel McCormac, Coordinator of Regulatory Analyst

Experience	**2003 to present** Tennessee Attorney General's Office, Consumer Advocate & Protection Division - Coordinator of Analysts. Supervise and provide management analysis and expert testimony as needed in all major rate cases, earnings reviews, and other investigations.	
	2001 to 2003 Tennessee Regulatory Authority - Chief of Energy and Water Division. Provide management analysis and assisted the public, the utilities, and others as needed in all rate cases, earnings reviews, requests for certificates of convenience and necessity, tariffs, audits, and other energy and water utility matters.	
	1994 to 2001 Tennessee Attorney General's Office, Consumer Advocate & Protection Division - Senior Regulatory Analyst. Provided management analysis and expert testimony as needed in all major rate cases, earnings reviews, and other investigations.	
	1987 to 1994 Tennessee Public Service Commission (TPSC) - Manager of Revenue Requirements and Special Studies Supervised seven professionals, coordinated rate cases, earnings reviews, and other financial investigations of telephone, gas, electric, water, and sewer utilities. Testified on major issues.	
	1984 to 1987 Wilson, Work, Fossett & Greer, CPAs - Supervisor Consulted and assisted public utilities in preparing rate cases, cost of capital studies, cost of service studies, Purchased Gas Adjustment rule proposal, capital structure study, valuation study, computer software, research.	
	1983 to 1984 TPSC - Technical Assistant to Commissioners Chosen as first Technical Assistant to review and summarize all rate case filings, provide commissioners with research reports, prepare issues lists and analyze those issues. Also assisted in administrative accounting and budgeting by computerizing office records.	
	1976 to 1983 TPSC - Financial Analyst / Supervisor Audited and analyzed rate case filings, testified and prepared exhibits for the TPSC.	
Education & Certification	1973 - 1976	David Lipscomb University, B.S., Accounting
	March 1979	Certified Public Accountant
	1981	TSU, Business Finance, Business Management

Oral and written testimony in numerous rate proceeding before the TPSC and the Tennessee Regulatory Authority including the following dockets listed below with references to PDF format web links:

Docket 01-00704: AUDIT OF UNITED CITIES GAS COMPANY'S INCENTIVE PLAN ACCOUNT (IPA) FOR THE PERIOD OF APRIL 1, 2000, THROUGH MARCH 31, 2001.

7/30/04 - Direct Testimony of Dan McCormac:
http://www.state.tn.us/tra/orders/2001/0100704cq.pdf

10/5/04 - Rebuttal Testimony of Dan McCormac:
http://www.state.tn.us/tra/orders/2001/0100704dk.pdf

Docket 03-00313: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC. FOR AN ADJUSTMENT OF ITS RATES AND CHARGES, FOR APPROVAL OF REVISED TARIFFS AND APPROVAL OF REVISED SERVICE REGULATIONS

08/18/03 - Direct Testimony of Dan McCormac:
http://www.state.tn.us/tra/orders/2003/0300313w.pdf

04-00034 PETITION OF CHATTANOOGA GAS COMPANY FOR APPROVAL OF ADJUSTMENT OF ITS RATES AND CHARGES AND REVISED TARIFF.

7/26/04 - Direct Testimony of Dan McCormac
http://www.state.tn.us/tra/orders/2004/0400034do.pdf

3/30/05 - Supplemental Testimony of Dan McCormac
http://www.state.tn.us/tra/orders/2004/0400034fh.pdf

Docket 05-00258: PETITION OF THE CONSUMER ADVOCATE TO OPEN AN INVESTIGATION TO DETERMINE WHETHER ATMOS ENERGY CORP. SHOULD BE REQUIRED BY THE TENNESSEE REGULATORY AUTHORITY TO APPEAR AND SHOW CAUSE THAT ATMOS ENERGY CORP. IS NOT OVEREARNING IN VIOLATION OF TENNESSEE LAW AND THAT IT IS CHARGING RATES THAT ARE JUST AND REASONABLE

9/15/05 - Direct Testimony of Dan McCormac
http://www.state.tn.us/tra/orders/2005/0500258.pdf

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Response to Support #20

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OCT 2 5 1995

TN PUBLIC SERVICE COMM.
UTILITY RATE DIVISION

Before the

REC'D TN. PUBLIC SERVICE COMM.
1995 OCT 24 AM 11 48
OFFICE OF THE EXECUTIVE DIRECTOR

TENNESSEE PUBLIC SERVICE COMMISSION

In Re: Price Regulation Plan of BellSouth Telecommunications d/b/a South Central Bell Telephone Company

Docket No. 95-02614

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DIRECT TESTIMONY

of

Archie R. Hickerson

****

OCTOBER 24, 1995

Q. What is your name, by whom are you employed, and what is your address?

A. My name is Archie Hickerson and I am the Director of the Consumer Advocate Division Staff in the Office of the Attorney General for the State of Tennessee. My business address is 1504 Parkway Towers, 404 James Robertson Parkway, Nashville Tennessee, 37243-0500.

Q. What is your educational background, and what licenses and professional memberships do you hold?

A. I have a bachelor of science degree from Austin Peay State University with majors in mathematics and accounting. I am a licensed Certified Public Accountant in the State of Tennessee and I am a member of the American Institute of Certified Public Accountants (AICPA).

Q. What is your work experience concerning the regulation of utilities?

A. For 18 years I worked for the Tennessee Public Service Commission. In 1976 I began as a financial analyst in the Commission's Accounting Division. As an analyst I audited utilities' books and records, analyzed their cost of providing service, developed financial exhibits, and entered testimony sponsoring these exhibits in rate proceedings before the Commission. I was promoted to Assistant Director of the Accounting

Division, and became the Deputy Director of the Utility Rate Division after the Accounting and the Utility Rate Divisions were combined. As the Assistant Director and later the Deputy Director, I supervised the employees who conducted compliance audits of utilities, made earning and rate investigations, reviewed tariff filings, supervised management audits, and supervised investigations as requested by the Commission. I directly participated in rate proceedings, worked in the development of Commission rules and regulations, and prepared and filed comments in proceedings before the Federal Communications Commission (FCC), and the Internal Revenue Service. I also reviewed depreciation studies submitted by the regulated utilities, and along with the Director of Telecommunications negotiated depreciation rates with the representatives of the utilities and the FCC. As part of my duties with the Commission, I served as a member of the National Association of Regulatory Commissioners' (NARUC) Staff Subcommittee on Communications and the NARUC Subcommittee on Accounts and the Souther Accounting Task Force.

When the Legislature created the Consumer Advocate Division within the Attorney General's Office effective July 1, 1994, I became the Director of the Consumer Advocate Staff. My duties and responsibilities in the Consumer Advocate Division are basically the same as when I was employed by the Commission.

Q. What is the purpose of your testimony?

A. I will provide an expert opinion for the Consumer Advocate Division concerning the net operating income, and rate base for the test year ended March 31, 1994 to be used to evaluate rates charged by BellSouth Telecommunications, Inc. intrastate telephone service.

Q. Are other experts also testifying on fehalf of the Consumer Advocate Division and Tennessee consumers?

A. Yes. Mr. Lane Kollen will provide expert opinion and testimony concerning lobbying expense, BellCore expense and other research and development expense improperly included by the Company in its cost of service. He will also address interest expense related to BellSouth Corporations's Leveraged Employee Stock Ownership Plan (LESOP) and the tax benefit related to the dividend paid on stock held by the BellSouth Corporation's LESOP. Dr. Stephen Brown will testify concerning the fair and reasonable rate of return to be used in evaluating and setting rates.

Q. What is the net operating income, and rate base for the test year ended March 31, 1995 which you found appropriate for evaluating rates charged by BellSouth Telecommunications, Inc. for intrastate telephone service?

A. The adjusted net operating income I found for the test period is $225.1 million, the rate base is $1.552 billion, and the resulting rate of return is 14.50%. Dr. Brown is recommending that the fair and reasonable rate of return for BellSouth

Telecommunications is 9.25%. As a result, a reduction of **$126.6 million** is required to reduce the BellSouth Telecommunication Inc.'s Tennessee Intrastate rates to an affordable level. This is shown on schedule 1.

Q. You state that a reduction of $126.6 million is warranted. Does the Commission have other alternatives in addition to rate reductions?

A Yes. The Commission could reduce the rates for certain services and expand other services. The Commission could make corrections by doing other things of great value to Tennessee consumers. In the past the rates have been corrected by expanding the local calling areas, ordering improvements in service, and through rate reductions. For example the implementation of the initial Metro Area Calling (MAC) that allowed ratepayers in Davidson, Shelby, Knox, and Hamilton Counties to make calls to and receive calls from ratepayers in the adjacent counties without there being a long distance charge was implemented as part of an earnings investigation. Dickson County, Tennessee was added to the Nashville MAC in this manner. An example of a service improvement is the FYI Technology Deployment Plan and the reduction of long distance rates to three cents ($.03) per minute in the Sprint United Telephone Company Southeast territory is an example of rate reductions. In this proceeding, funds are sufficient to reduce LATA wide long distance rates from the current average rate of approximately $.12 per minute to $.05 per minute, eliminate touch tone charges, and expand local calling areas in places like Clarksville, Jackson, Columbia, and Morristown. These alternatives have great value, however, I am not proposing a rate design at this time. Our recommendations for rate adjustments will be made in the rate design proceeding.

Q. Would you briefly describe the process used to evaluate or set utility rates?

A. The general objective of the ratemaking process is to establish rates that are just and reasonable. In carrying out this objective, regulatory agencies select a test period, usually twelve (12) months, and analyze the revenues and the costs of providing utility service during that period. Based on this analysis, the regulator then approves rates that will allow the utility the opportunity to collect revenues that will cover the expenses required to provide utility service and provide the return needed to attract investor capital.

In making this analysis, the regulators may choose either an historic test period, a future or forecast test period, or a combination of both. Financial exhibits are then developed based on the test period selected that reflect the revenues, expenses, and investment that are used to evaluate the utility's rates. Regardless of the test period selected, the goal of the analysis is to determine the earnings power of the utility's rates to insure that the ratepayers are not over charged and at the same time provide the investors an opportunity to earn a fair and reasonable return on their investment.

The distinction between the use of an historic or a future test period is more of a matter of the mechanics used than a matter of theory.

When an historic test period is used, initial financial exhibits are developed directly from the utility's books. Adjustments, (rate making adjustments), are then made to these initial exhibits to properly portray the relationship between the revenues, expenses, and investment expected during the time the rates will be in effect.

These adjustments can be characterized into five (5) basic categories:

1. Normalizing adjustments:

These adjustments are made to restate the amount recorded during the period to remove the effects of abnormal conditions that existed during the period. For example, extreme weather conditions may result in an abnormal level of expense that should be removed to reflect normal conditions.

2. Annualizing adjustments:

These adjustments are made to extend or to eliminate from the period the effect of events that had only partial effects during the period. For example, if a pay raise were granted in the middle of the test year only half the effect of a pay raise that was given to employees would be reflected in the operating expenses recorded on the utility's books. To properly reflect the ongoing normal level expenses the test period salary and wage expense would have to be increased to the level that would have been incurred if the current pay level had been in effect for the entire year. Similarly if near the end of the period the utility reduced its work force by 10%, the salary and wage expense would need to be reduced to reflect the expense that would have been incurred if the current employee level had been in place for the entire test period.

3. Out-of-period adjustments:

These adjustments are made to match an event to the proper period. For example a company may have discovered that it had under or over stated an expense during a prior period and corrected the error during the test year. As a result, the test period amounts should be reduced or increased, as appropriate, to match the proper expense to the test period.

4. Reclassified items:

These adjustments are made to remove costs that were not incurred in the provision of utility service. An example is lobbying expense that may have been incorrectly recorded as part of the cost of providing utility service.

5. Attrition adjustments:

These adjustments are made to reflect the known or reasonably known effects of events that change the relationship of the revenues, expenses, and investment during the test period. An example of an attrition adjustment would be to recognize a known or reasonably known increase in a utility's plant investment that would result in the rate base growing faster than the utility's net operating income. Without adjustments to correct for such a change in relationship the Commission could not properly evaluate the utility's rates. Another example would be the reasonably known or anticipated installation of equipment or other operational changes that will result in the operating costs growing at a slower rate than the growth in revenue. This would result in what has been termed "negative attrition." Again, without such adjustments the Commission would be unable to properly evaluate the earnings power of the utility's rates.

These adjustments do overlap somewhat. The attrition adjustments could include most of the normalizing and annualizing adjustments. Similarly, the annualizing adjustments that are made to reflect the full impact of changes that have occurred but are not fully reflected in the financial statements for the test period are in effect normalizing adjustments that are made to reflect normal operations based on current conditions.

These are not the only way that such adjustments are classified. For example, some analysts classify the adjustments into two categories: those related to rate changes, (pay rates, tax rates, etc.) and those related to volume levels (number of telephone lines, number of employees, etc.).

Regardless of the how such adjustments are classified, the adjustments should be for known, reasonably known, or reasonably anticipated events and should not be highly speculative. This reasoning was discussed extensively in the January 3, 1979 decision of the Court of Appeals of Tennessee, Middle Section that required the Commission to consider reasonably anticipated changes in setting rates. While the Court did not require the Commission to consider highly speculative changes, it did require the recognition of reasonable anticipated, or reasonable known events that result in changes in the relationship of the revenues, expenses, and investment. The Tennessee Supreme Court denied Certiorari on March 19, 1979.

When a forecast test period is selected, such changes are built into the projected revenues, expenses, and investment for a future or forecast period of time. In Tennessee, the forecast period has traditionally been one year after the effective date of the order in the ratemaking proceeding. The objective is the same as with the historic test periods. The goal is to develop financial exhibits that reasonably reflect the anticipated revenues, expense, and investment of the utility during the time that the rates will be in effect. The procedures used in developing such exhibits are similar to those used by businesses when they develop their budgets.

The level of demand for utility service and the resulting revenues are projected based on trends, known changes, projected economic conditions, etc. Expenses are forecast based on the anticipated level of employees, past trends in costs, known changes in rates, known changes in operating level, inflation, etc. Often the approach used in developing such forecasts are much the same as that used in developing the historic test period adjustments. Much, if not most, of the information used in developing these forecasts are based on information taken from the utility's books and records, and are grounded in data that relates to historic periods.

Q. Which methodology has the Tennessee Commission used in the past?

A. The Commission has used both. When I first began work as a member of the Commission staff in 1976, the historic test period was used almost exclusively. During the late 70's the movement toward the future or forecast test period began in earnest. The Court's decision that required the Commission to consider reasonable anticipated changes accelerated the movement toward the use of the forecast test period. It was around that time the Commission Staff began to include in our financial exhibits, attrition adjustments to reflect the decline or (attrition) in earnings as the result of inflation, and other factors that resulted in the costs of providing utility service growing more rapidly than the revenues. In developing our cases, we proposed such adjustments through the attrition period which was generally the first twelve (12) months that rates set in the proceeding would be in effect. During the subsequent years, the Commission Staff moved toward the use of full forecasts or budgets in setting rates and the term "attrition adjustment" was dropped. Instead, the future period was referred to as the test period. Interestingly it was South Central Bell's appeal of the Commission's decision to utilize an historic test period in the 1977 rate proceeding that prompted the Commission Staff to move to the attrition year and forecast test period concept almost exclusively. Now that inflation has returned to lower levels, the same Company contends that unadjusted historic information should be used.

In the late eighties, the Commission undertook the development of alternative regulation. Committees consisting of representatives from the telephone utilities and members of the Commission's technical staff, and Commissioners' personal staffs were given various tasks in developing that rule. I was a member of the committee that was investigating new regulatory schemes. As an alternative to the annual earnings reviews that had occurred in the late eighties, it was proposed, by members of this committee, that rates be set for an extended period of time based on a multi-year forecast test period, and that no rate adjustments be made during that period. Members of the staff at that time were concerned with the use of extended forecast for setting initial rates and argued for the use of a minimum period. On the other hand, the industry representative generally argued that the longer period would be more effective. Ultimately, the Commission adopted a three (3) year forecast test period and set rates for South Central Bell for the three years 1990, 1991, and 1992.

In 1993 the Commission again set rates for South Central Bell for three years 1993, 1994 and 1995. In that proceeding, South Central Bell proposed to modify the procedure and asked that the rates for the three year period be based on a one year forecast. The Commission adopted the Company's proposal and instead of using a three year forecast as it did in 1990, the Commission set rates for 1993, 1994, and 1995 based on the Company's 1993 forecast.

In summary, during the eighteen years that I worked for the Commission, I developed, assisted in the development of, and supervised the development of financial exhibits using a historic test period, using attrition periods, using single year forecasts, and multi-year forecasts.

Q. The statute addes the term"affordable" to the just and reasonable standard. How does this additional standard affect your analysis?

A. My analysis is consistent with the procedure that we have followed in the past.

CHAPTER 40

Accounting for the Rate-Regulated Enterprise

Richard N. Hildahl
Partner, Ernst & Whinney

best means for achieving consistency, uniformity, and comparability within individual industries and in comparing different industries.

Test Period Cost of Service. In addition to receiving a fair return on its investment or rate base, the regulated entity is entitled to recover in rates to customers all reasonable and necessary costs involved in providing service. In order to ensure that proposed rates will enable the company to recover its costs, a means must be found to measure those costs. For this purpose regulators generally prescribe the use of a test period to be used in measuring the results of operations. The two key questions involved in this process are these:

1. What time period will be used as a measure?
2. What revenues and expenses will be allowed in determining operating income for the test period selected?

Three basic types of test periods may be used, either separately or in various combinations: (1) the historical average test year, usually the most recent 12-month period for which complete records are available; (2) the year-end approach; and (3) the projected future test year.

Generally the same test period used for determining the cost of service will also be used for determining the rate base. One instance in which this approach would not work would be when using a year-end investment rate base along with the operating results from the preceding 12 months, unadjusted to match the year-end investment. Such a combination could produce a significant mismatching, because the rate base at the end of the period could contain major additions intended only for future use.

Such a mismatch is sometimes retained to offset regulatory lag in cases when the company's earnings are declining. Such declines, called attrition, result when a company experiences rapid plant growth and increased costs due to that growth and to inflation, while still operating under rates fixed during a previous time period when costs were lower.

Historical test year. The historical average test year traditionally was the most common approach to measuring cost of service. This approach is based on a presumption that the conditions under which the company operated during the test year will remain constant during the period for which proposed rates will be in effect. As noted above, it generally uses the most recent 12-month period for which complete financial data are available. Rate base is computed for each month using a basic 13-month averaging approach (the beginning and end of each number for a year) and is thus compared to earnings. Cost of service, including expense, depreciation, taxes, and return, is prepared in conjunction with this average rate base, based primarily on recorded results for that period.[5]

Because, however, the rates proposed on this basis are to be in effect for a future time period, the historical period must be adjusted, or "normalized," to reflect as well all measurable expenses known and expected to occur during the time the rates will be effective. For example, if a labor contract is scheduled to expire during the succeeding period and will be renegotiated on a higher basis, that increased cost will be included in the normalized test year. Thus, by including such measurable future costs, the historical test year can be made more representative of the near future and ensure that future costs will be recovered in rates.

The advantages of this system are that it depends on recent actual data easily obtained and that it can consistently relate investment to operating results. Its major disadvantage is that it depends on past conditions for measuring future revenue needs. Although adjustments are permitted for known and measurable changes in costs, regulators tend to object to estimates and to disallow extensive adjustments to the test year. In a rapidly changing economic environment, increased costs tend to outrun the provisions made for them, so that it is not uncommon that new rates become insufficient to cover costs even a few months after they become effective. Thus a regulated entity may consistently find itself in a "catch-up" position, in which it never fully makes up for earnings lost due to attrition and regulatory lag.

Year-end test period. The "year-end" approach has an advantage over the historical test year in that it minimizes the time lag between the test period and the application of new rates. Although it uses historical data as far as possible, it also allows more extensive adjustments.

A major difference between this approach and the historical test year is that new property added during the test year is included in rate base, and, if that property will also produce additional revenues, some jurisdictions include the projected revenues and expense in estimating financial results. Thus the final picture of the results of operation is somewhat more future-oriented than that produced by the historical test year.

Projected future test period. The use of a projected or future test period varies in use according to jurisdictions. Regulators in general oppose using a totally projected test year because it relies too heavily on budget estimates and projections and is difficult to verify. However, as projection techniques become more sophisticated and regulators become more familiar with their reliability, this resistance is beginning to erode.

Many agencies now accept partially projected test periods—that is, test periods that begin a few months before proposed new rates are filed and end several months after the filing. Thus the regulators have the advantage of seeing actual financial results for the first part of the test period and projections for the remainder, both for revenues, expenses, and the rate base. This approach retains some of the advantages of verifiability while still recognizing the volatility of the current business environment and minimizing attrition due to regulatory lag. A number of regulatory commissions are currently experimenting with alternative techniques to recognize timely changes in cost patterns.[6]

[5] The NARUC publication, *Annual Report on Utility and Carrier Regulation*, is an excellent reference for ascertaining those items that various state agencies will allow in rate base.

[6] Examples include the FERC's proposal in the TAPS case for a variable tariff methodology and the National Energy Board of Canada classes of rate cases, which allow for expedited proceedings if controversial items are not involved. The California Public Utilities Commission is experimenting with similar plans.

Buckner Support Documents

Terry Buckner, Regulatory Analyst

B. S. in Business Administration, University of Tennessee, Knoxville

CPA, Member of the AICPA and the Tennessee Society of CPAs

Twenty-five years of experience with the Public Utility industry:

1980 - 1988 TDS Telecom - Region Accounting Manager

1989 - 1994 Tennessee Public Service Commission ("TPSC") - Regulatory Analyst

1995 - 2001 Office of the Attorney General for the State of Tennessee - Consumer Advocate and Protection Division - Regulatory Analyst

2001- 2004 Comptroller's Office for the State of Tennessee - Public Utility Audit - Assistant Director

2004 - Present Office of the Attorney General for the State of Tennessee - Consumer Advocate and Protection Division - Regulatory Analyst

Oral and written testimony in numerous rate proceedings before the TPSC and the Tennessee Regulatory Authority. Including the following dockets and/or companies

Dockets

TRA #04-00288 Tennessee American Water Company
Direct Testimony: http://www.state.tn.us/tra/orders/2004/0400288bm.pdf

TRA#03-00391 BellSouth
Rebuttal: http://www.state.tn.us/tra/orders/2003/0300391ci.pdf

Rebuttal Exhibits: http://www.state.tn.us/tra/orders/2003/0300391ch.pdf

TRA #02-00383 Chattanooga Gas Company
http://www.state.tn.us/tra/orders/2002/0200383m.pdf

TRA #01-00451 United Telephone Company
http://www.state.tn.us/tra/orders/2001/0100451w.pdf

TRA #00-00523 Rural Universal Service
http://www.state.tn.us/tra/orders/2000/000052316.pdf

TRA #99-00210 BellSouth Telecommunications, Inc.
TRA #99-00244 BellSouth Telecommunications, Inc.
TRA #98-00559 BellSouth Telecommunications, Inc.
(Attached)

TRA #99-00995 TEC Companies
http://www.state.tn.us/tra/orders/1999/990099522.pdf

TRA #98-00626 UTSE
(Attached)

TRA #97-00982 Chattanooga Gas Company
(Attached)

TRA #96-00977 Nashville Gas Company
(Attached)

TPSC #95-02258 United Cities Gas Company
(Attached)

TPSC #95-02116 Chattanooga Gas Company
(Attached)

TPSC #94-02876 BellSouth Telecommunications
(Attached)

PSC #92-13527 South Central Bell - Earnings Investigation for the years 1993-1995 (Copy of Testimony Not Available)

Docket N/A GTE - Rate Filing
(Copy of Testimony Not Available)

#78966

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EXEC. DIR. OFF.

Before the

TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

In Re:

South Central Bell Telephone Company

Docket 94-02876

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Direct Testimony

of

Terry Buckner

****

November 18, 1994

Q. Please state your name for the record.

A. My name is R. Terry Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division (CA) in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately seventeen years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission (Commission) as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems (TDS) for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Would you briefly describe your responsibilities as a Senior Regulatory Analyst since your employment with the CA?

A. My responsibilities include evaluating financial data, submitting data requests to Companies, making recommendations to the Director of the CA Division and the Consumer Advocate, and preparing testimony and exhibits.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present information to the Commission as to the reasonableness of the proposed tariff filing #94-223 by South Central Bell (SCB) in Docket #94-02876 regarding the establishment of regulations, rates, and charges for the provision of Directory Assistance (DA) services in Tennessee.

Q. Would you please identify the general issues regarding Docket #94-02876?

A. The Consumer Advocate has filed a motion with the Commission to dismiss SCB's request to impose a charge for DA in Tennessee. In the filed motion, it is the Consumer Advocate's contention that SCB's filing was in fact improperly filed according to Commission rules and that the filing is inappropriate and untimely.

Additionally, the CA received responses from SCB to our data request dated November 1, 1994 on November 14, 1994. The CA staff is presently reviewing SCB's responses many of which were inadequate or were not responded to due to SCB's objections. On November 17, 1994, the CA spoke with counsel for SCB and SCB agreed to provide additional information which may offset other issues.

Q. Would you please identify the specific issues regarding Docket #94-02876?

The specific issues within the filing are as follows:

(1) Whether the filing is valid and appropriate under rule 1220-4-2-.55. In exchange for the opportunity to make excessive profits by cutting costs and inefficiencies, SCB agreed that it would not initiate any requests to adjust its earnings except in accordance with rule 1220-4-2-.55. SCB is not to initiate any requests and the Commission is not to entertain any unless and untii the situation comes within the provision of the rule.

The rule requires that SCB not initiate any adjustment unless its earnings are 60 basis points below its prescribed rate of return. The 60 basis points translates into 6/10 of 1% or .60%. SCB's prescribed rate of return is 11.25%. Using simple math to subtract .60% from 11.25%, one arrives at 10.65% as the point at which SCB can legitimately request an adjustment to its earnings. The Commission Staff knows SCB's most recent report of its earnings in relationship to its prescribed rate of return through the submission of the Commission monthly report 3.01. The Commission 3.01 report for August 1994 shows that SCB is earning 10.79% for the last twelve months to date. Therefore it is clear on its face to SCB and the

Commission Staff that there are no grounds to consider this earnings adjustment. The CA believes that this proceeding is illegal, illegitimate and very irregular. It is contrary to both the spirit and the letter of rule 1220-4-2-.55. In addition, it is contrary to what prompted that rule which was to encourage SCB to reduce its expenses and to improve its efficiency. SCB does neither with this particular earnings increase, so therefore it goes even against the policy behind the rule. Certainly, SCB is not offering to reduce any costs or improve its efficiencies by this particular rate increase or rate proposal. SCB has not shown that it is threatened or that the consumer's interests are jeopardized by denying this earnings adjustment. Simply put, SCB is proposing to reduce service that it is presently providing to its customers.

The CA would first say that this matter should be dismissed outright and that there was no need for this hearing in the first place if SCB complied with the rule. The Commission should dismiss this proceeding in its entirety and deny SCB any adjustment to its earnings;

(2) The determination of the 50% destimulation factor used by SCB to calculate revenue is not factually supported in their filing and calls into question the projected earnings increase identified by SCB. In addition, the imposition of the directory assistance charge will likely

increase revenues in the future from the Company's electronic white page offering. The Company has not included the additional revenue from this service in its projection;

(3) A local call allowance of 5 residential and 3 business per month for DA calls but no long distance DA allowance. This is backwards, logically there should be a greater DA allowance for long distance calls since a directory for the distant calling area is not normally available to the caller;

(4) While SCB has not provided the average monthly amount of new number listings by month, it only provided the activity for October 1994 during which 67,889 in new number listings were issued. If this is representative of a normal month, an average of approximately 600,000 numbers are not available during the directory publishing cycle. This recognizes that there is a sixty to ninety day lag in the time a number list is compiled and the date when a directory is issued for a particular year. The directory does not include the new number listings during the lag time or for future new number listings until a new directory is published the following year. As a result, there is a significant number of listings which are not available in the directories and the ratepayer has no option but to use DA;

(5) SCB is attempting to take advantage of or circumventing the proposed local competition rule currently pending. Under the

proposed rule, SCB would be required to reduce access charges half way to the interstate level without offsetting rate increases. By using the DA charge to more than offset the access reductions, SCB avoids the earnings reductions required in the proposed local competition rule. This filing is also an attempt by SCB to stifle potential competition at the expense of the captive monopoly ratepayers by increasing the charges for monopoly directory assistance charges and reducing rates for the potentially competitive access charges;

(6) There is a general vagueness in the determination of who the "handicapped or disabled" are and who makes that determination to qualify for an exemption from this tariff filing;

(7) Additionally, SCB's recent tariff filing revision filed November 14, 1994, includes a fifty call allowance for "qualified handicapped or disabled" employees of businesses. The Company has provided nothing to show an allowance is adequate. Obviously, the imposition of such a charge on business will impact a business' decision when considering the employment of a disabled person who must obtain telephone numbers in the performance of their jobs. The allowance of approximately 2 calls per work day may not be sufficient especially when the position calls for extensive use of the telephone;

(8) There are illiteracy concerns for those citizens who cannot read

and would be disadvantaged by this tariff filing. While we recognize that it is not the duty of the telephone company to teach reading, it must be recognized that a large number of Tennesseans are functionally illiterate. Based on data obtained from the Tennessee Department of Education, approximately 1 in 6 Tennesseans is functionally illiterate. This indicates that approximately 816,000 are functionally illiterate based upon the U.S. Census Bureau estimate of the population of Tennessee;

(9) SCB's rationale for determining the proposed reductions in access and toll rates, and the amounts per service to be reduced by SCB is questionable as to its propriety. It may be more appropriate to reduce Caller ID or reduce touch-tone calling rates. SCB has not shown any linkage between its revenues for long distance and directory assistance rates;

(10) There is no assurance that 100% of the proposed access reductions by SCB will be flowed through by the Inter-exchange Carriers (IXCs) to the ratepayer. There are no new reductions in tariff filings pending for any long distance carrier. In other words, the earnings of the IXCs would increase if the access reductions are not flowed through dollar for dollar by reduced interlata long distance rates;

(11) Uncertainty exists as to whether the filing would jeopardize the

accuracy of the annual access reduction ordered by the Commission (Megacom Order U-87-7492). The filing made by the Company to reduce access rates in accordance with order U-87-7492 is under the assumption that the proposed tariff is already in effect. This assumption impacts the magnitude of the access reductions;

(12) Privacy concerns also exist in that SCB will release name and address to a DA caller seeking identification for a phone number. Presently, SCB's DA will not provide the name and address when the caller has only the telephone number. Under the proposed tariff a caller will be able to obtain such information. In addition, this proposal raises safety issues as well as privacy concerns;

(13) SCB should realize a dramatic increase in revenues from unpublished number listings if the tariff is approved. This increase is not recognized anywhere in the filing. Additionally, the tariff filing is a disincentive to timely updates of directories. Also, SCB has not quantified the expected revenue increase and earnings from this new service;

(14) SCB has failed to provide evidence to demonstrate the reasonableness and fairness of this tariff filing when it is presently recovering the cost of DA through other revenue streams. This Commission has historically denied SCB's filings for a per call charge for DA, as recent as September 1993 in tariff filing 92-190. SCB has

provided **NO** evidence since September 1993 to change the Commission's current policy DA service in Tennessee.

Q. Are there other concerns with SCB's tariff filing?

A. Yes, the CA requests that public hearings be held across SCB's Tennessee service area to allow SCB customers the opportunity to express an opinion as to whether customers should be charged on a per DA call basis or that DA be recovered on a business as usual basis. The hearings should be scheduled to allow a representative number of customers of all types, areas and means to express their views on the proposed DA filing. Additionally, the public should be adequately notified of their opportunity and the potential change in the ratepayers bill. After public opinion is expressed, the Commission can more adequately determine the reasonableness of the current DA tariff filing.

SCB has not stated how the safety, efficiency, or adequacy of DA relates to those rates. Moreover, the CA is concerned that the DA rate request is priced to operate contrary to a free market system by discouraging calls rather than establishing a low rate and encouraging calls.

It must also be recognized that while this tariff was made by SCB, it will impact all Tennessee ratepayers. If approved, it will be a precedent for filings by other carriers such as AT&T.

Q. Does this conclude your testimony?

A. Not necessarily. As I indicated earlier SCB was not fully responsive to our data request. We may have additional concerns upon receipt of that information.

<u>CERTIFICATE OF SERVICE</u>

I, L. Vincent Williams, hereby certify that a true and correct copy of the foregoing Testimony of Terry Buckner has been served on the following parties of record by depositing a copy of the same in the United States mail, postage pre-paid, addressed to them, in accordance with the following list, this 18th day of November, 1994:

Charles Howorth, Esq.
South Central Bell Telephone Company
333 Commerce St.
Suite 2101
Nashville, TN 37201-3300

John M. Farris, Esq.
50 North Front St.
Suite 1400
Memphis, TN 38103

Roger Briney, Esq.
AT&T
1200 Peachtree St., NE
Room 4068
Atlanta, GA 30309

Val Sanford, Esq.
230 4th Ave., North
3rd Fl.P.O. Box 198888
Nashville, TN 37219-8888

for L. Vincent Williams

STATE OF GEORGIA

COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared James K. Brinkley who, being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company, before the Tennessee Public Service Commission in Docket No. 94-02876, Application of South Central Bell to Establish Regulation, Rates and Charges for the Provision of Directory Assistance Service in Tennessee, and if present before the Commission and duly sworn, his testimony would be set forth in the annexed Testimony consisting of 8 pages and 0 exhibits.

James K. Brinkley

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 11th DAY OF NOVEMBER, 1994.

Martha E. McDougal
Notary Public

Notary Public, Gwinnett County, Georgia
My Commission Expires March 8, 1997

DIRECT TESTIMONY OF
JAMES K. BRINKLEY
ON BEHALF OF BELLSOUTH TELECOMMUNICATIONS, INC.,
D/B/A
SOUTH CENTRAL BELL TELEPHONE COMPANY

NOVEMBER 18, 1994

Q. PLEASE STATE YOUR NAME, EMPLOYER, POSITION AND BUSINESS ADDRESS.

A. My name is James K. Brinkley. I am employed by BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company in Tennessee (hereinafter referred to as "South Central Bell" or "the Company"). My present position is Director - Pricing & Economics in the Regulatory and External Affairs department. My business address is 675 West Peachtree Street NE, Atlanta, Georgia 30375.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Science degree from Clemson University in 1969 and a Master of Engineering degree from the University of South Carolina in 1973. After graduating from Clemson University, I served approximately two years active duty in the U.S. Army and am presently a Battalion Commander in the U.S. Army Reserves. I began my telephone career with Southern Bell in 1973 in Columbia, South Carolina as an Outside Plant Engineer. Since then, I have served in various positions in the Engineering, Support Services, Marketing, and Pricing organizations in both South Carolina and Georgia. Currently, I have responsibilities for tariff and rate development for switched access, operator services, and billing and collections services for the nine states in the BellSouth region.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. On October 6, 1994, South Central Bell filed a revenue neutral tariff package to implement a charge for Directory Assistance (hereinafter referred to as "DA"). My testimony will describe the elements of the Company's filing package, why it is appropriate to charge for DA, and the benefits to consumers that will occur with approval of this package by the Tennessee Public Service Commission.

Q. DESCRIBE THE TARIFF PACKAGE FILED BY SOUTH CENTRAL BELL.

A. There are three parts to this tariff filing:

1. The implementation of a charge for DA service,
2. A reduction of Message Telecommunications Service ("MTS") charges, and
3. A reduction of intrastate Switched Access charges.

The revenue generated by a DA charge will be passed on to customers through lower long distance rates and access charges. Specifically, the DA charge proposal will generate approximately $~~19.9~~ 22.9 million in revenue and cost savings annually. The MTS charge proposal will reduce revenues by approximately $~~6.6~~ 7.7 million annually. The Switched Access charge proposal will reduce revenues by approximately $~~13.3~~ 15.2 million annually.

It should be noted that the impact of the Switched Access charge reduction on Tennessee consumers will depend on the pricing actions of the interexchange carriers ("IXCs").

Q. DID SOUTH CENTRAL BELL INITIATE THIS PROCEEDING TO ADJUST ITS EARNINGS?

A. No. As I have explained above, if this filing is approved, it will be revenue neutral and thus will have no effect on the company's earnings.

Q. WHAT WILL SOUTH CENTRAL BELL CHARGE FOR DIRECTORY ASSISTANCE?

A. The proposed tariff provides that all residence customers will have an allowance of five free DA calls per line per month and business customers will receive a three call allowance per line or equivalent per month. A charge of $.25 per call will be applied on DA calls exceeding the allowance. There will be no charge for DA calls made from hospitals, nursing homes, public and semi-public telephone service locations and customer-provided public telephones. Customers with disabilities that prevent their use of the printed directory will be exempt from the charges on their residential line and will receive a fifty call allowance on their business line.

South Central Bell's proposal protects those customers who use DA service only when necessary by moving some of the responsibility for paying for the service to those who use the service frequently. While the frequent DA user will begin paying for this service, all customers will have access to lower toll rates.

Q. WHY IS IT APPROPRIATE TO CHARGE FOR DIRECTORY ASSISTANCE?

A. In an increasingly competitive telecommunications environment, prices for individual services should reflect their underlying cost. Currently, competitive applications of Time Warner AxS of Tennessee, L.P., AVR, L.P., d/b/a Hyperion of Tennessee; Access Transmission Service, Inc. ("ATS"), Teleport Denver Inc., and Metropolitan Fiber Systems of Tennessee, Inc. ("MFS") are pending before the Commission, and a rulemaking is underway to open the local exchange to competition. Tariffs such as this one which move rates toward reflecting their underlying cost must be implemented in order to transition customers in Tennessee to a rate structure which will be sustainable in this increasingly competitive environment.

Today, because there is no charge for DA service in Tennessee, over $27 million of this service cost is recovered each year through prices customers pay for other services. Almost every customer, therefore, pays for DA service whether they use the service or not. Tennessee is the only state in the nation where there is no charge for customers to use intrastate DA service. Present usage studies show that eighty percent of residential customers make five or fewer DA calls, and ninety-five percent of business customers make three or fewer DA calls. From our studies, the majority of Tennessee's customers will not even be affected by the DA charge proposed in the tariff.

Q. IF THIS TARIFF IS APPROVED, WILL SOUTH CENTRAL BELL LAY OFF OPERATORS WHEN THERE IS LESS DEMAND FOR THE SERVICE?

A. The Company does not expect any layoffs as a result of implementing a directory assistance charge and has made this commitment to the Communications Workers of America. Any necessary reduction in force will be handled by attrition and reassignment.

Q. DESCRIBE THE TOLL CHARGE REDUCTION PROPOSED IN THE TARIFF.

A. There are two parts to the toll reduction proposed in the tariff. First, the tariff proposes to lower the rate on all mileage bands 31 miles and over. This reduction equates to $2,770,292 annually. The second part of this tariff filing is a volume discount which equates to a ~~$3,803,000~~ 4,724,000 revenue reduction.

The volume discount will apply to both residential and business customers. For each billing period, customers billed up to $10 in intraLATA toll will receive a one percent discount, for $10.01 to $25 - a ~~five~~ 5 1/2 percent discount, and for more than $25 - an ~~eight~~ 11% percent discount. The discounts will be applied on an account basis for calls carried by South Central Bell and are in addition to rate period discounts. The discounts will not apply to Optional Calling Plan calls, local exchange service charges, DA charges, operator-handled surcharges, or RegionServ calls. This volume discount will provide a benefit to those customers who rely on long distance service.

Q. DESCRIBE THE SWITCHED ACCESS CHARGE REDUCTION PROPOSED IN THE

TARIFF.

A. The annual projected gross revenue impact for Switched Access services is a reduction of $~~15,738,867~~ 17,895,470 to South Central Bell. The projected net revenue impact, assuming flow through of the access rate decreases by the IXCs, is a reduction of $~~13,300,000~~ 15,223,778. This reduction equals ~~approximately~~ more than half of the amount necessary to attain parity with current interstate Switched Access rates in Tennessee. Additionally, this reduction equates to approximately a twenty~~-two~~ five percent change in the composite Switched Access rate.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. South Central Bell's tariff filing will result in a much greater benefit to customers than does free DA. Present usage studies show that eighty percent of residential customers make five or fewer DA calls, and ninety-five percent of business customers make three or fewer DA calls. From our studies, the majority of Tennessee's customers will not even be affected by the DA charge proposed in the tariff.

There are many customer benefits to be gained from implementation of South Central Bell's proposed tariff:

* responsibility for paying for DA service shifted to the

individuals and businesses who use it frequently (i.e., move prices toward reflecting their underlying cost);

* lower MTS rates for the longer mileage bands;

* a volume discount for customers who use South Central Bell's intralata long distance service and, by choice or necessity, use long distance services frequently; and

* a reduction in the difference between intrastate and interstate access rates in Tennessee by approximately half.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

STATE OF TENNESSEE

Office of the Attorney General

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
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REGULATORY AUTH.

'99 APR 30 AM 11 50

EXECUTIVE SECRETARY

April 30, 1999

Mr David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: United Telephone-Southeast, Inc. Tariff to Reflect Proposed Changes Under Price Regulation Plan
Docket No. 98-00626

Dear Mr. Waddell:

I have enclosed an original and thirteen copies of Direct Testimony of Consumer Advocate Division witness Robert T. Buckner, Senior Regulatory Analyst in the above referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

L. Vincent Williams
Consumer Advocate

c: Counsel of record

#103500

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. TARIFF TO REFLECT PROPOSED CHANGES UNDER PRICE REGULATION PLAN
DOCKET NO. 98-00626

****

DIRECT TESTIMONY
of
ROBERT T. BUCKNER

****

April 30, 1999

#103500

Q. Please state your name for the record.

A. My name is Robert T. Buckner ("Terry").

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately twenty years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants. Additional education background with respect to my qualifications is provided in Exhibit No. 1 (Attachment A).

Q. Would you briefly describe your responsibilities as a Regulatory Analyst since your employment with the CA?

A. I prepared testimony and exhibits as an employee with the Commission before becoming a member of the CA. My responsibilities have not changed significantly since becoming employed with the CA.

Q. What is the purpose of your testimony before the Tennessee Regulatory Authority ("TRA")?

A. The purpose of my testimony is to present the CA's recommendations on the calculated amount to be used in changing United Telephone-Southeast ("UTSE") Tariff under their Price Regulation Plan in Tennessee Regulatory Authority ("TRA") Docket #98-00626. Also, my testimony will address the methodology set forth in the stipulation in TRA Docket #96-01423 and its concurrence with Tenn. Code Ann. § 65-5-209.

Q. By what amount should UTSE be allowed to change their Tariff under the Price Regulation Plan?

A. It is the CA's position that UTSE should reduce their Non-Basic Rates by an annual amount of $351,935 in contrast to UTSE's proposal to increase rates $2,072,472 for a total difference of $2,457,406. See Attachment B, Line 10 of Exhibit No. 1. This amount is consistent with the CA's Statement of Issues filed with the TRA on December 1, 1998.

Q. Does this reduction include the imputation of Yellow Page revenues?

A. No. UTSE has refused to identify the Yellow Page revenue that would have been imputed had the procedures that were in place in 1995 were being followed today. Consequently, the impact of this alleged deficiency cannot be determined at this time.

Q. Does the methodology as set forth in the stipulation in TRA Docket #96-01423 conflict with the requirements of Tenn. Code Ann. § 65-5-209?

A. No. The methodology does not conflict. Tenn. Code Ann. § 65-5-209 establishes the limit in the amount of rates increases that may occur in any one year:

> § **65-5-209(e)** A price regulation plan shall maintain affordable basic and non-basic rates by **permitting a maximum annual adjustment that is capped at the lesser of one half (1/2) the percentage change in inflation for the United States using the gross domestic product-price index ("GDP-PI") from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points.** An incumbent local exchange telephone company may adjust its rates for basic local exchange telephone services or non-basic services only so long as its aggregate revenues for basic local exchange telephone services or non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan. (Emphasis added.)

The stipulation establishes the method of determining the cumulative percentage increases and the maximum cumulative increase allowed over a period of years assuming that rates are increased the maximum allowed each year in accordance with Tenn. Code Ann. § 65-5-209. The stipulation does not modify the provisions of the statute and does not allow UTSE to increase rates in any one year more than the amount otherwise allowed under the statute. The maximum increase in any one year continues to be limited by the statute.

Additionally, the stipulation as interpreted by UTSE does conflict with the Telecommunications Act of 1996 and the FCC order in Docket #96-128. Section 276(b)(1)(B) of the Telecommunications Act (See Attachment E) directs the FCC to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments.... and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenue...." In its Docket #96-128, the FCC ordered such subsidies to be removed. UTSE has notified the TRA that its intrastate rates included an estimated subsidy for payphone operations of $143,500. (See Attachment D.) UTSE reduced its access charges to remove the subsidy in April 1997. If the base rates in effect on June 6, 1995 are used in the computation of the SPI as proposed by UTSE, this subsidy is restored. Clearly, this is contrary to the FCC's Orders.

Q. Does the methodology as adopted in the stipulation create an additional limit that was not specifically identified in Tenn. Code Ann. § 65-5-209?

A. Yes, it could. If the mix in the type of services being provided were to change materially, the formula for establishing the maximum cumulative increase could prohibit a company from increasing rates in any one year to the full amount otherwise allowable under Tenn. Code Ann. § 65-5-209.

Attachment C to my testimony is an example of how the stipulation could result in rates that are less than the maximum allowed under Tenn. Code Ann. § 65-5-209.

As shown on page 3 of the example, the adjustment allowed under Tenn. Code Ann. § 65-5-209 is a .8% reduction. The cumulative PRI as computed in accordance with the stipulation is 100.29%. However, when calculated using the rates that produce the .8% reduction the SPI is 101.23%. Since under the stipulation the SPI cannot exceed the PRI, the proposed rates that produce a .8% reduction would exceed those allowed under the stipulation. In this example, the rates allowed under the stipulation would be lower than those allowed by Tenn. Code Ann. § 65-5-209.

This does not indicate that the stipulated methodology is faulty. The parties simply agreed to a methodology that may result in some instances where rates are lower than the maximum allowed otherwise under the statute. As a result, the stipulation serves as the limiting factor. This does not indicate that there is a conflict between the statute and the stipulation since the resulting rates are lower than the maximum allowed by the statute. I have been advised by counsel that while the parties may agree on a procedure that imposes an additional limit on the level of rates, the parties cannot implement a procedure that results in rates greater than those allowed by statute.

Q. What caused the stipulation methodology to result in a lower rate level in the example?

A. The change in the mix of services. I point out that this is a hypothetical example that is being used for illustrative purposes and does not reflect an actual change in mix that has occurred.

Q. Does this conclude your testimony?

A. Yes, it does.

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. TARIFF TO REFLECT PROPOSED CHANGES UNDER PRICE REGULATION PLAN

DOCKET NO. 98-00626

****

EXHIBITS

****

April 30, 1999

#103500

Attachment A

Robert T. Buckner (Terry)

Senior Regulatory Analyst

Office of the Attorney General for the State of Tennessee

Consumer Advocate Division

Additional Education Background:

Micro-Computer Training, **University of Wisconsin, Madison**

Cost Separations School, **United States Telephone Association, San Diego**

Rate Case School, **Arthur Andersen LLP, Chicago**

Telecommunications Conference, **University of Georgia, Athens**

NARUC Conference, **Michigan State University, Lansing**

Management Training Seminar, **Vanderbilt University**

Interstate Access Settlements, **National Exchange Carrier Association**

SEARUC Conferences, **Birmingham, AL. and Charleston, S.C.**

Telephone Plant Accounting Program, **Ernst and Young LLP, Atlanta**

Sprint United Telephone-Southeast, Inc
1998 Annual Price Adjustment Filing

Line	Aggregate Non-Basic Revenues at Current Rates		Aggregate Non-Basic Revenues @ 6/98 Rates	
1	General Subscriber Service Tariff		$30,697,976 40 a/	
2	Access		9,103,137 60 b/	
3	Directory Revenue		58,353 60 c/	
4	Miscellaneous Revenues		4,132,349 88 d/	
5	Total Non-Basic per Company [L1+L2+L3+L4]			$43,991,817 48
	Computation of the Maximum Adjustment Factor			
6	Inflation First QTR 1997 vs First Qtr 1998	1 20% e/		
	Maximum Annual Adjustment Factor is the lesser of			
7	1/2 Inflation Rate [L6 X 5]	0 60%		
	or			
8	Inflation less 2% [L6-2%]	-0 80%		
9	Maximum Adjustment Factor [L8]			$\boxed{-0\ 80\%}$ f/
10	Maximum Allowed Annual Adjustment to Aggregate Non-Basic Revenue [L5 X L9]			($351,934 54)
	Aggregate Non-Basic Revenues Proposed Rates		**Aggregate Non-Basic Revenues @ UTSE Proposed Rates**	
11	General Subscriber Service Tariff		$32,755,722 24 a/	
12	Access		9,120,864 00 b/	
13	Directory Revenue		58,353 60 c/	
14	Miscellaneous Revenues		4,132,349 88 d/	
15	Total Company Proposed Non-Basic Revenue [L11+L12+L13+L14]		$46,067,289 72	
16	UTSE Proposed Increase in Aggregate Non-Basic Revenues [L15-L5]			$2,075,472 24
17	Proposed Increase in Aggregate Non-Basic Revenues Exceeds Allowed Adjustment [L16-L10]			$\boxed{\$2,427,406\ 78}$
18	UTSE Proposed % Increase in 1998 Non-Basic Aggregate Revenues		4 72%	

a/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service Price out page 12
b/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service (Access)Price out page 2
c/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service General Ledger [Directory compensation] page 1
d/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service General Ledger [Miscellaneous] page 1
e/ ATTACHMENT B of Sprint UTSE's Filing as revised 10/16/98
f/ Tenn Code Ann 65-5-209

Hypothetical Example

Proposed changes for each of the three years fall under the maximum annual increase allowed under Tenn Code Ann. 65-5-209. However in the third year the proposed rates exceed the maximum level established by the Stipulation accepted in 1996.

Assumptions:	Year 1	Year 2	Year 3
Inflation (GDP-PI)	2 40%	2.70%	1 20%
Maximum Factor [Lesser of (1/2)X(GPI-PI) or(GDP-2%)]	0 40%	0.70%	-0.80%
Year 1 - rate reduction			
Year 2 - No rate change			
Year 3- Rate reduced inaccordance with Tenn. Code Ann 65-5-209			

Computed Results			
Computed Annual Increase	-1.00%	0 00%	-0.80%
Computed PRI per Stipulation	100 40%	101 10%	100.29%
Computed SPI per Stipulation	99 00%	99 00%	101.23%
SPI Exceeds the Cumulative PRI by			0.93%

Year 1
Companson of SPI, PRI, and Annual Increase

	Base/Current Rates			Proposed Rate			
Service	Volume	Initial Rates	Revenue	Volume	Proposed Rates	Revenue	
Service 1	1,000	$1 000	$1,000 00	1,000	$0 9900	$990.00	
Service 2	4,000	2 0000	8,000.00	4,000	$1 9800	7,920.00	
Service 3	200	5 0000	1,000.00	200	$4 9500	990.00	
Service 4	600	7 0000	4,200.00	600	$6.9300	4,158.00	
Service 5	800	3.0000	2,400.00	800	$2 9700	2,376.00	
Service 6	900	4 0000	3,600.00	900	$3 9600	3,564.00	
			$20,200 00	Aggregate Revenue		$19,998 00	99 00% SPI
				PRI			100 40% PRI
				Annual % Change			-1.00%
				Cumulative Change			-1.00%

Year 1 proposed rate changes comply with both Tenn Code Ann 65-5-209 and the Stipulation

ATTACHMENT C
page 2 of 4

Hypothetical Example
Year 2

Comparison of proposed increase with annual limit per statute.

	Current Rates			Proposed Rate			
	Current	Current			Proposed		
Service	Volumes	Rates	Revenue	Volume	Rates	Revenue	
Service 1	1,100	$0 9900	$1,089 00	1,100	$1.2500	$1,375 00	
Service 2	4,500	1 9800	8,910 00	4,500	2.2500	10,125 00	
Service 3	300	4 9500	1,485.00	300	4.9500	1,485.00	
Service 4	650	6 9300	4,504.50	650	6 9300	4,504.50	
Service 5	850	2 9700	2,524.50	850	2 9700	2,524.50	
Service 6	1,000	3 9600	3,960.00	1,000	2 4590	2,459 00	
Aggregate Revenues			$22,473.00	Aggregate Revenues		$22,473 00	100.00%
				Allowed annual increase			0 70%
				Annual % Change			0 00%

Comparison of PRI with SPI.

	Base Rates			Proposed Rate			
	Current	Initial			Proposed		
Service	Volumes	Rates	Revenue	Volume	Rates	Revenue	
Service 1	1,100	$1 0000	$1,100.00	1,100	$1.2500	$1,375 00	
Service 2	4,500	2 0000	9,000 00	4,500	2 2500	10,125 00	
Service 3	300	5 0000	1,500.00	300	4.9500	1,485 00	
Service 4	650	7 0000	4,550 00	650	6.9300	4,504 50	
Service 5	850	3 0000	2,550.00	850	2.9700	2,524.50	
Service 6	1,000	4 0000	4,000 00	1,000	2 4590	2,459 00	
Aggregate Revenues			$22,700.00	Aggregate Revenues		$22,473.00	99.0000% =SPI
				Cumulative % Change			-1 00%
							101.10% =PRI
				Allowed Cumulative % Change			1 10%

Year 2 proposed rate changes comply with both Tenn Code Ann 65-5-209 and the 1996 Stipulation

Hypothetical Example
Year 3

Comparison of proposed increase with annual limit per statute.

	Current Rates			Proposed Rate			
Service	Current Volumes	Current Rates	Revenue	Volume	Proposed Rates	Revenue	
Service 1	3,100	$1.2500	$3,875.00	3,100	$1 5000	$4,650 00	
Service 2	5,000	$2 2500	11,250.00	5,000	$2 3000	11,500.00	
Service 3	450	$4 9500	2,227.50	450	$4 9000	2,205.00	
Service 4	700	$6 9300	4,851.00	700	$6 9300	4,851 00	
Service 5	860	$2.9700	2,554 20	860	$2.9000	2,494 00	
Service 6	900	$2 4590	2,213.10	900	$1.1720	1,054 80	
Aggregate Revenues			$26,970.80	Aggregate Revenues		$26,754 80	99 20%
				Allowed annual Increase			-0 80%
				Annual % Change			-0 80%

Comparison of PRI with SPI.

	Base Rates			Proposed Rate			
Service	Current Volumes	Initial Rates	Revenue	Volume	Proposed Rates	Revenue	
Service 1	3,100	$1 0000	$3,100.00	3,100	$1.5000	$4,650 00	
Service 2	5,000	$2 0000	10,000 00	5,000	$2.3000	11,500.00	
Service 3	450	$5 0000	2,250 00	450	$4.9000	2,205.00	
Service 4	700	$7 0000	4,900.00	700	$6.9300	4,851.00	
Service 5	860	$3 0000	2,580.00	860	$2.9000	2,494.00	
Service 6	900	$4.0000	3,600.00	900	$1.1720	1,054.80	
Aggregate Revenues			$26,430.00	Aggregate Revenues		$26,754 80	101.23% =SPI
				Cumulaltive % Change			1.23%
				PRI			100.29% PRI
				Allowed Cumulative % Change			0 29%

Year 3 rate changes comply with the limit in Tenn. Code Ann. 65-5-209 but exceed the limit established by the 1996 Stipulation.

Computation of Cumulative Adjustment Limit

	First Qtr. 1995 vs First Qtr 1996	First Qtr. 1996 vs First Qtr 1997	First Qtr. 1997 vs First Qtr 1998
Inflation (GPI-PI)	2 40%	2.70%	1.20%
Calculation			
Step 1			
Base Rate of 100	100.00%	100.00%	100.00%
Step 2			
Plus: The lessor of			
1/2 Inflation Rate	1.20%	1 35%	0 60%
or			
Inflation Rate - 2%	0 40%	0 70%	-0.80%
Annual Adjustment Factor Tenn Code Ann. 65-5-209	0 40%	0 70%	-0 80%
	100 40%	100 70%	99.20%
Step 3			
Divided by 100%	1 004	1.007	0 992
Step 4			
Current PRI	100 00%	100 40%	101 10%
New PRI=Current PRI X Annual Adjustment Factor	100 4000%	101.1028%	100 2940%

Attachment D

May 27, 1997

MEMORANDUM

TO: Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director

FROM: Chris Klein, Chief Utility Rate Division
Mike Gaines, Telecommunications Manager

SUBJECT: Tariff filing by United Telephone Southeast (UTSE) to reduce the intrastate CCLC access rate to remove the subsidy to pay telephones. Tariff 97-206, Docket 97-00409

UTSE filed tariffs effective April 1, 1997, to remove payphone operations from its tariffs. At that time, UTSE estimated the subsidy to payphone operations to be immaterial and did not reduce rates. However, on May 19, 1997, UTSE submitted a revised subsidy estimate and filed this tariff to reduce access rates $143,500, effective the same day.

The Staff reviewed this estimated amount, but has not audited the number because this matter will be addressed in the pending Payphone Docket 97-00409. Unless otherwise notified, this tariff will go into effect pending the outcome of Docket 97-00409.

cc: Docket File 97-00409

Attachment E

Telecommunications Act of 1996 Section 276

"SEC. 276. PROVISION OF PAYPHONE SERVICE.

"(a) NONDISCRIMINATION SAFEGUARDS.--After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

"(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

"(2) shall not prefer or discriminate in favor of its payphone service.

"(b) REGULATIONS.--

"(1) CONTENTS OF REGULATIONS.--In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

"(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

"(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and <u>all intrastate</u> and interstate <u>payphone subsidies from basic exchange and exchange access revenues</u>, in favor of a compensation plan as specified in subparagraph (A); (Emphasis Added)

"(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

"(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

"(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

"(2) PUBLIC INTEREST TELEPHONES.--In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably

"(3) EXISTING CONTRACTS.--Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996

"(c) STATE PREEMPTION.--To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

"(d) DEFINITION --As used in this section, the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.".

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE: UNITED TELEPHONE-SOUTHEAST, INC TARIFF TO REFLECT PROPOSED CHANGES UNDER PRICE REGULATION PLAN	)	DOCKET NO. 98-00626

AFFIDAVIT

I, Robert T Buckner, Senior Regulatory Analyst for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above referenced case and the opinion of the Consumer Advocate Division

Terry Buckner

Sworn to and subscribed before me
this 13th day of April, 1999.

Teresa G. Harris
NOTARY PUBLIC

My commission expires on. Jan. 25, 2003

#103500

CERTIFICATE OF SERVICE

I hereby certify that this document was served on parties of record by U.S. Mail or by facsimile this 30th day of April, 1999.

James B. Wright, Esq.
United Telephone-Southeast, Inc
14111 Capital Blvd.
Wake Forest, NC 27587-5900

R. Vincent Williams

#103500

STATE OF TENNESSEE

Office of the Attorney General

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July 30, 1999

Mr David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee
Docket No. 98-00559

Dear Mr. Waddell:

I have enclosed an original and thirteen copies of Rebuttal Testimony of Consumer Advocate Division witness Robert T. Buckner, Senior Regulatory Analyst, in the above referenced matter Copies are being furnished to counsel of record for interested parties.

Sincerely,

L. Vincent Williams
Consumer Advocate

c: Counsel of record

15999

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: PROCEEDING FOR THE PURPOSE OF ADDRESSING COMPETITIVE EFFECTS OF CONTRACT SERVICE ARRANGEMENTS FILED BY BELLSOUTH TELECOMMUNICATIONS, INC. IN TENNESSEE
DOCKET NO. 98-00559

****

REBUTTAL TESTIMONY
of
ROBERT T. BUCKNER

****

July 30, 1999

15999

Q. Please state your name for the record.

A. My name is Robert T.("Terry") Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately twenty years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS Telecom") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Certified Public Accountant, a member of the Tennessee Society of Certified Accountants, and a member of the American Institute of

Certified Public Accountants. Additional education background with respect to my qualifications is provided in Exhibit RTB-1.

Q. Would you briefly describe your responsibilities as a Senior Regulatory Analyst since your employment with the CA?

A. Before becoming a member of the CA, I prepared testimony and financial exhibits as an employee with the Commission. Since becoming employed with the CA, my responsibilities have not changed significantly.

Q. What is the purpose of your testimony before the Tennessee Regulatory Authority ("TRA")?

A. The purpose of my testimony is to present factual information, which supports the CA's position concerning the two Contract Service Arrangements ("CSAs") initiated by BellSouth ("Bell") in TRA Dockets #99-00210 and #99-00244, CSA's TN98-2766-00 and KY98-4958-00 respectively, and to respond to the positions taken by Bell's witness Frame.

Q. Have you done any other analysis of Bell's CSAs than the work specifically related to these two CSAs?

A. Yes. In Docket #97-01105, I reviewed many of Bell's CSAs that had been filed for period of time in 1997. I set forth the results of my review in a document filed in that docket entitled, *Consumer Advocate Division's Comments on BellSouth's Contract Service Arrangements*, July 22, 1998. At this time, I wish to adopt my opinion as set forth in that document as part of my testimony in the present Dockets. A copy of the Comments on BellSouth's Contract Service Arrangements is attached as Exhibit RTB-2.

Q. In your investigation of Docket #97-01105, what was Bell's apparent motive for CSAs?

A. I met with representatives of Bell on February 18, 1998 to discuss the matter of CSAs. I concluded from our discussions that it was Bell's position that there were three basic reasons for the CSAs: (1) Response to a competitive telecommunications provider; (2) To protect Bell's revenue stream for the long-term; and (3) As an incentive for customers to increase the usage of services.

Q. In the meeting of February 18, 1998, what was the basis for determining discount levels?

A. The basis for determining the discount levels was the following: (1) Up to the individual marketer; (2) There was no specific Bell policy for determination; and (3) The discount amount was dependent upon the volume of services purchased by the customer.

Q. How is the information gained in Docket #97-01105 relevant to these Dockets?

A. I believe that the information is relevant in that it is indicative of the fluid and evolving nature of the CSAs in Tennessee. Additionally, there is evidence of anti-competitive behavior and price discrimination.

Q. In these Dockets, the Bell witness, Mr. Frame, defends the CSAs primarily on the basis of competition. (See Frame Direct Testimony, Page 2, Lines 19-21.) Has the TRA, the FCC, or any other authority found that Bell has complied with the requirements necessary to open its local market in Tennessee to competition?

A. No. The Telecommunications Act of 1996 requires incumbents such as Bell to take action to allow competition to develop in the local market. Those requirements are found in Sections 251 and 252 of the Act. In Section 271(B), a checklist is provided for determining if an incumbent Regional Bell Operating Company ("RBOC"), such as Bell, has complied with Sections 251 and 252. Neither the TRA, the FCC, nor any other appropriate authority has found that Bell has yet complied with the requirements of the Act in Tennessee.

In May 1998, the TRA conducted an extensive hearing of more than ten days in Docket #97-00309 for the purpose of determining if Bell had opened its local market in Tennessee to competition in accordance with the Act and as required to be eligible to enter the regional interLATA long distance market. On April 8, 1999, Bell filed a Notice of Voluntary Dismissal and Withdrawal in Docket #97-00309 volunteering to withdraw its request that the TRA find that it had opened its market to allow competition as required by the Telecommunications Act of 1996. Since April 8, 1999, Bell has not filed or otherwise provided persuasive evidence that it has opened its local Tennessee market to competition.

Q. Have you reviewed the "Rate Assurance" provisions included in the CSA identified by Bell as CSA TN-98-2766-00?

A. Yes, on page 9 of the CSA TN98-2766-00 in Docket #99-00210, the following provision is found:

> If _____ is offered a service proposal from an unauthorized carrier that is comparable both in rate and in level of support provided by BellSouth for any V&T Eligible Service which priced at least 15% less than those provided to _____ by BellSouth which priced at least 15% less than those provided to _____ by BellSouth then these services may be considered for a price reduction. ______shall provide

> BellSouth written notice of the service proposal, and sufficient information to validate the terms and rates of the offer and the option to respond to the alternative proposal.
>
> BellSouth shall respond in writing within seven (7) calendar days as to whether or not BellSouth will pursue a new rate for _____. In the event BellSouth elects to respond to the offering from the alternative carrier and offers _____ a service proposal with rates that are within ten percent (10%) of the alternative carrier's competitive offering, this agreement shall continue in effect at the new customized rate and charges until the expiration of the V&T Agreement. The parties shall amend the Minimum Annual Revenue Base and the corresponding Discount Levels listed in Appendix II to reflect the rate reduction and any other portions of the Agreement necessary to effect this Rate Assurance Adjustment
>
> If BellSouth elects not to respond to the offer from the alternative carrier or does not offer _____ a service proposal with rates that are within ten percent (10%) of the alternative carrier's offering, the parties shall amend Appendix IA, Appendix IB and Appendix II and any other pertinent provisions of this Agreement as necessary to reduce _____'s Minimum Annual Revenue Base, the Annual Revenue Base and the corresponding Discount Levels listed in Appendix II, if necessary, to permit _____ to purchase the services in question from the alternative carrier.

While this provision is labeled "Rate Assurance," the assurance provided is that Bell will be able to stop a customer from moving to a competitor of Bell. This provision does not assure the customer that

Bell will match a competitor's offer. Instead, it tends to guarantee that Bell can retain the customer by offering to provide the service at rates that are 10% higher than the rates offered by the competitor. While the customer could theoretically reject the higher Bell rates, the punitive effect of the termination penalty included in the CSA would likely result in any potential saving being captured by Bell and not by the customer.

Q. What amount of a discount would a competitor have to offer the customer under this CSA before Bell would need to respond?

A. Under this provision, a competitor would have to offer the customer a rate that is 23.5% below Bell's Tariffed rate before Bell would even have to consider responding.

As stated, the prices offered by the competitor must be priced at least 15% less than those provided by Bell under the contract. Since the CSA provides a discount of 10%, the prices under the CSA are at 90% of the tariffed rates for the services provided. A 15% reduction in these rates would require the offered rates to be equal to 76.5% of the tariffed rates. (90% X 85%= 76.5%) This, of course, reflects a 23.5% discount.

Bell CSA provided Discount off Tariffed Rates	10%
Bells' Rates as % of Tariffed	90%
The required competitive offer must be 15% below Bell	90% X 85%=76 5% of Tariffed Rates
Total minimum discounts offered by the Competitor	100% - 76 5%=23.5%

Q. What level of a discount would Bell have to include in its counter offer in order to invoke the termination penalty if the customer elects to purchase service from the competitor?

A. Since Bell needs only to come within 10% of the competitor in order to bind the customer, Bell is only required to increase its contract discount from 10% to 15.85%.

A competitor offers a 23 5% discount off Bell Tariffed Rates Competitors' rates as a percent of Tariffed	76 5%
Bells' response must be within 10% of Competitive offer	79 5% X 110%=84 15%
Discount Required by Bell to retain the customer	100%-84 15%=15.85%

As a result, the customer would not be able to take advantage of what might otherwise be deemed a more economic and competitive offer, but instead will be bound to Bell.

While the customer could theoretically reject the Bell counter offer of the 15.85% discount, the punitive termination provision would likely eliminate any savings.

How the termination provision would penalize the customer depends on when the contract terminates. As Mr. Frame stated in his pre-filed testimony, termination of the contract at the end of a contract year results in a flat charge. (See Frame Direct Testimony, Page 18, Lines 6-8.) However, if the contract is terminated during a contact year, the charge is likely to be much greater.

> IX Termination Liability
>
> B If written notice of termination is delivered to BellSouth to be effective prior to the end of the current V&T Contract Year, BellSouth will bill ____ the appropriate termination charges calculated in A. above, in addition to an amount equal to the difference between the current Contract Year to date billing for V&T Eligible billings and the current year Minimum Annual Revenue Base.

The Minimum Annual Revenue Base for CSA TN98-2766-00 is $5,750,000. Therefore, if the contract is to terminate in the middle of the year and the customer has been billed only $2,850,000, the termination penalty will be $2,850,000 in addition to the flat rate charge as stated by Mr. Frame.

Q. Would the customer be subject to any additional termination charges?

A. Yes. Paragraph C of Section IX of CSA TN98-2766-00 provides:

> C. The application of termination charges pursuant to this Section shall not affect the application of termination charges pursuant to the tariff or any other agreement.

In accordance with BellSouth's tariffs, the customer would be liable for termination charges for some of the services listed on Mr. Frame's Exhibit RLF-1. For example, from the discounted rate for MegaLink® ISDN identified on the exhibit, it appears that the customer has entered into a 49-72 month agreement[1] to purchase this service. Therefore, the provision of BellSouth's Tariff Section B7.5.4 E would apply.

> Tariff Section B7.5.4
>
> E. A Termination Liability Charge is applicable at the date of termination. The applicable charge is dependent on the contract period subscribed to and will be equal to the number of months remaining in the contract times the monthly rate provided under the contract.

Therefore, not only would the customer be liable for the

[1] The rate for MegaLinK® ISDN on Exhibit RLF-1 is $217.50 with a 13% discount Therefore the pre-discounted rate would be $250 ($217 5/ 87%= $250.00) BellSouth Tariff Section 7 5 6 D (1) Primary Rate Interface for a 49-72 month commitment is $250 00 / month USOC PRFS1

termination penalty in Section IX of the CSA, but the customer would also be required to pay $250 for each MegaLink ®ISDN Primary Rate Interface for each of the remaining months on its contract to purchase MegaLink ®ISDN service.

Q. Are the termination provisions in this CSA consistent with those included in other Bell CSAs?

A. No. The termination provisions in this CSA and CSA KY 98-4598-00 are different from some other CSA's filed by Bell. For example, in some CSAs the cancellation language is patterned as follows:

> If Subscriber cancels this Agreement at any time prior to the expiration of the service period set forth in this agreement, Subscriber shall be responsible for all termination charges. Unless otherwise specified by tariff, termination charges are defined as **reasonable** charges due or remaining as a result of the minimum service period agreed to by Company and Subscriber and set forth in the Attachments. (Emphasis added.)

While the provision calls for the termination charge to be reasonable, as evident from information obtained during our review of the CSA process, the actual charges set forth in the CSA Attachments are arbitrary and dependent upon the ability of the customer to negotiate. For example, Bell provided copies of correspondence between certain of its employees that included the following discussions:

> ....wants the first year termination liability to be reduced $75K ($325,000 to $250,000). This shouldn't be an issue since I added an additional $!00K(sic) as a termination liability in the first year of the Supplemental agreement.
>
> ....I have done some calculations on the services that we have under contract at _____. Based on the termination penalties on these contracts I share _____ concern that they would be "double gigged" in the highly unlikely event of an early termination on an MSA. For example, if_____ enters into a 36 month MSA agreement with an effective date of 2/01/97, but they cancel ALL services through BellSouth at the conclusion of year 1 on 2/01/98, their termination penalties would be as follows
>
> $938,000 Contract termination penalties (ESSX, SMARTPath, PRI ISDN, Synchronet)
> <u>$775,000</u> MSA cancellation penalty at end of Year 1
>
> $1,713,000 TOTAL TERMINATION PENALTY
>
> _____understands that the individual contracts and the MSA agreement are two different issues, but they do not feel that we should have such hefty penalties. My contact tells me that if we can get the MSA penalties more like the following, we can continue with negotiations:
>
> $266,000 Year 1
> $134,000 Year 2

(See Exhibit RTB-3.)

From these statements, I infer that the termination liabilities included in these contracts are not based on Bell's unrecovered costs or damages that might be incurred by Bell if the contract is breached by the customer. Instead, termination liabilities are largely arbitrary and subject to the ability of the customer's and of Bell's negotiators.

Further, these exorbitant Termination Liability amounts are not a financial incentive to the customer as Bell contends, but a penalty imposed on customers. Otherwise, the customer might select services from a competing telecommunications service provider that offers more economical rates. A true financial incentive for the customer would be additional discounts at greater service volumes, not the penalty of paying for services the customer no longer wishes to receive.

The revised termination provisions in CSA KY98-4598-00, however, tie the penalties to the discounts received, and do not reflect incurred costs or damages to Bell, which might result from the termination of the contract.

Q. Does CSA KY98-4958-00 include the same "Rate Assurance" provisions as CSA TN98-2766-00?

A. No. The Rate Assurance provision is not included in KY98-4958-00.

Q. Is the computation of the termination penalty under CSA KY98-4958-00 consistent with computation under CSA TN98-2766-00?

A. No. Although when Bell filed the CSA, a page identified as "Additional Terms and Conditions" included replacement language for the computation of the termination liability that would have been similar, Mr. Frame testified that the substitute language was not accepted for CSA TN98-2766-00. (See Frame Direct Testimony, Page 17, Line 16.)

Q. Does the Consumer Advocate Division have a concern with the termination provisions in CSA KY98-4958-00?

A. Yes. While the procedure for determining the termination penalty is different in CSA KY98-4958-00 than in CSA TN98-2766-00, it also results in an amount that is not related to any cost or damages that Bell would incur as the result of the contract being prematurely terminated.

In fact, the procedure works somewhat in reverse of what one might expect. It would normally be expected, that the longer the contract has been in effect and the less time remaining on the contact when terminated, the smaller the termination liability. This is not the case as stated in the revised language of CSA KY98-4958-00. The termination penalty actually increases each month for the first year and then remains constant. Therefore, if the customer terminates the contact at the end of the first year or even at the end of the 35th month, when there is only one month remaining on the contract, the termination penalty will be the same. Obviously, any damages, that Bell incurs as the result of the early termination, would not be the same if the contract is terminated after one year when compared to termination with only a month remaining. This termination penalty is unjust and unreasonable.

Q. You state that the termination penalty is not related to costs incurred by Bell. Doesn't the revised language in KY98-4958-00 specifically address costs incurred by Bell?

A. Yes, it does. The recovery of the costs, however, is in addition to the penalty computed based on the length of time that the CSA has been in place.

Q. Are there other provisions in these CSAs that cause you concern?

A. In addition to the anti-competitive "Rate Assurance" provision in CSA TN98-2766-00 (TRA Docket #99-00210) and the punitive termination provision as previously discussed, these and other CSAs filed by Bell are discriminatory.

Q. Does Tennessee law prohibit discrimination?

A. Yes. Discrimination is addressed in several statutes. For example, Tenn. Code Ann. §65-4-122. Discriminatory charges - Reasonableness of rates - Unreasonable preferences - Penalties provides the following:

> (a) If **any common carrier** or public service company, directly or indirectly, **by** __**any special rate**__, __**rebate**__, __**drawback**__, or **other device, charges, demands, collects,** or **receives** from any person a **greater** or **less compensation** for **any service** within this state **than it charges, demands, collects,** or **receives** from **any other person** for **service of a like kind under substantially like circumstances and conditions**, and if such common carrier or such other public service company **makes any preference between the parties aforementioned** such common carrier or other public service company commits **unjust discrimination**, which **is prohibited** and **declared unlawful**. (Emphasis Added.)

Q. Is Bell a common carrier?

A. Yes.

Q. Does Bell directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives

from any other person for service of a like kind under substantially like circumstances and conditions?

A. Yes. Paragraphs II A, B, C, D, & E, III A of CSA KY98-4958-00 (TRA Docket #99-00244) and paragraphs II A & B of CSA TN 98-2766-00 (TRA Docket #99-00210) provide that service will be furnished to these two customers at a discounted rate, with the amount of the discount being dependent upon the amount of service to which the customer commits to purchase. The level of the service commitment is measured by total revenue collected from the customers. If the actual volume (revenue) during the contract year exceeds the projected volume, the customer is to receive a rebate.

As provided in paragraph III A, the customer served under CSA TN98-2766-00 will be billed for services at rates 10% less than the tariffed rates if the customer purchases the contracted level of service. If, however, in accordance with paragraph XIV B, the customer's annual billing equals or exceeds $6,250,000, the customer will receive a rebate equal to an additional 1%. If the customer's actual purchase equals or exceeds $6,750,000, the rebate is increased to an additional 2% and to an additional 3%, if the actual purchase equals or exceeds $7,250,000. Bell is providing these customers both a discount and a rebate.

Q. Are the same discounts and rebates provided to these two customers of the CSAs in this case?

A. No. When the discount and rebate provisions of the two contracts in this proceeding are compared, it is obvious that the amounts being charged, demanded, billed, and collected are lesser for one than the other. For example, the customer served in CSA TN98-2766-00 is required to purchase $4,750,000 in order to obtain an 8% discount, while the customer served under CSA KY98-4598-00 is required to purchase half the service of $2,375,000 to obtain the same 8% discount. In order to obtain an 11% discount, the customer served under CSA TN98-2766-00 must purchase $6,250,000 of service, while the customer served under CSA KY98-4598-00 must purchase only $3,000,000.

Q. Is the difference in the amount of the discounts based on a difference in the cost?

A. No. The CA previously requested Bell to admit that the difference in the rates charged customers under the approved tariffs and the CSAs was no greater than the difference in the cost of providing the service to the customers served under the CSAs. Bell responded that it could neither admit nor deny because it had not performed the analysis required. Consistent with its response to our discovery request, the cost studies filed by Bell in support of the CSAs in this docket do not reflect customers specific cost, but are the same cost supports that Bell filed in support of its tariffed rates for the services provided under the CSA. When this data is reviewed, it found that many of the services are common to both CSAs, and that the same costs are identified. This again supports the position that the difference in the rates charged under CSA KY98-4958-00 (TRA Docket #99-00244) and CSA TN98-2766-00 (TRA Docket #99-00210) is not based on the costs of providing the services.

Q. Are the same discounts and rebates provided to these customers as the discounts and rebates provided to other customers, who purchase service under CSAs?

A. No. To illustrate that different discounts and rebates are being offered. The following table is provided, which identifies the percent discount provided under the two CSAs that are the specific subject of these dockets as well as discounts provided to customers that are parties to four other CSAs filed by Bell. While each of the CSAs requires the customer to commit to purchase service for a three year period, the amount of service that the customers must agree to purchase in order to qualify for the discounts varies greatly. As I previously explained, the customer served in CSA TN98-2766-00 is required to purchase $4,750,000 in order to obtain an 8% discount, while the customer served under CSA KY98-4598-00 is required to purchase half the service, $2,375,000 to obtain the same 8% discount.

In order to obtain an 11% discount, the customer served under CSA TN98-2766-00 must purchase $6,250,000 of service, while the customer served under CSA KY98-4598-00 must purchase only $3,000,000.

This disparity in the amount of revenue required to obtain the discount is also present with CSA TN97-1641-00, which requires the customer to purchase $5,000,000 of service to obtain a 12% discount, while the customer served under CSA TN98-2766-00 must purchase $6,500,000.

Similarly, the customer that is a party to CSA TN97-5138-00 receives a 10.5% discount by committing to purchase only $1,360,000 of service, while the customers under CSAs TN98-2766-00 and KY98-4598-00 must purchase $5,750,000 and $2,750,000 respectively, in order to obtain 10% discounts.

Other Example CSAs

Discount Provided by CSA	Required Volume under CSA TN98-2766-00	Required Volume under CSA KY98-4598-00	Required Volume under CSA TN96-7973-01	Required Volume under CSA TN96-7961-02	Required Volume under CSA TN97-1641-00	Required Volume under CSA TN97-5138-00	Required Volume under CSA TN96-7967-03
2.0%							
3 0%							
4.0%			$104,236				
5 0%				$284,648			$63,516
6 0%		$2,000,000					
7 0%		$2,250,000					
8.0%	$4,750,000	$2,375,000					
9.0%	$5,250,000	$2,500,000					
10 0%	$5,750,000	$2,750,000					
10 5%						$1,360,000	
11 0%	$6,250,000	$3,000,000					
11 5%						$1,632,000	
12 0%	$6,750,000				$5,000,000		
12 5%						$1,904,000	
13 0%	$7,250,000						

Q. Why is it appropriate to compare the discount in these CSAs that are subject to this proceeding with the discounts offered in other CSAs?

A. To determine if CSAs, CSA TN98-2766-00, and CSA KY98-4598-00 are discriminatory, it is not appropriate to simply compare the rates charged the two customers served under these two CSAs. The rates charged in these dockets must be compared to those charged other customers, who are provided service under tariffed rates or under other CSAs. The table, which is provided here, is not an attempt to identify all of the CSAs that provide for discriminatory rates. The comparisons' presented in the table, however, accurately represent the unjust disparities in the rates that exist among the CSAs filed by Bell.

Q. Have you made any comparison of the rates charged for specific services billed under the CSAs and those for customers billed under Bell's General Subscriber Service Tariff rates?

A. Yes. The following table compares the rates charged for some of the services under the provision of the CSAs with the rates for the same service billed at the General Subscriber Service Tariff rates. Again, these are only examples of the disparity and are not intended to be all inclusive. Attachment III,[2] which was filed with the TRA in support of CSA TN98-2766-00 and identifies the services provided in accordance with that CSA, consists of 17 pages. I have not prepared a schedule that compares the discounted rates charged with the tariffed rates for each service on that listing or for all of the services listed on

[2] Exhibit RLF-1 filed by BellSouth as an exhibit to Mr. Frame's testimony is a duplicate of Attachment III.

similar supporting schedules filed in support of the other CSAs. Instead, I have compared the rates for some of the more familiar services.

As shown in this table, the price demanded, charged, and collected from a customer, who purchases one party business line (USOC[3] 1FB) service at the tariffed rate in a Group 5 exchange is $39.70 per month. (Group 5 Exchanges are those exchanges, which have 300,001 -500,000 lines, see BST TN Tariff Section A 3.2.1 Eighth Revised Page 1.1) Bell collects $34.54[4] per month for this service from the customer billed in accordance with CSA TN98-2766-00. This is a $5.16 difference. The customer served under KY98-4598-00 is charged $35.53 [1] and the customers served under CSAs TN96-7961-02, TN97-1641-00, and TN97-5138-00 are charged $37.72, $34.94, and $31.87 respectively, for this same one party business line service. This evidence shows an unjust difference in rates for exactly the same service.

[3] USOC (Universal Service Ordering Code)

[4] This is the rate at the maximum discount level provided under the contract.

Q. Are their similar disparities between the rates charged customers served under Bell's General Subscriber Service Tariff and those served under these CSAs for other services?

A. Yes. The charges for single business lines in rate group 3 & 4 exchanges are compared as are the charges for MegaLink ® ISDN, MegaLink ®Channel Service, and DID service. In each instance, the customers, who are billed the General Subscriber Service Tariff Rates pay more than those billed under the CSAs.

Q. Are the same amounts billed for these services under the various CSAs?

A. No The discounts provided under the CSAs vary. Therefore, the amount charged for the same services are different under the various CSAs.

Service	USOC	Tariff Rate	Rate CSA TN98-2766-00[5]	Rate CSA KY98-4958-00[1]	Rate CSA TN96-7961-02	Rate CSA TN96-7973-01	Rate CSA TN97-1641-00	Rate CSA TN97-5138-00[1]
Flat Rate Business Line	1 FB Group 5	$39 70	$34 54	$35 33	$37 72		$34 94[6]	$31.87[7]
Flat Rate Business Line	1 FB Group 4	$39 05	$33 97	$34 75				
Flat Rate Business Line	1 FB Group 3	$32 75	$28 49	$29 15		$31 44[8]		
Megalink ISDN	PRFS1 (3yr commit)	$260 00	$217 50[9]		$247 00	$240 00		
Megalink Channel Service	VUM 24 (3 yr commit)	$189 00	$182 70[10] 164 43	$168 21				$165 38
DID/AIOD	NDT	$20 00[11]	$17 40	$17 80	$19 00	$19 20	$17 60	$17 56

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[5] Prices based on the maximum discount provided under the CSA

[6] Tariff Rate Group 1 $39 70 X 88%=$34.94 (100%-12%=88%)

[7] Discounted rate per workpapers filed with the TRA Staff in support of CSA

[8] Clarksville is a Class 3 rate schedule wire center. The business rate for a class 3 wire center is $32.75 (BellSouth Tariff Eighth revised page 1.1 Tariff Section A3 2 1, and Fifteenth revised page 20, Tariff Section A3 7 1) Discount is 4% $32 75 X 96%=$31 44.

[9] The Tariff rates for MegaLink®ISDN service are $360/ month, Month to Month, $260/ month with a contract commitment 24 - 48 months, $250/ month with a contract commitment 49-72 months, $240 / month with a contract commitment 73 - 96 months (BellSouth Tariff Section B7 5.6 First Revised Page 37 4)While each of these contracts are for 3 years the discount for MegaLink ®ISDN service under CSA TN98-2766-00 appears to have been computed on Attachment III assuming a $250 / month rate indicating a commitment of at least 49 months. It appears that the discounted rate for TN96-7961-02 was computed based on the $260/month for a 3 yr commitment The discounted rate for TN96-7973-01 again appears to have been computed assuming that the $250/month rate for a 49 to 72 month commitment was used $250 discounted 4% is $240.

[10] The Tariff rates for MegaLink® Channel Service are $210/month, Month to Month, $189/ month with a contract commitment 24 - 48 months, $171/ month with a contract commitment 49-72 months, $154/ month with a contract commitment 73 - 96 months (BellSouth Tariff Section B7 3 4 First Revised Page 19)Each of these contracts are for 3 years. Therefore it would appear that the discounts would have been computed based on the $189 tariffed rates The discounted rate for CSA TN98-2766-00 would be $164 43 (13% discount) instead of the discounted rate of $182 70 based on the Month to Month rate of $210 The result is an actual discount is only 3 4%. (182 70/189=96 6%) [Four MegaLink® Channel were discounted to $164 43, apparently based on a 3 yr contract commitment.]

The discounted rate for KY98-4958-00 was computed correctly using the $189 rate for a 24-48 month contract $189 discounted at 11% is $168 21

[11] BellSouth Tariff Section A12.7 2 Eighth Revised Page 2

Q. Is the customer billed under CSA TN98-2766-00 provided any additional discounts from that specified in the CSA?

A. Yes. For example, Bell's Tariff Section B7.5.6 First Revised Page 37.4 provides that the monthly rate for MegaLink® ISDN service is $360. If the subscriber commits to take the service for a period of 24 to 48 months, the rate is discounted to $260. (A 27.7% discount.) If the customer commits to take the service for a period of 49 to 72 months, the rate is reduced to $250 and to $240 with a commitment of from 73 to 96 months. From the price-out filed by Bell with the Authority in support of this CSA, it is apparent that the customer is being given a discount for committing to purchase MegaLink®ISDN for at least four years. The discounted rate shown on Attachment III filed in support of the CSA is $217.50 per month, which is a 13% discount off of the $250 tariffed rate charged to a customer that signed a 49 to 72 month commitment. It appears that the service billed in accordance with CSA TN98-2766-00 is receiving a 30.55% discount for committing to continue to purchase the service as provided in the tariff and an additional 10%-13% discount[12] under the CSA for a total discount of 37.5% to 39.6%[13].

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[12] The 13% discount assumes the customer billing reaches the maximum discount level provided under the CSA The discount at the contract level is 10%.

[13] At 10% discount level under the CSA the rates would be $225. ($250 X 90%=$225) [$225/$360=62.5%, 1-62 5%=37 5%] At 13% discount level under the CSA the rate would be

The customers billed under the provisions of CSAs KY98-4958-00, CSA TN96-7961-02, CSA TN97-5138-00, and CSA TN96-7973-01 appear to have also received discounts in accordance with the provision of the Tariffs in addition to the discounts provided in the CSA.

Q. Do the tariffs also provide for termination penalties?

A. Yes. The tariffs do have termination provisions. In some instances, when the customer is provided a discount for committing to purchase service over an extended period of time. For example, Bell's Tariff Section B7.5.4 E provides that:

> A Termination Liability Charge is applicable at the date of termination. The applicable charge is dependent on the contract period subscribed to and will be equal to the number of months remaining in the contract times the monthly rate provided under the contract.

Similar provisions are included in other tariff sections, where a discounted rate is provided in exchange for customer's commitment to purchase service over an extended period of time.

Q. In the event that the customer being billed under the CSA

$217.50 ($250 X 87%=$217 50) [$217.50/$360=60.4%, 1-60 4%=39.6%]

transfers the service to a competitor of Bell, which termination penalty would apply?

A. Both penalties would apply. Section IX paragraph C of CSA TN98-2766-00 and the first sentence of Section IX paragraph B of CSA KY98-4958-00 provides the following:

> The application of termination charges pursuant to this Section shall not affect the application of the termination charges pursuant to the tariff or any other agreement

Q. Mr. Frame, testifying on behalf of Bell, contends that the CSA does not modify the tariffed rates:

> **Q. WHAT RATE OR PRICE DOES BELLSOUTH CHARGE THIS CUSTOMER FOR TELECOMMUNICATIONS SERVICES?**
>
> **A. The rates charged to the customer are those specified in the appropriate tariffs and available to any customer ordering the same services. This CSA does not modify those tariffed rates in any way, but rather provides discounts based on billed revenue from the eligible services identified in the contract. (See Frame Direct Testimony, Page 7, Lines 12-17.)**

Is this statement consistent with the documents that BellSouth has filed in support of its CSAs?

A. No. In support of its CSAs, Bell had filed documents that provide the same information as Frame Exhibit RLF-1, which identifies each service subject to the CSA and for **each** such service identifies the following:

1. The USOC
2. Service Description
3. Quantity
4. **Discounted Rate**
5. Annual Revenue
6. Unit Cost
7. Annual Cost
8. Annual Contribution
9. Percent Contribution

(Emphasis Added.)

Q. You state that this document identifies the discounted rates for the individual service provided under the CSA. Are the tariffed rates for the individual service stated on the document?

A. No. The tariffed rates for the services are not identified. The only rates are the individual discounted rates. This document identifies each individual service being discounted, and the discounted rate to be billed under the CSA for each specific service.

Q. Does the Frame Exhibit RLF-1 identify CSA rates for one party business service in a Group 5 exchange than that charged for a Group 4 exchange?

A. Yes. On page 3 of Exhibit RLF-1 four rates are identified for Flat Rate Business line: $34.54, $33.97, $28.49, $26.80 and $23.93.

Q. Are these the tariffed rates for a Flat Rate Business line in the various exchange groups?

A. No. These are the discounted rates. The tariffed rates for a 1 party business lines for group 5, group 4, group 3, group 2, and group 1 exchanges, are $39.70, $39.05, $32.75, $30.80, and $27.05, respectively. The tariff rates and the rates discounted at 13% as shown on Mr. Frame's Exhibit RLF-1 are presented in comparative format in the following table.

Service	Tariffed Rate[14]	Tariffed Rate Discounted 13%
1 FB Group5 exchange	$39 70	$34 54
1 FB Group4 exchange	$39.05	$33.97
1 FB Group3 exchange	$32.75	$28.49
1 FB Group2 exchange	$30.80	$26.80
1 FB Group1 exchange	$27.05	$23.53

The filing of the exhibit that compares the revenue from the individual services after a discount with the cost of providing the individual services is

[14] BellSouth Tariff Section A3.2.1, Eighth Revised Page 1 1.

not consistent with Mr. Frames position that the individual service rates are not discounted.

Q. Are Bell's CSAs evidence of anti-competitive behavior?

A. Yes. Bell's CSAs are evidence of anti-competitive behavior. Tenn. Code Ann §65-5-208. Classification of services - Exempt services - Price floor - Maximum rates for non-basic services states the following:

> (c) Effective January 1, 1996, an incumbent local exchange telephone company shall adhere to a price floor for its competitive services subject to such determination as the authority shall make pursuant to § 65-5-207. The price floor shall equal the incumbent local exchange telephone company's tariffed rates for essential elements utilized by competing telecommunications service providers plus the total long-run incremental cost of the competitive elements of the service. When shown to be in the public interest, the authority shall exempt a service or group of services provided by an incumbent local exchange telephone company from the requirement of the price floor. **The authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, <u>price discrimination</u>, <u>tying arrangements</u> or <u>other anti-competitive practices</u>.**

(Emphasis added.)

Q. Do the prices for services provided under the CSAs reflect price discrimination?

A. The economic definition of price discrimination is defined as, "the practice of selling the same product at two or more prices where the price differences do not reflect cost differences."[15] The price of service provided to the customers subject to the CSAs is different from the price of the service when provided under tariff rates. In addition, the same services provided under different CSAs are at different prices.

Bell does not contend that the cost of providing the service differs. In fact, the documents that Bell has filed in support of the CSAs, which identifies the cost of the various services, is the same as the cost used to support the tariffed rates. (See Attachment III to the various CSAs and Bell's Exhibit RLF-1 filed with Mr. Frame's testimony.) While the rates are different, the costs of providing the service are the same. Bell is selling the same product at two or more prices, where the price differences do not reflect cost differences. By definition, the rates are discriminatory.

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[15] Kaserman, David L. and Mayo, John W., *The Economics of Antitrust and Regulation*, Orlando. The Dryden Press, 1995

Q. Are there tying arrangements included within the CSAs?

A. While there is no specific wording in the CSA state there are tying arrangements, Mr. Frame has entered testimony that; "....the discount on billed revenue is determined by the specific mix for each customer . . . " (Frame Direct Testimony, Page 14, Lines 13-14.) The discounts are therefore apparently specifically tied to the combination of services purchased by the customer. This would indicate, that in order to obtain a discount on one service, a customer may have to purchase another specific service or a specific group of other services.

Q. Do the CSA's include other anti-competitive practices?

A. Yes. As Dr. Brown will provide in more detail, the CSAs provide that Bell will react to the same economic event differently based on the underlying cause of the event. If the event is caused by a competitor, Bell's actions will be different from its actions if the event has other causes. For example, in Paragraph X of CSA TN98-2766-00, the following language is found:

> In the event of a Business Change as defined herein which significantly reduces the volume of network services required by_____, and those subsidiaries listed in Appendix III, with the result that _____ is unable to meet its Minimum Annual Revenue Base under this Agreement (notwithstanding _____ best efforts to avoid such a shortfall), BellSouth

> and_____ shall cooperate in efforts to develop a mutually agreeable alternative that will **reduce _____ liability** under the Minimum Annual Revenue Base, the Annual Revenue Base and the Discount levels which satisfies the concerns of both parties and complies with all applicable legal and regulatory requirements. Such alternative will reduce the Customer's Annual Revenue Base, Minimum Annual Revenue Base and the corresponding Discount levels to the extent of any shortfall resulting from a Business Change as defined herein. **This provision shall not apply to a change resulting from a decision by _____ to transfer portions of its traffic or projected growth to providers other than BellSouth.** (Emphasis added.)

Similar language is found in CSA KY98-4958-00.

Q. How does this language indicate that Bell will react differently to the same economic event dependent on the underlying cause?

A. As stated in the previously quoted paragraph, Bell will work with the customer and will reduce or adjust the minimum annual revenue base and the related discount level if the decline is the result of a business change. However, if the decline in demand is caused by the customer electing to transfer part of its telecommunications operations to a competitor of Bell, no such reduction will be made. From Bell's perspective the end result of a decline in the level of service purchased by the customer is the same. Bell will receive less revenue. In accordance with the provision in the CSAs, Bell's actions in response to such a decline will be different depending upon the cause in the revenue decline and will be punitive toward the customer if the decline is caused by a competitor. Dr. Brown will provide a more thorough discussion on this matter.

Q. In his testimony Mr. Frame states:

> **Although I am not a lawyer, the discount on billed revenue is determined by specific service mix for each customer as described above. Because these customers have a different product mix, they are not similarly situated such that BellSouth can lawfully offer the customer different discounts and revenue commitments. (See Frame Direct Testimony, Page 14, Lines 13-16.)**

Do you agree with his conclusion that because two customers subscribe to different groups of services they are not similarly situated?

A. No. If you accept his definition of similarly situated, the idea of uniform tariffed rates for business services is useless. Using his argument as justification, Bell could charge a business customer, who subscribes to only a single business line, more for that line than it would charge the customer's business neighbor for a single business line, who also purchases a call forwarding. Since the customers would have a different product mix, Mr. Frame's definition would allow Bell to find that the two business customers would not be similarly situated.

Additionally, if a business customer had an office with three business lines with caller ID on each line and another customer occupying an adjacent office in the same building has four business lines and call waiting on each line, Mr. Frame's definition would find these customers are not similarly situated.

If adopted, Mr. Frame's definition of similarly situated could virtually result in each customer being placed in a separate one customer class.

Q. Is there some relationship between the mix of services being provided and the amount of discounts provided under the individual CSAs?

A. The revenue contribution is largely a matter of the mix of services being provided. Using the revenue and cost data filed as Bell's Exhibit RLF-1 and the corresponding schedules filed with other CSAs, I have compared the discounts awarded with the weighted per cent contribution before and after the discount for various CSAs. The results as shown on Exhibit RTB-4 do not reflect a consistent pattern. It does appear that the customers, whose mix of services produces the lesser contributions before discounts, are the customers who are also receiving the larger discounts. For example, the services discounted under TN98-2766-00 produce a contribution of 127% before the rates were discounted by 13%. Similarly, the services for CSA KY98-4958-00 resulted in a contribution of 137% before the discounts of 11%-13%. In contrast, the contributions from the services being discounted under CSA TN97-7973-01 produce a contribution of 999% before the 4% discount, while the services under CSA TN97-7961-01 produce a contribution of 540% before the 5% discount.

Q. Did you compute the "contribution" consistent with the computation on Bell's Exhibit RLF-1?

A. Yes.

Q. Are any of the services discounted under the CSA TN98-2766-00 and CSA KY98-4958-00 being discounted below the cost of providing the service as identified by Bell?

A. Yes. On Bell Exhibit RLF-1, there are 80 instances of service being discounted below the cost as identified by Bell for CSA TN98-2766-00 and 15 instances of service being discounted below cost under CSA KY98-4958-00. The USOCs and the resulting negative contributions are presented on Exhibit RTB-5. The service descriptions, quantities, and cost of these are presented on Bell Exhibit RLF-1.

Q. Does this conclude your testimony?

A. Yes, it does.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE: PROCEEDING FOR THE PURPOSE OF ADDRESSING COMPETITIVE EFFECTS OF CONTRACT SERVICE ARRANGEMENTS FILED BY BELLSOUTH TELECOMMUNICATIONS, INC IN TENNESSEE.	)	DOCKET NO. 98-00559

AFFIDAVIT

I, Robert T. Buckner, Senior Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Rebuttal Testimony represents my opinion in the above referenced case and the opinion of the Consumer Advocate Division

Robert T. Buckner

Sworn to and subscribed before me
this 30th day of July, 1999.

Teresa A. Harris
NOTARY PUBLIC

My commission expires on: Jan. 25, 2003

15999

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE; PROCEEDING FOR THE PURPOSE OF ADDRESSING COMPETITIVE EFFECTS OF CONTRACT SERVICE ARRANGEMENTS FILED BY BELLSOUTH TELECOMMUNICATIONS, INC. IN TENNESSEE.
DOCKET NO. 98-00559

****

EXHIBITS
of
ROBERT T. BUCKNER

****

July 30, 1999

15999

Exhibit RTB-1

Robert T. Buckner (Terry)

Senior Regulatory Analyst

Office of the Attorney General for the State of Tennessee

Consumer Advocate Division

Additional Education Background:

Micro-Computer Training, **University of Wisconsin, Madison**

Cost Separations School, **United States Telephone Association, San Diego**

Rate Case School, **Arthur Andersen LLP, Chicago**

Telecommunications Conference, **University of Georgia, Athens**

NARUC Conference, **Michigan State University, Lansing**

Management Training Seminar, **Vanderbilt University**

Interstate Access Settlements, **National Exchange Carrier Association**

SEARUC Conferences, **Birmingham, AL. and Charleston, S.C.**

Telephone Plant Accounting Program, **Ernst and Young LLP, Atlanta**

Before the

TENNESSEE REGULATORY AUTHORITY

In Re: Nashville Gas Company

Docket No. 96-00977

****

DIRECT TESTIMONY

of

R. Terry Buckner

****

October 28, 1996

Q. Please state your name for the record.

A. My name is R. Terry Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been in the utility industry related employment?

A. Approximately nineteen years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. My responsibilities included testifying before the Commission as to the appropriate cost of service for public utilities operating in Tennessee. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Would you briefly describe your responsibilities as a Senior Regulatory Analyst since your employment with the CA?

A. I prepared testimony and exhibits as an employee with the Commission before becoming a member of the CA. My responsibilities have not been altered significantly since my employment change.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present information to the Tennessee Regulatory Authority ("TRA") on the appropriate operating expenses other than depreciation for the attrition year November 1, 1996 to October 31, 1997 for Nashville Gas Company ("Company"). Additionally, I will present the CA's calculation of other taxes and income taxes for the attrition year.

Q. What is an attrition year?

A. An attrition year is a synonym for a forecasted or projected 12 month period.

Q. Please identify the issues regarding operation and maintenance expenses for Nashville Gas Company in Docket #96-00977?

A. The CA Exhibit, Schedule 8 indicates the differences in the CA and the Company forecasted expenses for the twelve months ended October 31, 1997. The total operation and maintenance expenses projected by the CA are $7,838,394 lower than the operation and maintenance expenses projected by the Company for the attrition year. The differences that make up this $7.8 million include the following just and reasonable exclusions, reductions and increases: (1) the CA has excluded approximately $1.6 million in excessive net expense growth and inappropriate expenses for setting rates for the ratepayer; (2) a $1.9 million reduction in forecasted expenses associated with sales promotion and advertising; (3) a $1.3 million reduction in forecasted allocated net pension expense; (4) a $2 million reduction in allocated service company charges; (5) a $.6 million reduction in the Company's Long Term Incentive Pay plan; and (6) a $.4 million increase in the amount of General and Administrative expenses which are capitalized and charged to non-regulated operations.

Q. Please explain the just and reasonable $1.6 million exclusion due to forecasted expense growth differences of the Company and the CA for the attrition year.

A. The primary reason for the exclusion is the difference in forecasted expense growth caused by the Company's use of an excessive inflation factor and unsubstantiated growth rates for various expenses. The CA used an annual customer growth of 5.1% and an annual inflation rate of 2.39% which generates a compound growth rate of 12.66% through the attrition year ended October 31, 1997. The information used to determine the CA's forecasted inflation factor was taken from the publication "Blue Chip Indicators."[1] The percentage increase of the attrition year Gross Domestic Product ("GDP") deflator over the test year GDP deflator, equates to an annual inflation rate of 2.39%. The annual inflation rate of 2.39% generates a compounded growth rate of 4.01%. The compound growth rate of 12.66% (customer growth plus inflation growth compounded) was applied to most of the CA's test year ended February 1996 expenses excluding salaries and wages.

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[1]The Blue Chip Economic Indicators publication is a consensus summary of fifty top economists in the United States.

Q. How does the 12.66% growth rate compare with the Company's experience in recent years?

The CA's compounded growth rate is somewhat greater than the actual annual expense growth of the Company over the last thirty-three months ended April 1996 of 3.735%, which was a compounded growth rate of 10.61%. In contrast, the Company used an unjust and unreasonable projected 16.10% compounded growth rate for a twenty-two month period ending October 31, 1997 for certain expense items based on an annual inflation rate of 3.2% and an annual customer growth rate of 5.1%. The Company's overall operation and maintenance expenses, however, are projected to grow 21.31% for the attrition year over actual 1995.

One difference from the CA projection is that, instead of using the GDP deflator, the Company used the CPI inflation indicator from the Economic Forecasting Center of Georgia State University for its speculative annual inflation rate. The GDP deflator, which was used by the CA, has been traditionally used by the Commission and TRA staff, not the CPI inflation factor proposed by the Company. Current evidence supports the CA's projected annual inflation rate of 2.39%. The difference in growth rates results in a lower expense amount of approximately $1.1 million for expenses excluding salaries and wages.

This amount, also, recognizes an error by the Company in their growth of Injuries and Damages of approximately $.4 million. The Company miscalculated their projected amount of Injuries and Damages for the attrition year. Additionally, the CA has deducted $145,983 of non-recurring expenses recorded during the test year ended February 28, 1996.

Finally, the CA has used actual employees and wage rates as of August 31, 1996 grown during the attrition year. The Company used outdated 1995 actual employee levels. This difference results in $307,473 in lower salaries and wages than the Company's salary and wage projection for the attrition year.

Q. Please explain the forecasted difference in advertising and sales promotion expense amounting to $1.9 million.

A. The CA requested that the Company provide a detailed analysis of the 1995 projected advertising and sales promotion expenses in the following categories: Institutional, Conservation, Promotional, Informational and non-regulated Promotional for the sale of appliances. The Company's response was such that amounts projected for each advertising category cannot be determined. Since the Company declined to furnish the breakdown of advertising expenditures, it is not clear if the amount includes advertising that would be included in the rates charged ratepayers. Without such information, there is no possible way to determine if the advertising expense budgeted by the Company is appropriate for setting rates. As with any other expense, the Company is obligated to prove that costs that are recovered in rates are just and reasonable. Since the information is not available, the CA has excluded approximately \$1.9 million (\$.8 million in salaries and wages) in advertising and sales promotion expenses. Since the Company failed to support the cost of advertising expense, we have included an amount based on a standard adopted by the Commission. Further, regarding advertising expenses Commission rule *1220-4-5- 45* (Attachment) states, "A utility may not recover from any person other than their shareholders (or other owners) any direct or indirect expenditure for promotional or political advertising. The term 'promotional advertising' means any advertising for the purpose of encouraging any person to select or use gas service or additional gas service or the selection or installation of any appliance or equipment designed to use gas service." We have included an amount equal to .5% of revenues. The CA has applied this threshold to all NARUC Uniform System of Accounts ("USOA") accounts which include advertising and sales promotion expenditures. This standard criteria was set in Commission Docket U-85-7355 for Nashville Gas Company and is consistent with positions taken by the

Commission staff in subsequent gas company rate cases, i.e. United Cities Gas Company, Docket #92-02987. Mr. Hal Novak, of the TRA staff and formerly of the Commission staff, recommended in Docket #92-02987, "that the Commission approve its interpretation of the Commission policy by disallowing all advertising **and** sales promotion expenses that are in excess of .5% of operating revenues." Again, in September 1994, the Commission staff cited the Company in a compliance audit report that "The Company is understating the monthly rate of return that it reports to the Commission" due to excessive advertising expenses which are not in compliance with the Commission Orders. Our case is consistent with the standard as applied in the past.

Q. Please explain the forecasted difference in net pension expense of $1.3 million.

A. The Company's pension plan is fully funded and no funding is anticipated during the attrition year based on the Company's 1995 annual report to their stockholders. Additionally, Company personnel indicated through CA verbal inquiries that there would be no funding during the attrition year. The CA has not recognized any pension expense for the attrition year which is consistent with Federal Income Tax treatment. The Company, however, has unjustly and unreasonably included approximately $1.3 million of net pension expense in its filing. The Company's recognition of a $1.3 million pension expense in fact causes the ratepayer to pay an expense that has already been paid. Finally, the Commission historically recognized only the actual contributions to the pension plan in the cost of service for setting rates for both telephone and other utilities. Please note the following examples in cases:

Tennessee-American Water Company	U-87-07534	Mar. 1988
Tennessee-American Water Company	89-15388	May 1990
Tennessee-American Water Company	91-05224	Dec. 1991
Tennessee-American Water Company	96-00959	Oct. 1996
Chattanooga Gas Company	U-87-07531	Apr. 1989
Chattanooga Gas Company	91-03765	Apr. 1991
Nashville Gas Company	U-87-07499	Nov. 1987
Nashville Gas Company	89-10491	Nov. 1989
Nashville Gas Company	91-02636	Nov. 1991
Nashville Gas Company	94-01054	Oct. 1994
United Cities Gas Company	89-10017	Nov.1989
United Cities Gas Company	92-02987	Sep. 1992
Kingsport Power Company	90-05735	Dec. 1990
Kingsport Power Company	92-04425	Nov. 1992
Tellico Telephone Company	91-09061	Feb. 1992
Tennessee Telephone Company	91-09062	Feb. 1992
Concord Telephone Company	91-09063	Feb. 1992

In summary, the Company should not be allowed to recover the $1.3 million a second time.

Q. Please explain the forecasted difference in allocated service company charges of $2 million.

A. The CA has allocated the general and administrative expenses (service company charges) of Piedmont Natural Gas Company ("PNG") based upon the ratio of the number of Nashville Gas customers at the end of 1995 to the total PNG customers. This results in 22.16% of PNG's customers being in Tennessee, therefore, Nashville Gas is allocated 22.16% of PNG's general and administrative expenses. The Company, however, has allocated these expenses based upon the ratio of net plant in Tennessee to PNG's total net plant in service. This method is inappropriate and inconsistent with allocation methods historically used and further, is unjust and unreasonable. Historically, audit procedures have allocated operating expenses based on the number of customers in Tennessee to the total number of customers in all states in which PNG operates. This method was recommended by the Commission Staff in Docket #92-02987. The Company's method for no real reason ignores the distinctive nature of the plant assets in each state as to age, cost and the rate at which the plant is being depreciated and should be rejected. The CA's method of allocation is approximately $.6 million lower than the Company's allocation amount.

Additionally, the Company has included a projection of $2.4 million in salaries and wages allocated from PNG to Tennessee customers. This amount is $1.6 million higher than the 1995 amount and $1.5 million higher than the test year ended February 1996, a 200% increase from the test year. Although we requested all supporting workpapers, the Company provided no support for the reasonableness and accuracy of this 200% increase which is unjust and unreasonable. There is no evidence that any change in the Company's operations warrant a $1.4 million increase for the attrition year. The Company's projection should be rejected.

Q. Please explain the forecasted difference in Long-Term Incentive Pay plan of $.6 million.

A. The Company has included $.6 million in Long-Term Incentive Pay ("LTIP") during the attrition year. The Company has defined the LTIP as:

> "a shareholder-approved Executive Long-Term Incentive Plan for the purpose of promoting the interests of the Company by attracting and retaining in its employment persons of outstanding ability....provides executives and other key employees of the Company greater incentive to make material contributions to the success of the Company by granting them incentive compensation conditioned upon the corporate achievement of financial and other performance objectives."

Thus, the Company rewards employees if the Company overearns. The Company has defined the performance objective "**as being a 5% compounded, average, annual increase in net, real (corrected for inflation) after-tax earnings**....Thus, the targets for the periods 1987 through 1991 and 1989 through 1994 were each established as being a 27.6% (5% per year, compounded) increase in net after-tax earnings." After review of the Company's LTIP, the CA recommends exclusion of this expenditure due to the following: (1) The LTIP is based principally on earnings growth. **In fact, the plan encourages the executives to seek earnings growth through rate increases such as this one in order to produce growth in earnings instead of performance gains or improved service.** In other words increasing rates to the ratepayers for LTIP expenses results in increased earnings, which in turn increases LTIP in the future, and which also increases revenue requirements from the ratepayers in the future. This circular incentive program rewards the Company for increasing rates and **harms** customers; (2) All LTIP employees receive the compensation regardless of the individual employee's performance; and (3) There is no measurable benefit to the ratepayers.

Q. Have other regulatory commissions rejected the expense resulting from such incentive plans?

Yes, earlier this year the Washington Utilities and Transportation Commission ("WUTC") disallowed incentive pay with the following statement[2]:

> "Plans which do not tie payments to goals that clearly and directly benefit ratepayers will face disallowance in future proceedings. (Emphasis added.)

Additionally, the WUTC commented,

> "....there is a potential tension between quality and earnings. A firm can concentrate on financial elements so heavily that it can lose sight of the importance of providing customer service. In a public utility service, where many customers have no reasonably substitutable alternatives, the Commission must substitute for the competitive market in assuring that customer service remains a priority to the business. Financial goals are at best a very crude way to measure specific efficiencies that employees can accomplish." (Emphasis added)

Finally, in 1995 the South Carolina Public Service Commission staff excluded over $.3 million of Piedmont LTIP[3] (Attachment). In fact, in that case both the South Carolina Commission and the Company

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[2]WUTC v. U S WEST Communications, Docket No. UT-950200

[3] In RE. Piedmont Natural Gas Company, Inc. Docket No. 95-715-G, Accounting Exhibit A-1, Line No. 13.

had excluded LTIP amounts in the projected cost of service schedules.

Q. Please explain the forecasted difference of General and Administrative expenses transferred for capitalization and to non-regulated operations in the amount of $.4 million.

The Company has made an error in their calculation of General and Administrative expenses to be transferred for capitalization and to non-regulated operations in the amount of $.4 million for the attrition year. This error was noted in detail on pages 21-22 of the TRA staff's compliance audit of October 14, 1996 (Attachment). Further, the Company was cited by the Commission staff for this same error in a previous compliance audit of September 1994. The Company, as of this date, has failed to correct the error. The Company agreed with the TRA staff finding and has stated that it would implement the change at the beginning of the attrition year, November 1, 1996.

Q. Please identify the differences regarding other taxes and income taxes for Nashville Gas Company in Docket #96-00977.

A. The CA Exhibit, Schedule 9 indicates the differences in the forecasted amounts between the CA and the Company. The other taxes projected by the CA are $.2 million lower than the tax amounts projected by the Company for the attrition year. This $.2 million difference is due to lower payroll taxes.

Q. Please explain why the CA forecasted difference of approximately $.2 million in payroll taxes .

A. $.163 million of the $.2 million Company overstatement is associated with the unsubstantiated allocation of salaries and wages from PNG (See p.10-11). The residual $.037 million is half due to the Company including the Company's portion of payroll tax on the personal use of the Company cars. The other half is attributable to an overstated salary and wage calculation by the Company as discussed previously (See p.6).

Q. Please explain the forecasted difference in income taxes.

A. The $1.9 million difference in the CA and Company's income taxes is due to lower operating expenses projected by the CA (discussed on P. 3) and the difference in capital structure, specifically the cost of debt or interest expense (See testimony of Dr. Steve Brown).

Q. Does this conclude your testimony?

A. Yes, it does.

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September 19, 1997

Mr David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition of Chattanooga Gas Company to Place into Effect a Revised Natural Gas Tariff
Docket No. 97-00982

Dear Mr. Waddell

I have enclosed an original and thirteen copies of Direct Testimony of Consumer Advocate Division witness Robert T Buckner, Senior Regulatory Analyst in the above referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

L. Vincent Williams
Consumer Advocate

'97 SEP 19 PM 3 52

c Counsel of record

#103500

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: PETITION OF CHATTANOOGA GAS COMPANY TO PLACE INTO EFFECT A REVISED NATURAL GAS TARIFF
DOCKET NO. 97-00982

****

DIRECT TESTIMONY
of
ROBERT T. BUCKNER

****

September 19, 1997

#103500

Q. Please state your name for the record.

A. My name is Robert T Buckner ("Terry").

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately twenty years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Would you briefly describe your responsibilities as a Regulatory Analyst since your employment with the CA?

A. I prepared testimony and exhibits as an employee with the Commission before becoming a member of the CA. My responsibilities have not changed significantly since becoming employed with the CA.

Q. What is the purpose of your testimony before the Tennessee Regulatory Authority ("TRA")?

A. The purpose of my testimony is to present the CA's recommended revenue requirement for Docket #97-00982 for Chattanooga Gas Company ("Company"). The CA is recommending a rate reduction of $1.393 million. A summary of the revenue requirement issues is found in Schedule A of my exhibit. Mr. Dan McCormac will present direct testimony regarding the forecast of revenues. Mr. Archie Hickerson, Director of the CA staff will present direct testimony and exhibits regarding the Company's proposed acquisition adjustment. Dr. Stephen Brown will present direct testimony and exhibits as to the just and reasonable cost of equity. Additionally, I will present my opinion on behalf of the CA as to the appropriate operating expenses for the attrition year October 1, 1997 to September 30, 1998 for the Company. Also, I will present my opinion as to the appropriate calculation of other taxes, income taxes, rate base and depreciation expense for the attrition year.

Q. Please identify the issues regarding operating expenses for Chattanooga Gas Company in Docket #97-00982?

A. The CA Exhibit, Schedule 10 indicates the differences in the forecasted amounts between the CA and the Company. The operating expenses projected by the CA are $2.239 million lower than the operating expenses projected by the Company for the attrition year. The issues regarding this $2.239 million include the following: (1) the CA has excluded $1.497 million in excessive expense growth due to the allocation of charges from the Company's corporate parent, Atlanta Gas Light ("AGL"); (2) a reduction of $.227 million in forecasted expenses associated with promotional advertising; (3) a $.219 million reduction in projected uncollectible expense; (4) a reduction of $.192 million in expenses primarily due to excessive growth rates; and (5) $.142 million in rate case expense and miscellaneous income deductions. (This includes $.038 million of miscellaneous income deductions per CA Exhibit, Schedule 8, Line 10). Additionally, a reconciliation of all revenue requirement differences between the CA and the Company is provided in Buckner Exhibit, Schedule A.

Q. **Please explain your opinion as to the forecasted difference of $1.497 million in forecasted allocation of AGL expenses of the Company and the CA for the attrition year.**

A AGL performs most of the management and financial operations of the Company AGL performs these same operations for its customers in Georgia. As of June 30, 1997, AGL serves nearly 1.37 million customers in Georgia and just over 53,000 in Tennessee or 3.73% of AGL's total customers. Since AGL personnel perform the same operations for both states, their costs are allocated between the two jurisdictions. The Company has included $5.227 million of allocated operating expenses from AGL in its forecast for the attrition year. This amount is 5.13% of AGL's forecasted total of $102 million in expenses subject to allocation and is disproportionate to the number of customers in Chattanooga. In my opinion, the TRA should reject the Company's expense allocation amount because it simply seeks to impose the highest possible costs on Chattanooga consumers instead of just and reasonable costs. The CA has included in its forecast $3.730 million of allocated operating expenses from AGL, resulting in a difference of $1.497 million. The total difference in allocation is $1 497 million in the following three areas: (1) $1.253 million in allocation based on the current number of customers of the Company to total AGL; (2) $.151 million in excessive rate of return on net investment; and (3) \$.093 million of allocated AGL expenses that should be charged to non-utility operations rather than regulated ratepayers.

First, in my opinion, a change is required as to the result from the allocation methodology proposed by the Company to one based on the percentage of Company customers to the total number of customers served by AGL (3.73%). My opinion is based on several criteria.

(A) Financial: AGL's proposed forecast of charges allocated to the Company is nearly 300% higher than the 1996 amount (an increase of \$3.908 million). This increase causes results that are not logical. According to the Company's accounting records, the new allocation methodology was implemented October 1, 1996. While the theoretical multi-component allocation methodology proposed by the Company seems reasonable, the practical end result of the methodology is not reasonable to the ratepayer. Mr. James E. Kissel, who filed direct testimony on behalf of the Company, explains the allocation methodology change. In his testimony, he states the following:

> "Chattanooga Gas Company is expected to see an increase of approximately \$2.3 million in the total amount being allocated versus the estimated amount to be allocated using the prior method....The new methodology allocates 3.7% of the central services costs

to Chattanooga Gas Company."

As previously mentioned, the Company has forecasted a $3.908 million increase over fiscal year end 1996 (New allocation methodology over old allocation methodology). Also in contrast, AGL forecasts 5.13% of the total costs subject to allocation to be charged to Chattanooga. Mr. Kissel did not testify to the validity of the Company's forecasted allocation amount, nor is there any assurance that AGL is following Mr. Kissel's recommended allocation methodology with precision.

Further, as an offset, the Company has reduced its local employee level from an average of 127 in 1996 to an average of 91 for year-to-date May 1997. As a result, the Company realized $2.267 million in personnel related cost savings. Despite the lower number of employees, the Company's forecast of operations and maintenance expenses does not reflect a decline in expense for the attrition year, but is unjustifiably 15% higher than fiscal year ended September 30, 1996 (See Buckner Exhibit, Schedule B). Additionally, the 1996 amount is abnormally high because it includes $2.8 million of one-time employee severance expenses for the Company's restructuring. Further, AGL's 1996 annual report to its shareholders reports that, "Fiscal 1996 was a record earnings year for us." AGL is merely shifting costs previously charged to their Georgia operations to their

Tennessee operations. If a rate increase is granted from this issue, the net result is an increase in profit for AGL.

(B) Regulatory: In my opinion, the CA's recommended methodology is consistent with the findings of the preliminary draft of the TRA staff compliance audit dated July 29, 1997. It is standard practice for the operating utility companies regulated by the TRA to apply a single percentage allocation formula when allocating corporate charges. A single component allocation eliminates the potential for recovering over or under 100% of its allocated common costs. Also, this practice offers consistent treatment of costs in all jurisdictions, thereby eliminating the potential for cost manipulation between entities by AGL management. The use of a multi-component allocation method is problematic. For example, while using the multi-component method, the actual fiscal year-to-date May 1997 charges from AGL to the Company are 4.36% of the total subject to allocation and not AGL's forecast of 5.13%. If the year-to-date factor of 4.36% is applied to AGL's forecasted $102 million subject to allocation, then the allocated expense is $.780 million in lower expenses. Also, AGL has reduced its level of employees by over 70 since year end December 31, 1996. Consequently, if the TRA approves the Company's proposed allocated amount for the attrition year, the Company will over recover costs using its current allocation methodology. When the single allocation percent of 3.73% based on number of customers is applied, the allocated charges from AGL are lowered by $1 253 million or an additional $ 473 million in lower allocated expenses.

Finally, if either the Georgia and the Tennessee regulatory agencies set rates using other than rate base regulation, i.e. incentive regulation, then a temptation exists for the Company to maximize costs in one jurisdiction over another.

(C) Practicality: The use of a single allocation component makes a cleaner trail to audit and to verify the accuracy of the charges allocated to both Chattanooga and Georgia customers. A regulatory agency usually has limited time and resources to validate the financial records of the Company. The Company's external auditors rarely, if ever, certify the accuracy of charges between jurisdictions, but usually examine only the Company's operations in total. Consequently, the Company's use of a multi-component allocation method makes the regulator's audit exponentially more difficult. If the multi-components change from month to month, then the regulator is forced to examine every employee's record of time, every paid invoice and every financial accounting change for its veracity. The use of a multi-component allocation method significantly improves the regulator's oversight abilities.

(D) Equity By using a single component allocation method, every customer bears equally the charges from corporate's common costs. When dealing with common or joint costs, there is no way to pinpoint the party that actually causes the cost. By definition, common or joint cost is not associated with any particular party. It is a fine notion in attempting to pinpoint every cost causation to a particular customer or a group of customers, but that is not practical. The TRA's goal should be one of providing excellent utility service for every customer at a just and reasonable price. For example, if a main is in need of repair for a particular neighborhood, all the customers of the Company bear the cost in repairing the main, not only the neighborhood. Further, when the Company expands the service, all of the customers bear the cost of the expansion.

Secondly, the forecasted AGL allocations for the attrition year include a return component on the net investment used for both jurisdictions (For example, the AGL corporate office building). This return amount is calculated using the Georgia Public Service Commission authorized rate of return of 9.32% in AGL's last rate case. By updating the rate of return to the just and reasonable rates at this time, based upon the opinion of Dr. Stephen Brown, the CA recommends 8.85% as the rate of return using the net investment of April 1997. Based upon that just and reasonable return, the rate of return component is reduced by $.151 million.

Finally, AGL has not allocated any of its corporate office costs to non-utility operations. This finding was made in the previously mentioned TRA staff compliance audit report. The Company has stated in response that it will change its allocation to non-utility operations beginning October 1, 1997. This change results in a reduction in allocated expenses of $92,503.

In summary, it is germane to the TRA and the ratepayer that the allocation of AGL expenses should be based on a consistent methodology. Most importantly, the expenses borne by the ratepayer must be just and reasonable. Although the Company trumpets its efficiency from restructuring, the results are not evident in what AGL is asking the customer to pay. Finally, AGL's proposed rates should not be granted to placate Company management, but only if they are just and reasonable.

Q. **Please explain the forecasted difference in sales promotion expense amounting to $.227 million.**

A. The CA has excluded $.227 million in sales promotion expenses. The sales promotion expense proposed by the CA meets the standard criteria of 5% of revenues in determining the amount of expense to allow for advertising. This standard criteria was set in Tennessee

Public Service Commission ("TPSC") Docket U-85-7355 for Nashville Gas Company as a surrogate for actually identifying the advertising expense by category because most of the advertising expense was promotional in nature. This is consistent with positions taken by the Commission Staff in subsequent gas company rate cases i.e. United Cities Gas Company, Docket #92-02987. Further, regarding advertising expenses Commission rule *1220-4-5- 45* states, "A utility may not recover from any person other than their shareholders (or other owners) any direct or indirect expenditure for promotional or political advertising. The term 'promotional advertising' means any advertising for the purpose of encouraging any person to select or use gas service or additional gas service or the selection or installation of any appliance or equipment designed to use gas service."

The TPSC found the .5% to be consistent with the rule and departure from the policy is inappropriate under existing legal standards which require the agency to follow existing rules and practices.

Q. Please explain the forecasted difference in uncollectible expense of $.219 million.

A. The CA's uncollectible expense for the attrition year was calculated based on the Company's most recent seven years and eight months experience of net write-offs. The CA uncollectible expense amount for the attrition year is $165,968. This amount is $219,051 lower than the Company's amount of $385,019 which was based on a 12 month average from March 1996 to February 1997. The Company's selected time period is an aberrant and abnormal time period for forecasting purposes and is more than double the historical amounts for the previous six fiscal years. The Company has not presented substantial and material evidence which shows that the expense will continue at that unusual rate. Further, the Company forecasted amount is not indicative of even their current expense. The Company booked $14,293 for uncollectible expense in May 1997.

Q. Please explain the difference in the forecasted expense growth rates of the Company and the CA for the attrition year.

A. The Company has used a compound customer and inflation ("CPI") growth rate of 15.62% for the majority of the operating expense accounts excluding salaries and wages. The Company grew these accounts for the test year, the fiscal year ended September 30, 1996, by 15.62% to arrive at their attrition year amounts. It is generally accepted that CPI overstates inflation. Because use of the CPI overstates inflation, it creates more than a just and reasonable expense

In my opinion and the opinion of most experts the GDP is a better indicator than CPI. The CA used one half of the annual customer growth rate of 4.65% and an annual inflation ("GDP") rate of 2.36% which generates a compound growth rate of 7.25% from the nineteen months ended May 31, 1997 through September 30, 1998. The information used to determine the CA's inflation factor was taken from the publication "Blue Chip Indicators". The difference between GDP and CPI results in $.057 million in lower operations and maintenance expenses. Also, the CA used a later test period from June 30, 1996 through May 31, 1997. This period is used because it is more indicative of the Company's post-restructuring costs and of their current cost of operation. The annual customer growth rate was based on the Company's projections of customer growth. Additionally, the CA priced out employee's salaries and wages for the attrition year resulting in $.052 million lower expense. Consequently, it was not necessary to grow salary and wage expense from the test period using an inflation factor. The cumulative effect of the difference in the compound inflation rates, customer growth rates and test period differences amounts to $.192 million.

Q. Please explain the difference in the forecasted rate case expenses and miscellaneous income deductions of the Company and the CA for the attrition year and your opinion on these differences.

A. The CA included $144,500 of Company anticipated costs for this rate filing to be amortized over three years or $48,167 for the attrition year plus one year's amortization of Docket #95-02116 at $16,167. The excess expense difference between the CA calculated amount and the Company projection amounts to $.104 million. The Company has taken the fiscal 1996 year end amount and has increased it for "CPI" inflation and customer growth. The Company's adjustment has no relationship to historic or prospective amortization amounts from rate filings.

Finally, the CA disallowed approximately $37,540 in miscellaneous expenses as proposed by the Company which are not allowed for use in setting rates. In my opinion, the CA position on this item is consistent with previous positions taken by the TRA Staff.

Q. Please identify the issues and your opinion regarding other taxes and income taxes for Chattanooga Gas Company in Docket #97-00982?

A. The CA Exhibit, Schedule 11 indicates the differences in the forecasted amounts between the CA and the Company. In my opinion, the projected other taxes are $ 401 million lower than the tax amounts projected by the Company for the attrition year. My opinion regarding this $.401 million includes the following: (1) I exclude approximately $.207 million in excessive property tax expense; (2) a reduction of $.151 million in forecasted Tennessee gross receipts tax expense; (3) a reduction of $26,340 in forecasted Tennessee state franchise tax expense; (4) approximately $6,800 in lower payroll taxes and the TRA inspection fee; and (5) income taxes per Schedule 12 are due to the difference in taxable net operating income.

Q. Please explain your opinion as to the forecasted difference in other taxes of approximately $.401 million.

A. The Company has erroneously mixed un-equalized property assessment value with equalized property assessment value in its calculation of average property assessment growth from 1991 through 1996. The Company's use of assessment history, beside its inherent error in calculation, does not reflect current trends. I calculated property taxes using the 1996 tax rates and equalized property assessment values which reflects the most recent historical increases (1995-1996). This results in a $.217 million adjustment to remove the overstated projected property tax expense proposed by the Company.

In addition, the Company has used a five year average of effective Tennessee State Gross Receipts Tax rates to calculate the amount of Tennessee Gross Receipts Tax for the attrition period. The Company's use of a five year average does not reflect the current effective tax rate for use in setting rates and consequently overstates the Tennessee Gross Receipts Tax. For example, the Gross Receipts Tax to be paid is offset by the amount of Tennessee Franchise and Excise Tax paid in the prior year. The Excise tax is calculated based on normalized tax depreciation. The use of accelerated tax depreciation reduces the Tennessee excise tax, but conversely increases the Tennessee Gross Receipts Tax. For setting rates, both the Company and the CA have ignored accelerated tax depreciation rates for calculating Tennessee Excise Tax. The Company, however, has used the normalized tax depreciation benefit when calculating its Gross Receipts Tax. The difference in calculated amounts between the Company and the CA amounts to $.151 million for the attrition year.

The Company has included an acquisition adjustment in its calculation of Tennessee State Franchise Tax. This is an inappropriate inclusion for calculating franchise tax expense in setting rates. I excluded this amount resulting in $26,340 lower franchise tax expense.

Additionally, the payroll taxes for the attrition year are overstated by the Company by approximately $4,141 due to an overstated salary and wage calculation by the Company.

Finally, the Company has overstated the TRA inspection fee by $2,746 primarily due to overstated revenues for the inspection fee period.

Q. Please explain the forecasted difference in income taxes.

A. The difference in the CA and Company's income taxes is due to lower operating expenses by the CA and the difference in capital cost, specifically the cost of debt.

Q. Please define, "Rate Base."

A. Simply put, Rate Base is the net investment upon which the Company is allowed to earn a just and reasonable rate of return. A summary comparison of the rate base amounts for both the CA and the Company is found in the CA Exhibit, Schedule 3.

Q. Please explain you opinion and the forecasted difference in Rate Base.

A. The CA Rate Base is $6.783 million lower than the Company and my opinion relies on the following:

Net Acquisition Adjustment - The CA has excluded $13.356 million Acquisition Adjustment and $4 196 million of Accumulated Amortization of Acquisition Adjustment for a net reduction in rate base of $9 160 million. As previously mentioned, Mr. Archie Hickerson, Director of the CA will address these amounts in his direct testimony.

Working Capital - The CA is $1.636 million higher than the Company primarily due to an erroneous customer deposit amount by the Company in its forecast. According to the Company, there is a transposition error in their filing of forecasted customer deposits.

Net Utility Plant in Service - The CA used a simple average rather than a thirteen month average to develop the two major Rate Base components, Utility Plant and Service and Accumulated Depreciation. This amounts to the CA being a net $.691 million higher than the Company.

Q. How did you calculate depreciation expense for the attrition year?

A. The average attrition year plant balances were multiplied by the Company proposed depreciation rates. I am not expressing an opinion on the accuracy of the Company's request to reduce the composite depreciation rate from 3.66% to 3.61%. The CA did not have sufficient time nor the resources to investigate the reasonableness of the Company proposed depreciation rates. The calculated result, however, is $4.811 million in depreciation expense for the attrition year. This amount is $9,875 lower than Company amount. This amount is due to the CA's exclusion of depreciation expense on Land and Land Rights as proposed by the Company. In my opinion, Land and Land Rights should not be depreciated.

Q. Does this conclude your testimony?

A. Yes, it does.

BEFORE THE

TENNESSEE PUBLIC SERVICE COMMISSION

In Re Petition of United Cities Gas Company to Place Into Effect a Revised Natural Gas Tariff

Docket No 95-02258

****

DIRECT TESTIMONY

OF

R TERRY BUCKNER

****

September 25, 1995

Q. Please state your name for the record.

A. My name is R. Terry Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately eighteen years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Would you briefly describe your responsibilities as a Regulatory Analyst since your employment with the CA?

A. I prepared testimony and exhibits as an employee with the

Commission before becoming a member of the CA. My responsibilities have not been altered significantly since my employment change.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present information to the Commission on the appropriate operating expenses other than depreciation and salaries and wages for the attrition year December 1, 1995 to November 30, 1996 for United Cities Gas Company ("Company"). Additionally, I will present the CA's calculation of other non-payroll taxes and income taxes for the attrition year.

Q. Please identify the issues regarding operating expenses for United Cities Gas Company in Docket #95-02258?

A. The CA Exhibit, Schedule 5, indicates the differences in the forecasted amounts between the CA and the Company. The non-payroll operating expenses projected by the CA are $3.166 million lower than the non-payroll operating expenses projected by the Company for the attrition year. The eight principle issues regarding this $3.166 million include the following: (1) The CA Exhibit, Schedule 4, Line 11 has included $1.502 million in annual savings as found in the Management Audit of the Company by The Liberty Consulting Group ("Liberty"). Liberty was employed at the direction of the Commission to conduct the management audit of the Company in Docket #92-02987. The Commission ordered in Docket #92-02987 that the results of the audit be considered in the next rate filing which is this Docket #95-02258. Liberty has completed the audit and has provided the report to the Commission. Liberty representatives will testify as to the validity of the annual savings amount. The CA relied on their expertise in incorporating the identified annual savings in its forecast for the attrition year as found in Liberty's management audit report; (2) The Company has overstated $.694 million in forecasted non-payroll operating expenses originating from the CA's test period reconciliation; (3) The Company overstated $.390 million in projected employee health insurance; (4) The CA recommends $.334 million in disallowed and non-recurring expenses; (5) The CA inflation and customer growth rate used for non-payroll expenses is $.244 million in higher than the Company for the attrition year; (6) The CA proposes a disallowance of $.198 million in forecasted sales promotion expense; (7) The Company has improperly included $.189 million of interest on customer deposits with operating expenses. The CA has recognized this item for presentation purposes as interest expense and as a separate line item in the comparative income statement; (8) The CA has disallowed Company adjustments of $.103 million in storage expense, postage expense, and management audit amortization expense.

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Q. Please explain the $.694 million difference in the test period non-payroll operating expense amount of the Company and the CA used in forecasting non-payroll expenses for the attrition year.

A. The Company has over-allocated non-payroll costs to Tennessee operations for the test year 1994 by $.694 million. Approximately $.656 million of this amount is classified in the General and Administrative expenses. The Company has four major divisions of operation and allocation of costs: (1) The Division Corporate Office; (2) The Illinois/Tennessee Division; (3) The Virginia/East Tennessee Division; and (4) The Tennessee Division. Tennessee operations receive an allocation of payroll and non-payroll expenses from each Division for reporting purposes and setting rates. The allocation amounts in the Company's filing are not consistent with the actual test period 1994 Divisional income statements ("R50400") furnished to the CA by the Company. Consequently, the allocation percentages used by the Company in its rate filing to allocate costs to Tennessee are overstated and are not consistent with the actual amounts or the factors used in Commission Docket #92-02987, the last rate increase for the Company.

Q. Please explain the forecasted difference in employee health insurance amounting to $.390 million.

A. The Company has proposed an increase of nearly 50% in health insurance expense from 1994 to the attrition year. A review of actual growth has been well below this level of growth. The medical claims furnished to the CA have grown closer to the annual inflation rate of 2% to 3% for 1994 over 1993. Additionally, year to date 1995 annualized amounts are approximately at the same level as 1994.

Q. Please explain the forecasted difference in disallowed and non-recurring amounts of $.334 million.

A. The Company has included $.334 million in expenses from the 1994 test period which are not valid for setting rates or are non-recurring in nature. These expenses include the following: (1) expenses for Non-competition agreements primarily with Union Gas Company incurred during acquisition of their natural gas systems. These payments in effect represent a premium paid in excess of the book value of the Union Gas Company and are not a cost of providing utility service to Tennessee customers. This position is supported by Liberty. In its management audit report, Liberty agrees that this cost should not be recognized for setting rates (See pages II-45,48). Further, the Commission has historically recommended that these costs be borne by the shareholder of the Company and not the ratepayer; (2) expenses for an equity funding fee were also excluded in the CA's attrition year forecast. Simply put, the Company relies upon the earnings of an affiliated company, Energy Company, in order to issue utility bonds, therefore, justifying a fee. However, the affiliated Energy company generates most of its earnings from captive financing agreements with the Company. The Commission Staff has historically not allowed this expense in setting rates. Additionally, Liberty recommended that this equity funding fee be eliminated (See pages II-44,45); and (3) The CA excluded one-time expenses incurred by the Company in 1994 through a class-action lawsuit alleging price fixing in East Tennessee in the 1980's. In February 1995, the Company reached a settlement agreement with the Tennessee Attorney General in the amount of $80,000. This settlement was pending the United States District Court's approval according to the Company's audited 1994 annual report to the stockholders. This is not a normal or recurring expense.

Q. Please explain the forecasted difference in expense growth rates amounting to $.244 million.

A. The Company has proposed a growth factor of 6.71% to increase most of its non-payroll operating expenses. The CA used a compound growth factor of 9.81% from the twelve months ended December 31, 1994 to November 30, 1996. The CA used an annual weighted customer growth rate of 2.5% and an inflation rate of 2.56%. The information used to determine the CA's inflation factor was taken from the publication *Blue Chip Indicators*. The cumulative effect of the difference in the compound growth rate of non-payroll expense amounts to $.244 million more than the Company.

Q. Please explain the forecasted difference in sales promotion expense amounting to $.198 million.

A. The CA has excluded $.198 million in sales promotion expenses. The sales promotion expense proposed by the CA meets the standard criteria of .5% of revenues in determining the amount of expense to allow for advertising. This standard criteria was set in Commission Docket U-85-7355 for Nashville Gas Company and is consistent with positions taken by the Commission Staff in subsequent gas company rate cases i.e. United Cities Gas Company, Docket #92-02987. In addition, Commission rule *1220-4-5- 45* states, "A utility may not recover from any person other than their shareholders (or other owners) any direct or indirect expenditure for promotional or political advertising. The term 'promotional advertising' means any advertising for the purpose of encouraging any person to select or use gas service or additional gas service or the selection or installation of any appliance or equipment designed to use gas service." While this rule prohibits promotional advertising, safety and informational advertising is allowed. In previous years, disagreements have arisen as to the proper classification of advertising expenses. The .5% allowance threshold was adopted in lieu of specifically identifying the type of advertising expense.

Q. Please explain the forecasted difference in storage expense, management audit amortization, and postage expense amounting to $.103 million.

A. Storage expense amount of $42,334 is excluded by the CA because the test year amount in the Company's exhibit (See Exhibit 7, Page 1, Line 7, Column 2) does not reconcile to the amount in the Company's corporate division income statement.

Also, the CA has amortized the management audit expense over a four year period. A four year period more adequately reflects the potential life of the management audit investment cost. This is consistent with the Commission Staff recommended amortization period as stated in their compliance audit report dated September 13, 1995. In the Company's rate filing, an amortization period of three years was used resulting in excess expense for the attrition year of $29,791.

Finally, the Company has included a $31,137 increase for postage expense. As previously mentioned, the CA has already recognized this increase through the growth factor applied to all non-payroll expenses. (See p. 7, Line 2).

Q. Please identify and explain the issues regarding other taxes and income taxes for United Cities Gas Company in Docket #95-

02258.

A. The CA Exhibit, Schedule 8 indicates the differences in the forecasted amounts between the CA and the Company. Other taxes are a separate tax category for classification purposes and are non-income taxes. The other taxes projected by the CA are a net $60,000 lower than the tax amounts projected by the Company for the attrition year. The issue regarding this $60,000 include primarily the calculated net differences in gross receipts tax, property tax and franchise tax.

Income taxes are higher per Schedule 10 primarily due to the difference in taxable net operating income. However, based on the capital structure of Dr. Brown, the CA has included $.600 million in additional interest expense in its calculation of income taxes, Schedule 9, Line 15. This inclusion reduces income taxes, but also the CA has included permanent differences, items which are not deductible for income tax purposes, of $.164 million which increases income taxes. These permanent differences have apparently been excluded by the Company in its tax calculation.

Q. Does this conclude your testimony?

A. Yes, it does.

Q. Please state your name for the record.

A. My name is R. Terry Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate Division ("CA") in the State of Tennessee Attorney General's Office as a Senior Regulatory Analyst.

Q. How long have you been employed in the utility industry?

A. Approximately eighteen years. Before my employment with the Attorney General, I was employed with the Tennessee Public Service Commission ("Commission") as a financial analyst for approximately six years. Prior to my employment with the Commission, I was employed by Telephone and Data Systems ("TDS") for eight years and the First Utility District of Knox County for three years.

Q. What is your educational background and what degrees do you hold?

A. I have a Bachelors degree in Business Administration from the University of Tennessee, Knoxville with a major in Accounting. I am also a Tennessee Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q. Would you briefly describe your responsibilities as a Regulatory Analyst since your employment with the CA?

A. I prepared testimony and exhibits as an employee with the

Commission before becoming a member of the CA. My responsibilities have not been altered significantly since my employment change.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present information to the Commission on the appropriate operating expenses other than depreciation for the attrition year October 1, 1995 to September 30, 1996 for Chattanooga Gas Company ("Company"). Additionally, I will present the CA's calculation of other taxes and income taxes for the attrition year.

Q. Please identify the issues regarding operating expenses for Chattanooga Gas Company in Docket #95-02116?

A. The CA Exhibit, Schedule 10 indicates the differences in the forecasted amounts between the CA and the Company. The operating expenses projected by the CA are $1.854 million lower than the operating expenses projected by the Company for the attrition year. The issues regarding this $1.854 million include the following. (1) the CA has excluded approximately $.577 million in excessive expense growth and inappropriate expenses for setting rates for the ratepayer; (2) a reduction of $.398 million in forecasted salaries and wages associated with advertising; (3) a reduction of $.280 million in forecasted medical insurance; (4) $.248 million reduction in projected uncollectible expense, sales promotion expense, management audit expense, and miscellaneous expense; (5) $.194 million in legal and rate case expense; and (6) $.157 million in payroll clearings.

Q. Please explain the difference in forecasted expense growth of the Company and the CA for the attrition year.

A. The Company has used a compound customer and inflation growth rate of 18.06% for the majority of the operating expense accounts excluding salaries and wages. The CA used an annual customer growth rate of 4.65% and an annual inflation rate of 2.56% which generates a compound growth rate of 9.89% from the twelve months ended September 30, 1994 through September 30, 1996. The information used to determine the CA's inflation factor was taken from the publication "Blue Chip Indicators". The annual customer growth rate was based on the Company's projections of customer growth. The cumulative effect of the difference in the compound growth of non salary and wage expense amounts to $.310 million.

The CA's calculation of salaries and wages is approximately $.220 million lower than the Company. This difference is due to overstatement of salaries and wages in the Company's filing when reconciled with the price-out of employee's salaries, the exclusion of one employee, and lower salary increases for management and non-union supervisory personnel. The Company included an employee who is no longer with the organization in its projection of salary and wages. Additionally, the Company projected annual increases of 5% and 4.5% for it's non-union management and supervisory personnel. The CA limited the increase for these employees to a 4% annual increase, the same level agreed to by the union supervisory personnel in year one of their contract.

The remaining $47,000 difference is due to the erroneous exclusion by the Company of flex vacation deduction amounts of approximately $28,000; and approximately $19,000 of under-allocated costs to non-regulated operations and capitalization.

Q. Please explain the forecasted difference in sales promotion salaries and wages expense amounting to $.398 million.

A. The CA has excluded $.398 million in sales promotion salaries and wage expenses. The sales promotion expense proposed by the CA meets the standard criteria of .5% of revenues in determining the amount of expense to allow for advertising. This standard criteria was set in Commission Docket U-85-7355 for Nashville Gas Company and is consistent with positions taken by the Commission Staff in subsequent gas company rate cases i.e. United Cities Gas Company, Docket #92-02987. Further, regarding advertising expenses Commission rule *1220-4-5- 45* states, "A utility may not recover from any person other than their shareholders (or other owners) any direct or indirect expenditure for promotional or political advertising. The term 'promotional advertising' means any advertising for the purpose of encouraging any person to select or use gas service or additional gas service or the selection or installation of any appliance or equipment designed to use gas service."

Q. **Please explain the forecasted difference in employee health and life insurance expense of $.280 million.**

A. The Company erroneously used the projected 1997 amount for employee insurance expense rather than the appropriate 1996 per Company workpapers. Further, the Company failed to allocate a portion of these expenses to capitalization and non-regulated operations. The correction of these oversights amounts to approximately $.280 million.

Q. **Please explain the forecasted difference in uncollectible expense, sales promotion expense, and management audit expense accumulating to $.248 million.**

A. The CA's uncollectible expense for the attrition year was calculated based on the most recent five year history of net write-offs. The CA amount is approximately $65,000 lower than the Company's amount which excludes an abnormally high recovery amount for 1994, but fails to exclude the abnormally high write-off as well. The CA amount reflects both exclusions.

The CA has excluded $90,226 in additional Company proposed sales promotion expenses. As previously discussed, the sales promotion expense proposed by the CA meets the standard criteria of .5% of revenues in determining the amount of expense to allow for advertising. This standard criteria was set in Commission Docket U-85-7355 for Nashville Gas Company and is consistent with positions taken by the Commission Staff in subsequent gas company rate cases i.e. United Cities Gas Company, Docket #92-02987.

Also, the CA has amortized the management audit expense over a four year period. This is consistent with the Commission Staff recommended amortization period as stated in their compliance audit report dated August 28, 1995. In it's rate filing, the Company amortized the management audit expense over a two year period resulting in excess expense of $49,347.

Finally, the CA disallowed approximately $42,000 in miscellaneous expenses as proposed by the Company which are not allowed for use in setting rates. The CA position on this item is consistent with previous positions taken by the Commission Staff.

Q. Please explain the forecasted difference in legal and rate case expense of $.194 million.

A. The Company included legal costs for Federal Regulatory Energy Commission ("FERC") orders incurred in or prior to the test year and have no basis for inclusion in the attrition year. The CA included $48,500 of anticipated costs for this rate filing to be amortized over three years or $16,167 for the attrition year. The excess expense difference between the CA calculated amount and the Company projection amounts to $.194 million.

Q. Please explain the forecasted difference in payroll clearings of $.157 million.

A. The Company has included in its calculation of non-salary and wage expenses, $.157 million in payroll clearing. The Company calculated its attrition year salaries and wages expense including amounts charged to clearing accounts. Some employees charge their work time to a clearing account. A portion of the clearing account amount is redistributed to expense accounts. The redistributing or clearing process allocates payroll charged to clearing accounts to an expense account based on salaries and wages charged directly to expense accounts. However, through the Company's accounting processes, the payroll clearing amount is recognized as non-payroll dollars. The Company has in effect double-counted the $.157 million payroll clearing dollars by including them in their salaries and wages expense calculation and also in their calculation of non-salary and wage expenses.

Q. Please identify the issues regarding other taxes and income taxes for Chattanooga Gas Company in Docket #95-02116?

A. The CA Exhibit, Schedule 11 indicates the differences in the forecasted amounts between the CA and the Company. The other taxes projected by the CA are $.400 million lower than the tax amounts projected by the Company for the attrition year. The issues regarding this $.400 million include the following: (1) the CA has excluded approximately $.200 million in excessive property tax expense; (2) a reduction of $.106 million in forecasted Tennessee gross receipts tax expense; (3) a reduction of $45,550 in forecasted Tennessee state franchise tax expense; (4) approximately $30,000 in lower payroll taxes; and (5) income taxes per Schedule 13 which are primarily due to the difference in taxable net operating income.

Q. Please explain the forecasted difference in other taxes of approximately $.400 million.

A. The Company has assumed a significant property tax rate change for Hamilton County during the attrition year. There is no evidence to support this rate change. Further, the composite tax rate for the Company has not changed significantly over the last three years. The CA has calculated property taxes using the 1994 tax rates and property assessment values which reflects recent historical increases. This results in $.200 million in overstated projected property tax expense by the Company.

The Company has used a five year average of effective Tennessee State Gross Receipts Tax rates to calculate the amount of Tennessee Gross Receipts Tax for the attrition period. The effective tax rate has declined by 20% over the last five years. The Company's use of a five year average does not reflect the current effective tax rate and consequently overstates the Tennessee Gross Receipts Tax. The CA has used an average of actual and projected gross receipts for the attrition year at the actual tax rate less 1994 estimated franchise and excise taxes. The difference in calculated amounts between the Company and the Staff amounts to $.107 million for the attrition year.

The Company has included an acquisition adjustment in its calculation of Tennessee State Franchise Tax. This is an inappropriate inclusion for calculating franchise tax expense in setting rates. The CA has excluded this amount resulting in $45,550 lower franchise tax expense.

Additionally, the payroll taxes for the attrition year are overstated by approximately $30,000 due to an overstated salary and wage calculation by the Company.

Q. Please explain the forecasted difference in income taxes.

A. The difference in the CA and Company's income taxes is due to lower operating expenses by the CA and the difference in capital structure, specifically the cost of debt.

Q. Does this conclude your testimony?

A. Yes, it does.

Buckner Response Support #29, 30 & 45

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

March 17, 1988 Nashville, Tennessee

IN RE: PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO PERMIT IT TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS

DOCKET NO. U-87-7534

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Tennessee American Water Company to increase its rates and charges to produce additional gross revenues of $2,175,137.

At the request of Tennessee American Water Company, a pre-hearing conference was set for hearing and heard on February 19, 1988 before Mack Cherry, Administrative Judge.

This matter was set for a further hearing and was heard on March 8, 1988 before Administrative Judge, Mack Cherry, at the Hamilton County School Board Building, Chattanooga, Tennessee, at which time all parties were present and advised the Administrative Judge that the controversy in this matter had been resolved and that they were agreeable to entering into an Agreed Initial Order setting out the basis for the resolution of this action before the Commission. On March 8, 1988 an Agreed Initial Order, signed by all parties, was issued by the Administative Judge.

The Commission considered this matter at its regularly scheduled Commission Conference on March 15, 1988, and it was concluded after consideration of the entire record, and all applicable laws and statutes, that the Agreed Initial Order of the Administrative Judge should be approved. The Commission further ratified and adopted the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order, dated March 8, 1988, in this docket, is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge, which the Commission adopts as its own.

2. That the tariffs filed by Tennessee-American Water Company on October 2, 1987, to become effective on November 1, 1987, which have heretofore been suspended, are hereby denied.

3. That Tennessee American Water Company file revised tariffs designed to produce additional annual revenues of approximately $1,521,000 and that these tariffs be filed with the Staff for their review in accordance with the Agreed Initial Order.

4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
May 4, 1990 NASHVILLE, TENNESSEE

IN RE: PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO PERMIT IT TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS

DOCKET NO. 89-15388

ORDER

This matter is before the Tennessee Public Service Commission upon the application of Tennessee American Water Company (Company) to increase its rates and charges to produce additional gross revenues of $2,609,365.

This matter was set for hearing and heard on April 4, 1990 at the Hamilton County School Board Building, Chattanooga, Tennessee before Ralph B. Christian, Administrative Judge. On April 12, 1990, the Administrative Judge issued his Initial Order recommending that the increase be granted with certain modifications in rate design as proposed by the Commission Staff.

The Commission considered this matter at the Commission Conference held on May 1, 1990. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes that the Administrative Judge's Initial Order should be approved. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated April 12, 1990, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein,

including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That the tariffs filed by Tennessee American Water Company on December 15, 1989, to become effective on January 14, 1990 which have heretofore been suspended, are hereby denied.

3. That the revised tariffs filed by the Company on April 24,1990 are consistent with this Order and are hereby approved to be effective for service rendered on and after the date of this Order.

4. That the Company shall conduct a depreciation study to establish new depreciation rates and present the results to the Commission within one (1) year. The cost of this study will be deferred until the Company's next rate filing.

5. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

6. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

Keith Bissell
CHAIRMAN

Stephen O. Hewlett
COMMISSIONER

Frank D. Cochran
COMMISSIONER

ATTEST

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

December 17, 1991

IN RE:	**PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO PERMIT IT TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS**	)

Docket No. 91-05224

O R D E R

This matter is before the Tennessee Public Service Commission (Commission) upon the Petition of Tennessee American Water Company (Company) to increase its rates and charges to produce additional gross revenues of approximately $2,400,000. The Company's petition, the testimony of its witnesses and exhibits, together with its tariffs, were filed on June 28, 1991. The tariffs were to become effective July 29, 1991. The tariffs as filed by the Company have been suspended by the Commission's two Orders, the last of which, dated October 25, 1991, suspended the tariffs for an additional ninety (90) days or until January 23, 1992.

PRELIMINARY MATTERS

The Commission designated Mack H. Cherry, Administrative Judge (AJ), to conduct a pre-hearing conference pursuant to T.C.A. § 4-5-306 in Nashville, Tennessee and to preside over any pre-trial matter raised to be resolved. A pre-hearing conference was held in Nashville, Tennessee on November 18, 1991 at 10:00 a.m. at which hearing counsel for the Company, the Commission

Staff (Staff) and the Chattanooga Manufacturers Association Water Intervention Group (CMA) were present and participated. A copy of the Pre-Hearing Conference Order dated November 20, 1991 approved by counsel for the parties participating was presented to the Commission at its hearing on November 20, 1991 at Chattanooga, Tennessee. The salient parts of the pre-hearing order are as follows:

> In its petition the Company has sought a revenue increase of $2,398,813.00. The Commission Staff has investigated the matter and concurred with this request. In addition, the Staff and Company have agreed to a rate of return of 10.42%. The rate design to accomplish this proposed rate increase has been accepted by the Company and the Commission Staff along with modifications proposed by the Staff.
>
> The intervenor, Chattanooga Manufacturers Association Water Intervention Group, does not contest the Company's rate case as filed with the Commission. This intervenor does, however, object to one rate design modification proposed by the Commission Staff. The Staff has proposed elimination of a special use tariff established for large volume water users in 1985. This special tariff is at present utilized by only two concerns, Buster Brown Apparel, Inc. and Seaboard Farms of Chattanooga, Inc., members of the intervenor group.
>
> This rate design issue relative to this special use tariff is the only issue in dispute to be resolved at the hearing before the Commission scheduled for November 20, 1991, in Chattanooga.
>
> The parties have agreed that the pre-filed testimony and exhibits of all Company witnesses and the staff witness relative to this Company's rate case <u>with</u> the exception of any testimony relating to the disputed special use tariff may be entered into the record of this proceeding. The right to cross-examine with respect to such pre-filed testimony and exhibits is waived with the exception of that testimony concerning the disputed issue.

HEARING

This matter then came on to be heard pursuant to notice dated October 25, 1991 before the Commission on November 20, 1991 at 1:30 p.m. EST at the Hamilton County School Board Building, 2nd and Broad Streets, Chattanooga, Tennessee at which time the following appearances were entered:

T. G. PAPPAS, Bass, Berry & Sims, 27th Floor, First American Center, Nashville, Tennessee, 37237, appearing on behalf of Tennessee American Water Company.

WILLIAM C. CARRIGER, Strang, Fletcher, Carriger, Walker, Hodge & Smith, 400 Krystal Building, One Union Square, Chattanooga, Tennessee 37402, appearing in behalf of The Chattanooga Manufacturers Association Water Intervention Group.

KENNETH O. FRITZ, Special Counsel for Randall L. Nelson, City Attorney, 400 Pioneer Bank Building, Chattanooga, Tennessee, 37402, appearing in behalf of The City of Chattanooga, Tennessee, Intervenor.

JEANNE MORAN, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37219, appearing on behalf of the Commission staff (Staff).

At the beginning of the hearing in response to the Commission's inquiry as to preliminary matters, the Company's counsel introduced a Letter dated November 19, 1991 addressed to Paul Allen, Executive Director of the Commission that was filed with him on that date setting out the Company's compliance with Commission Rule 1220.4-1.05 as to Publication of Notice. This was identified and marked as Exhibit 1. The Company's counsel then stated that, as set out in the pre-hearing order, there were no unresolved issues between the Company and the Staff. That the

Company had reviewed the pre-filed testimony and exhibits of the Staff's witness, John L. Baugh, and that his testimony, conclusions and recommendations were consistent with the Company's testimony and proof that it had a revenue deficiency of approximately $2,400,000 ($2,398,813). He further stated that the Company had proposed and the Staff had agreed to adopt an overall return of 10.42%, using the Commission's methodology, found to be fair, just and reasonable in Docket Nos. U-87-7534 and 89-15388 as proposed by the Commission's economist Dr. Christopher Klein in the prior cases and agreed upon for this case.

The Company's counsel then stated that all other matters proposed by the Staff including Staff recommendations as to the rate design were not opposed by the Company and therefore the Company did not file rebuttal testimony to the testimony of the Staff's witnesses recommendations. These recommendations from the Staff include (a) increasing the proposed services activation charge from $12.50 to $15.00 for a new account where service exists and a new account service fee of $25.00 where a new service must be installed; (b) increase the Company's bad check charge from $12.50 to $20.00; (c) increase the disconnect/reconnect fee from $12.50 to $15.00; and, (d) decrease the Company's proposed $.21 per CCF charge on the customer's first four CCF to $0.116 per CCF ($0.37 per CCF for customers in Lookout Mountain).

Staff counsel then stated that the only remaining rate design issue not agreed upon was the Staff's recommendation as to the continuation of the special use tariff. The Staff's position is that when the special use tariff was adopted in Docket No. U-85-7338 it was for the purpose of stabilizing the revenues of the Company and at that time the special use tariff rates for the fourteen listed customers were designed to be revenue neutral. It was intended that the minimum bill volumes would be calculated in each subsequent rate case, although the order in that case did not so specify, and such re-calculation had not been done in the subsequent cases. The Staff proposed to eliminate the special use tariff that was now only used by two customers or in the alternative to restate the minimum bill volumes to reflect the volumes actually used during the prior twelve (12) month period.

Counsel for CMA stated that his clients did not oppose the Company's request but that they did take issue with the Staff's proposal as to the special use tariff and that rebuttal testimony had been filed by officials of the two companies that had adopted the special use tariff and that they would testify as to the economic impact the Staff proposals would have on their operations in Chattanooga. Counsel for the City of Chattanooga stated that the City endorsed the position of CMA.

Counsel for each party then moved that the pre-filed sworn testimony of their witness and their exhibits be admitted and received as if the questions were asked and answers given and exhibits produced. The Commission received such testimony, and the exhibits were identified for the record. The testimony of the Company's witnesses, Richard T. Sullivan, Chris E. Jarrett, Dr. John L. O'Donnell, Edwin L. Oxley, J. L. Ware and Roy L. Ferrell, the Staff's witnesses, John L. Baugh and the witnesses of CMA, Glen Foreman and Les H. Wagner were entered as if orally presented.

The witnesses who were to be called to testify on the sole issue remaining to be adjudicated, the Staff's proposal as to the special use tariff, were then identified, John L. Baugh, Roy L. Ferrell, Glen Foreman and Les H. Wagner. They were duly sworn and counsel for the Staff, having the burden of proof or persuasion, presented its proposals and testimony in support thereof.

The testimony of the witnesses, both in support of and in opposition to the Staff's proposals concerning the special use tariffs was informative, well presented and assisted the Commission in its determination. The Staff witness, Baugh, explained the structure of the special use tariff that was filed by the Company in the 1985 rate case and adopted by the Commission in that docket. There are fourteen named customers listed in the special use tariff who can avail themselves of its provisions and they are all large volume users of water in the Chattanooga area. Only two customers, Buster Brown Apparel, Inc. and Seaboard Farms of Chattanooga,are currently availing themselves of this special use tariff. The volumetric factor in the special use tariff was based on 1985 data and has not been changed since that date even though the Company has filed three rate cases since this tariff was first filed in 1985.

The Staff's two proposals, the elimination of the special use tariff or the increase of the volumetric factor using current data would result in the customers having practically the same increase in their overall water cost. The increase to these customers by the Staff proposals would be approximately $24,000 per year for Buster Brown, Apparel, Inc. and approximately $20,000 for Seaboard Farms of Chattanooga. This increase would be in addition to the approximately 10 1/2% increase on the Company's rates for all customers that has been agreed to by all parties as being just and reasonable. It was further developed in this testimony that the Commission has had a policy for a long period of time of approving and in fact encouraging utilities to provide special contracts for customers in order to encourage usage and retention of such large customers, to attract customers to a particular area, or to encourage customers to stay aligned with the utility furnishing the service. These public policy considerations not only encourage industrial development but are successful in helping to keep the residential customers' rates lower than they would be without the industrial or large customer usage.

The Company witness, Roy L. Ferrell, called by the Staff, stated that while he was with the Company in 1985 he was not a witness in the 1985 rate case. He stated that the special use tariff had a dual purpose, the stability of revenues and the stability of customers. The Company had never proposed an adjustment of the volumetric component but that in every case the Company had adjusted the dollar amount, both in the monthly service charge and also as to the unit cost. He further testified that there were special use contracts in other jurisdictions served by water companies that were part of the American Water Works Company system. It was further developed from the testimony of Mr. Ferrell that the volumetric rate for these two customers provided for revenue over and above the cost of production.

CMA presented Glen Foreman, the general manager of Seaboard Farms who stated that his company was basically a producer and processor of poultry products employing approximately 1,000 people with a plant located in the downtown Chattanooga area. He testified that his company used 286 million gallons of water annually. It was the second largest customer of the Company and that the 1985 special use tariff permitted them to have an efficient operation and to cease seeking alternative sources of water. He testified that a new plant in Mayfield, Kentucky had its own wells and was a more efficient operation and had a capacity to increase production that could replace the Chattanooga plant production. He further testified that if the special use tariff were eliminated or changed that his company, by necessity, would have to seek alternatives. The plant last year operated at a loss of approximately $100,000, and that the increase that would come about by this rate case and the elimination or change of the special use tariff would cost his company approximately $55,000 for the coming year.

CMA finally presented Les H. Wagner, Vice President, Secretary and Treasurer of Buster Brown Apparel, Inc. who testified that his company was founded in Chattanooga in 1904 and that in 1984 they were looking at their water consumption. Because of the proposed increase in rates they had investigated alternative sources of supply. That after the special use tariff was adopted their business has increased, in fact it has tripled. In his direct testimony he testified that Buster Brown Apparel, Inc. had approximately 860 employees in the Chattanooga facility and is a profitable operation.

The Commission then heard from the only public witness present, Mr. Ed Markum, who made several observations concerning the proposed service charges and other matters. He thought the time for the hearing at 1:30 p.m. would discourage working people from attending. Also that the owners of apartments where the tenants changed from time to time should not be required to pay a turn on fee each time a tenant left and the apartment had to be cleaned. He discussed summertime watering and garden meter tariffs and suggested that consideration should be given to eliminating or reducing the activation fees. He also commented concerning management techniques and Commission review of operations. The comments of Mr. Markum were appreciated, and the Chairman stated that a service hearing had been held on November 12, 1991 at Chattanooga in the evening so that people could be heard at a convenient time and noted that only one person from the public attended that hearing. As to the issue involving the two tariff matters, the Commission stated that the Staff would look into these and see what could be done. The Chairman further stated that as to the planning processes of Tennessee American Water Company that the Commission was very aware of this Company's program, that it was a forward-thinking company, and that the Company was concerned not only with its own profitability but also with providing affordable rates and a safe supply of pure water for its customers. The Chairman further stated that the Commission now had a Staff person who does management audits and that there were specialists on the Staff who looked into all management issues. Mr. Markum was commended for taking the time to appear and share his thoughts with the Commission. The Chairman stated that the Commission's decision would be announced at the next regular deliberative session in Nashville, Tennessee and the hearing was adjourned.

CRITERIA FOR ESTABLISHING JUST AND REASONABLE RATES

The Commission has traditionally considered petitions such as this one, filed pursuant to T.C.A. § 65-5-203, in light of the following considerations:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and

4. The rate of return the utility should earn.

FINDINGS AND CONCLUSIONS

The following findings and conclusions as to the above criteria were agreed to by the Company and the Staff in this action and are as herein set out. The Intervenors stated they were not opposing the Company and Staff's resolution of these issues but they were opposing the Staff's proposals as to the special use tariffs.

TEST PERIOD

The objective of selecting a test period is to obtain financial data and adjust it as necessary to reflect the interrelationship of revenues, expenses and investment expected to occur in the immediate future. In this case the Company proposed the twelve months ended March 31, 1991 as a proper test period and has made adjustments through December 31, 1992. The Staff accepted this test period since it provides a proper analysis of the results of operations for the first year any new rates would be in effect.

RATE BASE

The Company developed an attrition year rate base of $65,524,904. The Staff agreed, for the purpose of this proceeding, that the rate base developed by the Company reflected adjustments that were likely to occur during the attrition year and therefore the rate base as developed by the Company is acceptable to the Staff. In Docket No. 89-15388 the Staff recommended and the Company had agreed to conduct a depreciation study for the purpose of establishing new depreciation rates and to present the results to the Commission within one year. This was done by the Company filing a petition, Docket No. 91-00183 for approval of the study and the depreciation rates it developed. The Commission by its order in Docket No. 91-00183 dated July 18, 1991 approved the new depreciation rates that are used in this case..

REVENUES AND EXPENSES

The Company and Staff have agreed that for the purposes of this case that the net operating income at present rates of the Company, for the test period was $5,371,240. They have further agreed that the revenue deficiency for the attrition year is $2,398,813 based upon a fair rate of return of 10.42%. The calculation of the revenue deficiency and the components used are found in Staff Exhibit, Schedule 1 entitled **Results of Operations for the Twelve Months Ending December 31, 1992**, which is as follows:

TENNESSEE-AMERICAN WATER COMPANY
Results of Operations
for the Twelve Months Ending December 31, 1992

		Amount
1	Rate Base	$65,524,904
2	Operating Income at Present Rates	5,371,240
3	Earned Rate of Return	8.20%
4	Fair Rate of Return	10.42%
5	Required Operating Income	6,827,695
6	Operating Income Deficiency	1,456,455
7	Gross Revenue Conversion Factor	1.647022
8	Revenue Deficiency	$ 2,398,813

FAIR RATE OF RETURN

In a contested case a finding on fair rate of return is one of the most subjective determinations that a Commission must make in arriving at a decision concerning the proper level of rates a Company charges its customers. The decision on a rate of return must be given in-depth analysis and consideration because of the impact that a small change in rate of return has on revenue requirements and the rates that customers must pay. This consideration must be weighed in conjunction with the controlling legal standards established by statute and case law. The Commission has the obligation to make this determination based upon the controlling legal standard laid down in the landmark Bluefield and Hope cases. In the Bluefield case the Supreme Court stated:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional rights to profits such as are realized or anticipated in highly profitable or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management to maintain and support its credit and able it to raise the money necessary for the proper discharge of its public duties."

Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia, 262 U.S. 679, 692-93 (1923).

Later, in the Hope case, the Supreme Court refined these guidelines, holding that:

"From the investor or company points of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return on the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital."

Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 603 (1944).

In this case the Company and the Staff have agreed that an overall return of $10.42% as presented by the Company and as shown in the following table is fair and reasonable and meets the tests of the Bluefield and Hope cases. The intervenors did not disagree with this stipulation. This weighted cost of capital has an assigned cost rate for the common equity component of the capital structure of 11.84% which rate approximates the current authorized return for equity in the Company's last rate case, Docket No. U-89-15388. The capital structure and the weighted cost of each component for the Company as agreed to by the Company and the Staff for this case and this case only is as shown on Jerry Ware Exhibit 3, Schedule 1, which is as follows:

RATE OF RETURN SUMMARY

CLASS OF CAPITAL	REFERENCE	AMOUNT	PERCENT OF TOTAL	COST RATE	WEIGHTED COST RATE
Long Term Debt	Schedule 2	$36,425.109	57.58%	9.81%	5.65%
Short Term Debt			0.00%		0.00%
Preferred Stock	Schedule 3	3,282.670	5.19%	6.95%	0.36%
Common Equity		23,547.898	37.23%	11.84%	4.41%
		$63,255.677	100.00%		10.42%

It is agreed by the Company and the Staff that the overall rate of return shown above would provide the Company a fair, just and reasonable rate of return. Therefore, the Company needs additional gross annual revenues in the amount of $2,398,813.

RATE DESIGN

The Company filed tariffs with its petition designed to produce an increase in annual revenues of $2,398,813. Other than the special use tariff, the Staff had recommended four (4) changes to the filed tariffs and the Company did not oppose the changes. It is agreed that as part of the tariffs to be filed by the Company the following will be included: (a) increasing the proposed services activation charge from $12.50 to $15.00 for a new account where service exists and a new account service fee of $25.00 where a new service must be installed; (b) increase the Company's bad check charge from $12.50 to $20.00; (c) increase the disconnect/reconnect fee from $12.50 to $15.00; and, (d) decrease the Company's proposed $.21 per CCF charge on the customer's first four CCF to $0.132 per CCF ($0.386 per CCF for customers in Lookout Mountain). It has also been agreed that the remainder of the increased revenues shall be derived by an across the board equal increase for all classes of service.

CONCLUSION

This matter was further considered at the Commission's deliberative session on Tuesday, December 3, 1991 in Nashville, Tennessee. After considering the pretrial testimony, the exhibits, the testimony of the witnesses as to the disputed issue, the pre-conference order and the stipulations announced at the November 20, 1991 hearing in Chattanooga, the Commission finds and concludes that: (a) the Company is entitled to place rates in effect that will permit it to earn its revenue deficiency of $2,398,813.00 for the attrition year; (b) the overall return of 10.42% and the capital structure of the Company as agreed upon by the Staff is fair, just, reasonable and complies with the Hope and Bluefield cases; (c) the special use tariff as filed by the Company should remain in effect because it is consistent with our public policy to encourage businesses and industry to contribute to the economic welfare of this state; (d) the three Staff proposals as to the activation charge, the bad check charge, and the disconnect/reconnect fees are proper; and (e) the Company should establish for all customers a rate for the first four CCF's of $0.132 per CCF ($0.386 per CCF for customers in Lookout Mountain). All of these changes and additions are fair, just and reasonable and in the best interests of the Company and its customers and therefore they should all be approved by this Commission and placed into effect as soon as possible.

IT IS THEREFORE ORDERED:

1. That the tariffs heretofore filed by the Company on

June 28, 1991 with an effective date of July 29, 1991, which have been suspended by two orders of the Commission are hereby denied.

2. That the Order of the Administrative Judge dated November 20, 1991 is hereby adopted and ratified by the Commission and by reference is made a part of this order.

3. That the Company shall file tariffs in accordance with this order that are designed to produce additional gross annual revenues of approximately $2,398,813.00. The tariffs shall contain the special use tariff, as filed by the Company on July 29, 1991 and shall incorporate the three changes proposed by the Staff and agreed to by the Company and the change in CCF rates for the first four CCF as set out herein. The Company having furnished the Staff a copy of the proposed tariffs for their review and since they have been approved, the tariffs shall become effective the date of this Order.

4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle

Section, within thirty (30) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 31, 1996

IN RE:	PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	))))))

DOCKET NO. 96-00959

ORDER

This matter is before the Tennessee Regulatory Authority (hereafter "Authority") upon the petition of Tennessee American Water Company (hereafter "Company") to increase its rates and charges to produce additional gross revenues in the amount of $2,448,943.00. The matter was set for hearing and heard on October 17, 1996, at the Hamilton County School Board Building, Chattanooga, Tennessee, beginning at 10:00 a.m. EDT before H. Lynn Greer, Hearing Officer.

The Hearing Officer issued his Initial Order holding that the Stipulation and Recommendation of Settlement entered into by and between the parties should be approved in its entirety. The Hearing Officer found and concluded from the entire record that: (a) the additional revenues needed by the Company were $1,405,000.00, and that this amount is just and reasonable; (b) the stipulated and agreed upon decrease from 8.9% requested, to 5.1% increase in customer rates is fair, just and reasonable; and (c) that tariffs filed by the Company on October 17, 1996, to become effective on November 1, 1996, designed to increase annual revenues by $1,405,000.00 are just and reasonable and should be permitted to go into effect on November 1, 1996.

The Authority considered this matter at a regularly scheduled Authority Conference held on October 29, 1996. It was concluded, after careful consideration of the entire record, that the Hearing Officer's Initial Order should be approved and adopted. The Authority further finds that it should adopt the findings and conclusions of the Hearing Officer as its own.

IT IS THEREFORE ORDERED:

1) That the Hearing Officer's Initial Order in this Docket is hereby approved, adopted and incorporated by reference in this Order as though fully copied verbatim herein, including the findings and conclusions of the Hearing Officer which the Authority adopts as its own;

2) That the tariffs filed by Tennessee American Water Company on May 17, 1996, to become effective on June 16, 1996, which have heretofore been suspended are hereby denied; and

3) That the tariffs filed on October 17, 1996, with an effective date of November 1, 1996, be and the same are hereby approved to be effective for service rendered to customers on and after November 1, 1996.

Lynn Greer

CHAIRMAN

Sara Kyle

DIRECTOR

DIRECTOR

ATTEST:

EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

October 28, 1996 Nashville, Tennessee

IN RE:	PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	)

DOCKET NO. 96-00959

INITIAL ORDER

This matter is before the Tennessee Regulatory Authority ("Authority") pursuant to the Petition filed by Tennessee American Water Company ("Company") to change and increase certain rates and charges as set out in that Petition. The Authority set the matter for hearing in Chattanooga, Tennessee, for October 17, 1996, beginning at 10:00 o'clock a.m. EDT at the Hamilton County School Board Building. The Authority at a regularly scheduled Authority Conference on October 15, 1996, appointed its Chairman H. Lynn Greer, Hearing Officer, to hear this matter and to issue an Initial Order.

I. HEARING

This matter then came on to be heard before the Hearing Officer H. Lynn Greer, on October 17, 1996, at the Hamilton County School Board Building, Chattanooga, Tennessee, beginning at 10:00 o'clock a.m. EDT, at which time the following appearances were entered.

APPEARANCES:

T. G. PAPPAS, Bass, Berry & Sims PLC, 27th Floor, First American Center, Nashville, Tennessee, 37238, appearing on behalf of Tennessee-American Water Company.

DAVID W. YATES, Consumer Advocate Division, Office of the Attorney General, 404 James Robertson Parkway, Suite 1504, Nashville, Tennessee 37243-8700.

WILLIAM C. CARRIGER, Strang, Fletcher, Carriger, Walker, Hodge & Smith, 400 Krystal Building, One Union Square, Chattanooga, Tennessee 37402, appearing in behalf of The Chattanooga Manufacturers Association Water Intervention Group.

The Hearing Officer asked for any preliminary statements, Counsel for the Company stated that the Company had complied with Rule 1220.4-1.05 of the Rules of the Authority and Tennessee Code Annotated 65-5-201 pertaining to publication and posting of a Notice of Hearing ("Notice") by publishing the Notice in the Chattanooga News Free Press on October 7, 1996, and the Chattanooga Times on October 7, 1996 and by posting a copy of the Notice in the Company's main lobby of the Customer Service area in Chattanooga on October 4, 1996. Counsel then moved that the letter to Mr. K. David Waddell, dated October 14, 1996, as to the publication, with copies of the printed and published notices be made Exhibit 1 in this cause, and the Hearing Officer so ordered.

The Company then stated that the Company had entered into an agreement of Stipulation and Recommendation of Settlement with all the parties in this cause, the Consumer Advocate Division, Office of the Attorney General and the Chattanooga Manufacturer's Association Water

Intervention Group. He asked that a copy of the letter dated October 7, 1996, to the Executive Secretary, together with the agreement and attachments thereto, be filed and made a part of this record as Exhibit 2, and the Hearing Officer so ordered.

Counsel for the Company then stated the general terms and conditions of the Stipulation and Recommendation of Settlement. It was stated that the Company's requested additional annual revenues had been reduced from $2,448,943.00 to $1,405,000.00. Counsel further stated that as shown in attachment B to the Stipulation and Recommendation of Settlement, customers' rates would increase 5.1% and that this was a reduction from the originally requested rate increase of approximately 8.9% as shown in its Petition. The stipulation Exhibit 2 in this proceeding included these seven terms to which the parties agreed:

> (1) The Company has reduced the amount of its requested annual revenues from $2,448,943.00 to $1,405,000.00 and shall adjust its rates to recover approximately $1,405,000.00 in additional annual revenues from its customers for service rendered on and after November 1, 1996. Attached hereto as attachment A is a schedule that shows the calculation of the stipulated revenue increase. It is agreed that the additional revenues and the design of the tariffs to be applied by the Company are fair and reasonable. The tariffs are attached to this Stipulation as attachment B and are designed to increase the customer rates 5.1% "across the board".
>
> (2) It is understood that this Stipulation and Recommendation has not been approved by the Authority and will be submitted to the Authority.
>
> (3) The parties agree that the negotiations have been conducted in good faith in an attempt to resolve the Company's need for increase revenues and that the resolution of this matter as set out in this Stipulation and Recommendation is a fair and reasonable resolution of all the issues in this proceeding and is in the best interest of the Company's customers and the Company.
>
> (4) The parties agree that by entering into this Stipulation and Recommendation, they are not agreeing, for the future, to any item or change as requested by the Company nor any specific theory supporting the appropriateness of such changes.

(5) This Stipulation and Recommendation has been agreed to for the purposes of settling this case and shall not be binding upon the parties hereto in any other proceeding before this Authority or any Court and it shall not be offered in evidence or relied upon in any other proceeding involving Tennessee American Water Company before the Authority.

(6) It is agreed that if the Authority does not adopt this Stipulation and Recommendation in its entirety, each party hereto reserves the right to withdraw from it and request that the matter proceed as if no stipulation or recommendation had been entered into, and in such event this Stipulation and Recommendation shall not be binding upon any of the parties, and shall not be admitted into evidence or relied upon by any party in this proceeding before the Authority or any Court proceeding for judicial review.

(7) If the Regulatory Authority adopts this Stipulation and Recommendation in its entirety, each party agrees that it shall not file an application for rehearing with the Authority nor appeal this case or any part thereof for the judicial review.

Counsel for the Company and the Intervenors moved that all pre-filed testimony and exhibits be entered as if the questions had been asked and the answers had been given and all parties waived cross-examination of all witnesses. The Hearing Officer then inquired as to whether there were any public witnesses present who wanted to testify or make a statement. No public witnesses appeared to testify or make a statement.

II. CRITERIA FOR ESTABLISHING JUST AND REASONABLE RATES

The Authority considers petitions such as this one, filed pursuant to T.C.A. § 65-5-203, in light of the following considerations:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;

3. The proper level of expenses for the utility; and

4. The rate of return the utility should earn.

III. FINDINGS AND CONCLUSIONS

The following findings and conclusions as agreed to by the parties in this action are as herein set out. Counsel for the Intervenor Chattanooga Manufacturers Association Water Intervention Group, stated that the interest which compelled his client's intervention was for the purpose of monitoring the tariff design, and the testimony which they filed dealt primarily with that issue. They agreed that their concerns had been resolved by the Stipulation entered into by the Company and the Intervenors. From all the record and exhibits before me, this Hearing Officer makes the following findings and conclusions.

A. TEST PERIOD

The objective of selecting a test period is to obtain financial data and adjust it as necessary to reflect the inter-relationship of revenues, expenses and investment expected to occur in the immediate future. In this case the Company selected the twelve months ending December 31, 1995, as the historical test period and made two levels of adjustments. The first adjustment normalizes the test year and the second adjusts the normalized year to arrive at the attrition year which is the twelve months ending October 31, 1997. The Stipulation and Recommendation of the parties as to this issue is adopted. The Hearing Officer, therefore, finds that the test period as adjusted will allow the Company the opportunity to earn a fair rate of return on its investment.

B. RATE BASE

The parties stipulated as to a rate base for the attrition year of $76,085,848. The Hearing Officer finds that the rate base in this case has been adjusted to reflect the investment and expenses of the Company for the attrition year test period and therefore is proper and should give the Company the opportunity to earn a fair rate of return on its investment to which it is entitled.

C. REVENUES AND EXPENSES

The parties stipulated that they have agreed to certain facts which were obtained by their review of the Company's books and records for the purposes of this case. They agreed that the net operating income at present rates of the Company, for the attrition period was $6,366,903. They further agreed that the revenue deficiency for the attrition year is $838,427 based upon an overall return of 9.47%. The calculation of the rate base, revenue deficiency, the revenue increase needed and the other components used are found in attachment A to Exhibit 2, which is as follows:

Tennessee-American Water Company
Stipulated Revenue Increase
Docket No. 96-00959

	Amount
Rate Base	$76,085,848
Operating Income at Present Rules	6,366,903
Earned Rate of Return	8.37%
Fair Rate of Return	9.47%
Required Operating Income	7,205,330
Operating Income Deficiency	838,427
Gross Revenue Conversion Factor	1.675758
Stipulated Revenue Increase	$ 1,405,000

D. FAIR RATE OF RETURN

The Authority in reaching a decision on a rate of return must give in-depth analysis and consideration to numerous factors, such as capital structure, cost of capital and changes that can be reasonably anticipated in the foreseeable future. The Authority has the obligation to make this determination based upon the controlling legal standard laid down in the landmark Bluefield and Hope cases. These cases have been cited and relied upon by many courts including the Tennessee Supreme Court. (See, Southern Bell Telephone & Telegraph Co. v. Public Service Commission, 304 S.W.2d 640, 647 (1957)). In the Bluefield case the United States Supreme Court stated:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risk and uncertainties; but it has no constitutional rights to profits such as are realized or anticipated in highly profitable or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia, 262 U.S. 679, 692-93 (1923).

Later, in the Hope case, the United States Supreme Court refined these guidelines, holding that:

> "From the investor or company points of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on

the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital."

Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 603 (1944).

The parties for this case and this case only have agreed in a capital structure that produces a rate of return for the Company of 9.47% which is fair and reasonable and meets the tests of the Bluefield and Hope cases. Therefore, the Company needs additional gross annual revenues in the amount of approximately $1,405,000.00, as shown in the table above.

E. RATE DESIGN

The parties have agreed that an across the board increase of 5.1% designed to produce an increase in annual revenues of $1,405,000 is fair and reasonable. The Hearing Officer approves this increase as being just and reasonable and meets the standards set out in T.C.A. § 65-5-203(a). The Company filed tariffs on October 17, 1996 pursuant to the agreement reached between the parties. It is the finding of the Hearing Officer that the tariffs as filed shall go into effect on November 1, 1996.

IV. REVIEW OF INITIAL ORDER

The appeal from an initial order is controlled by T.C.A. § 4-5-315. The steps necessary to have an initial order appealed are fully set out in that section. Pursuant to the provisions of the above cited section, the Authority may upon its own motion review the initial order and the parties may file exceptions or replies to exceptions in the form of a brief setting forth specific issues. The exceptions and any replies thereto will be considered by the Authority in its review. The Authority will determine the matter at a regularly scheduled Authority conference.

IT IS THEREFORE ORDERED:

1. That the tariffs filed by the Company on May 17, 1996, to become effective on June 16, 1996, which have heretofore been suspended, are hereby denied.

2. That the tariffs filed by the Company with an issue date of October 17, 1996, and an effective date of November 1, 1996, designed to produce additional annual revenues of approximately $1,405,000 and designed to increase customer rates across the board by 5.1% be approved and permitted to go into effect as of November 1, 1996, subject to the Authority's adoption of the Initial Order.

3. That the Settlement Agreement resolves all issues in this case which were before the Hearing Officer.

H. LYNN GREER
HEARING OFFICER

#478143

REC'D TN REGULATORY AUTH.

'96 OCT 7 PM 2 30

EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE: PETITION OF TENNESSEE AMERICAN WATER COMPANY TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS)

DOCKET NO. 96-00959

STIPULATION AND RECOMMENDATION OF SETTLEMENT

This matter is before the Tennessee Regulatory Authority ("Authority") pursuant to the Petition filed by Tennessee American Water Company ("Company") to change and increase certain rates and charges as set out in that Petition. The Authority has set the matter for hearing in Chattanooga, Tennessee, October 17, 1996, beginning at 10:00 o'clock a.m. EDT at the School Board Building.

The parties to this proceeding, the Company, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") and the Chattanooga Manufacturers Association Water Intervention Group ("CMA") have had full and free exchange of information and have negotiated in an attempt to resolve issues in this case. The parties have resolved the issues in controvery and have entered into this Stipulation and Recommendation of Settlement as follows:

(1) The Company has reduced the amount of its requested additional annual revenues from \$2,448,943.00 to \$1,405,000.00 and shall adjust its rates to recover approximately

$1,405,000.00 in additional annual revenues from its customers for service rendered on and after November 1, 1996. Attached hereto as attachment A is a schedule that shows the calculation of the stipulated revenue increase. It is agreed that the additional revenues and the design of the tariffs to be applied by the Company are fair and reasonable. The tariffs are attached to this Stipulation as attachment B and are designed to increase the customer rates 5.1% "across the board".

(2) It is understood that this Stipulation and Recommendation has not been approved by the Authority and will be submitted to the Authority.

(3) The parties agree that the negotiations have been conducted in good faith in an attempt to resolve the Company's need for increase revenues and that the resolution of this matter as set out in this Stipulation and Recommendation is a fair and reasonable resolution of all the issues in this proceeding and is in the best interest of the Company's customers and the Company.

(4) The parties agree that by entering into this Stipulation and Recommendation, they are not agreeing, for the future, to any item or change as requested by the Company nor any specific theory supporting the appropriateness of such changes.

(5) This Stipulation and Recommendation has been agreed to for the purposes of settling this case and shall not be binding upon the parties hereto in any other proceeding before this Authority or any Court and it shall not be offered in evidence or relied upon in any other proceeding involving Tennessee American Water Company before the Authority.

(6) It is agreed that if the Authority does not adopt this Stipulation and Recommendation in its entirety, each party hereto reserves the right to withdraw from it and request that the matter proceed as if no stipulation or recommendation had been entered into, and in such event this

Stipulation and Recommendation shall not be binding upon any of the parties, and shall not be admitted into evidence or relied upon by any party in this proceeding before the Authority or any Court proceeding for judicial review.

(7) If the Regulatory Authority adopts this Stipulation and Recommendation in its entirety, each party agrees that it shall not file an application for rehearing with the Authority nor appeal this case or any part thereof for the judicial review.

AGREED to this 7th day of October, 1996.

TENNESSEE AMERICAN WATER COMPANY

By T. G. Pappas
T. G. Pappas

CONSUMER ADVOCATE DIVISION
of the OFFICE OF THE ATTORNEY
GENERAL

By David Yates
David Yates By Permission T.G.P.

CHATTANOOGA MANUFACTURERS
ASSOCIATION WATER INTERVENTION
GROUP

By William C. Carriger
William C. Carriger By Permission JLH

Attachment A

Tennessee-American Water Company
Stipulated Revenue Increase
Docket No. 96-00959

	Amount
Rate Base	$76,085,848
Operating Income at Present Rates	6,366,903
Earned Rate of Return	8.37%
Fair Rate of Return	9.47%
Required Operating Income	7,205,330
Operating Income Deficiency	838,427
Gross Revenue Conversion Factor	1.675758
Stipulated Revenue Increase	$1,405,000

TENNESSEE-AMERICAN WATER COMPANY

TPSC No. 19
Fourth Revision of Sheet No. 4
Canceling
Third Revision of Sheet No. 4

SERVICE CHARGES:

Service Charge Per Month

Meter Size	Chattanooga General Water Service Tariff	Lookout Mountain Tariff	Lakeview Tariff	
5/8"	$ 8.26	$ 9.24	$ 9.24	(I)
3/4"	13.86	13.86	13.86	(I)
1"	23.07	23.07	23.07	(I)
1-1/2"	46.18	46.18	46.18	(I)
2"	73.86	73.86	73.86	(I)
3"	138.50	138.50	138.50	(I)
4"	230.83	230.83	230.83	(I)
6"	461.67	461.67	461.67	(I)
8"	738.67	738.67	738.67	(I)

VOLUMETRIC RATES:

Cost per CCF

Monthly Use	Chattanooga General Water Service Tariff	Lookout Mountain Tariff	Lakeview Tariff	
0-4 CCF/Mo.	$ .1490	$ .4350	$ .1490	(I)
4-65	2.4360	3.3720	3.0850	(I)
65-500	1.5400	2.5180	2.2300	(I)
500-5,000	1.1390	1.4760	1.1890	(I)
5,000-15,000	.9160	1.2540	.9680	(I)
Over 15,000	.5550	.8880	.6080	(I)

(I) Increase

ISSUED: EFFECTIVE DATE: November 1, 1996

BY: R.T. SULLIVAN, VICE PRESIDENT
1101 Broad Street
Chattanooga, Tennessee 37401

TENNESSEE-AMERICAN WATER COMPANY

TPSC No. 19
Fourth Revision of Sheet No. 6
Canceling
Third Revision of Sheet No. 6

CLASSIFICATION OF SERVICE

PUBLIC FIRE SERVICE FOR THE CITY OF RIDGESIDE

Available For:

Public Fire Service in the City of Ridgeside.

Annual Rates, Charges and Conditions of Service

The annual charge for water service furnished to fire hydrants existing on October 20, 1956, attached to its then-existing water mains in the City shall be $1,849.92. This charge shall be due and payable in twelve (12) equal installments, each installment to be due and payable on the 10th day of the month, covering service for the preceding month, and if not paid within sixty (60) days thereafter, shall bear interest from said due and payable date at the rate of six percent (6%) per annum. (I)

The City shall have the right to install or cause to be installed, at its own cost and expense, such additional fire hydrants as it may desire on mains within the limits of the city six (6") and larger in diameter, size to be determined by the Water Company, in the public highways in the City, and, on such extended mains as may be ordered by the City, and the City shall pay an annual rental on such water main extensions of six (6") inches or larger at the rate of three cents ($.03) per inch of diameter for each lineal foot of main laid in the extension of such main, provided, however, that the Water Company shall not be required to make any extension of its mains while the City is in arrears on its fire hydrant rental payment.

(I) Increase

TENNESSEE-AMERICAN WATER COMPANY

TPSC No. 19
Fourth Revision of Sheet No. 8
Canceling
Third Revision of Sheet No. 8

CLASSIFICATION OF SERVICE

PUBLIC FIRE SERVICE

Available For:

Public Fire Service in the City of Chattanooga, City of East Ridge, City of Red Bank, the Town of Lookout Mountain, Tennessee, and Unincorporated Areas of Hamilton and Marion Counties, Tennessee; and the City of Rossville, the Town of Lookout Mountain, Georgia and the Unincorporated Areas of Walker, Catoosa and Dade Counties, Georgia.

Rates	Rates Per Annum	
Each Public Fire Hydrant	$301.20	(I)

(I) Increase

ISSUED: EFFECTIVE DATE: November 1, 1996

BY: R.T. SULLIVAN, VICE PRESIDENT
1101 Broad Street
Chattanooga, Tennessee 37401

TENNESSEE-AMERICAN WATER COMPANY

TPSC No. 19
Fifth Revision of Sheet No. 9
Canceling
Fourth Revision of Sheet No. 9

CLASSIFICATION OF SERVICE

PRIVATE FIRE SERVICE

Available For:
Private Fire Service in all territory served by the Company. Private Fire Service is rendered only after approval by the President or Vice President and General Manager of the Company of an "Application for Special Connection," and only in accordance with the terms and conditions as provided therein.

Rates

	Rate per Annum	
Private Fire Service Connections:		
1" diameter	$ 21.60	(I)
1-1/2" diameter	48.72	(I)
2" diameter	86.64	(I)
2-1/2" diameter	132.12	(I)
3" diameter	194.76	(I)
4" diameter	390.00	(I)
6" diameter	779.40	(I)
8" diameter	1,560.12	(I)
10" diameter	2,340.36	(I)
12" diameter	3,120.72	(I)
Private Fire Hydrants other than those supplied by Private Fire Service Connections	$779.40	(I)

(I) Increase

ISSUED: EFFECTIVE DATE: November 1, 1996

BY: R.T. SULLIVAN, VICE PRESIDENT
1101 Broad Street
Chattanooga, Tennessee 37401

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC. - FOR AN ADJUSTMENT OF ITS RATES AND CHARGES.

DOCKET NO. U-87-7499

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Nashville Gas Company (the Company) for a general rate increase. This matter was heard on October 8, 1987, before Chairman Frank Cochran, Commissioner Keith Bissell, and Commissioner Steve Hewlett. In addition, service hearings were conducted on September 29, October 1, and October 5, 1987, in the Cities of White House, Nashville, and Brentwood respectively.

Pursuant to T.C.A. Section 4-5-306, the parties held a pre-hearing conference on October 7, 1987. Ralph B. Christian, II, Administrative Judge, presided. Judge Christian thereafter issued an initial order for the Commission's consideration. The Judge's order approved a settlement between the Company and the Commission Staff which resolved all issues between the Staff and Company except questions concerning rate design.

While not specifically agreeing to the settlement, the intervenors - Vanderbilt University, City of Nashville, Avco Corporation, and Ferro Corporation - have raised no objections to it.

After considering the entire record, we adopt the settlement agreement proposed by the Company and Staff as set forth in the Order of October 7, 1987, and we incorporate that order (a copy of which is attached) in this decision.*

RATE DESIGN

The only issue not agreed upon was rate design.

Intervenor witness Johnstone testified in support of a rate design which he stated would shift revenues from the industrial customers to residential customers. Based upon the Company's cost of service study, Mr. Johnstone calculated that if all customer service classes were to earn the same rate of return, it would require a revenue shift of $11.9 million (Exhibit 20, Sch. 3). To avoid rate shock to that class of customers, he recommended a $2.9 million transfer which, in light of the settlement agreement, would increase residential rates by 17.3% (Exhibit 20, Sch. 5).

Staff witness Klein attacked the cost of service study filed by Company witness Schiefer. Dr. Klein testified that the study was based on fully distributed costs which should

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* One of the issues disposed of during the settlement process was whether the Company's new headquarters building should be included in rate base for ratemaking purposes. After several questions were raised about this issue during the hearing, the parties pointed out that the matter could be litigated in the Company's next rate proceeding and would be litigated if the management audit, or subsequent staff investigation, demonstrated that the purchase had been imprudent. With the understanding that the Commission is not foreclosed from considering this issue again, we approve the settlement between the parties.

not be used for ratemaking purposes. Some of the criticism leveled at the study by Dr. Klein included: (1) the proportion of residential bills to total (83%) was used to allocate some costs; (2) shares of peak day demand or peak and average day result in 30 to 40% allocators to the residential classes; (3) a fully distributed cost (FDC) study ignores economic efficiency; and (4) the dominant FDC concept is average cost, not marginal cost, and demand elasticities are ignored. Though he testified that the cost of service study was not reliable, he recommended that the Commission spread the agreed rate increase over residential and commercial customers. Dr. Klein testified that "leaving industrial and interruptible rates unchanged will help prevent a loss of gas sales to competitive fuels and will help maintain a contribution to fixed costs from these customers."

The Company and Staff proposals on rate design were very close. Both recommended increasing residential and commercial and not increasing rates for industrial customers. The difference mainly centered on the Company's proposal to shift approximately $400,000 of the revenue requirement from interruptible customers (which reflected the highest earnings) to residential and commercial customers. The Staff opposed the transfer of revenues. Ferro Corporation and Avco support it. The transfer will increase rates for residential and commercial customers by approximately .6% more than the Staff's proposed rate design.

We approve the design proposed by the Staff but direct that it be amended to shift $400,000 in revenues from interruptible customers to residential and commercial customers as proposed by the other parties. The transfer should be apportioned based on the relative commodity revenues for both classes. As pointed out by Dr. Klein, "These interruptible customers have the easiest access to alternative fuels and are the most likely purchasers to be lost if gas is priced too high." Since all customers are not equally "risky," there is no reason why all should pay the same return, but the rates we approve here will help the utility maintain service to its most vulnerable customers.

No party objected to the Company's proposal to raise fixed facility charges to all classes of customers and we so approve. The Company also proposes to offer lower rates to residential and commercial customers in summer months to encourage usage in off-peak months. We approve that concept.

One other rate design issue remains. The Company proposed a new transportation tariff. The Staff asked that the tariff be denied until the whole matter of transportation tariffs can be addressed in the generic docket G-86-1 (Order issued November 10, 1987). We believe the Staff's recommendation is sound and will deny the tariff and review the matter in subsequent generic proceedings.

The Company has filed proposed tariffs which conform to these findings. We hereby approve those tariffs for service rendered on or after the date of this Order.

MAIN EXTENSION POLICY

The Commission has received many complaints regarding the Company's main extension policy and the lack of responsiveness on the part of the Company to customer requests for service. Piedmont President Maxheim promised an immediate review of the situation. The Company is directed to file new main extension tariffs addressing these concerns within forty-five (45) days from the date of this Order.

IT IS THEREFORE ORDERED:

(1) The tariffs filed by Nashville Gas Company on May 15, 1987, designed to produce $7,369,815 in additional annual revenues be and the same are hereby denied.

(2) The tariffs filed by Nashville Gas Company designed to produce $2,061,000 in additional annual revenues are hereby approved for service rendered on or after the date of this Order.

(3) The Transportation tariff discussed herein is hereby denied.

(4) The Company shall file the main extension tariffs discussed herein within forty-five (45) days from the date of this Order.

(5) Any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with

the Commission within ten (10) days from and after the date of this Order.

(6) Any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
October 7, 1987

IN RE:	APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR AN ADJUSTMENT OF ITS RATES AND CHARGES	DOCKET NO. U-87-7499

PRE-HEARING ORDER

This matter is before the Commission upon petition of Nashville Gas Company (the "Company") for a general rate increase. The Commission designated the undersigned Administrative Law Judge to conduct pre-trial conferences pursuant to T.C.A. 4-5-306 and to preside over other pre-hearing matters as may arise. A pre-hearing conference was held at 2:00 p.m. on October 7, 1987, at which time the following counsel appeared:

For the Company:	Leslie B. Enoch II Jerry W. Amos
For the Staff:	Henry M. Walker
For the Intervenors:	John C. Callison for Vanderbilt University
	Kevin Key for City of Nashville
	Grant Smith for Textron Aerostructures, A Division of Avco Corporation
	Daniel R. Loftus for Ferro Corporation

In its application, the Company sought a revenue increase of $7,369,815. The Commission Staff (the "Staff") has investigated the Company's request and has proposed certain modifications and adjustments thereto. The Company and the Staff have held several settlement conferences in an attempt to resolve their differences. As a result of these conferences, the Company and the Staff have agreed to the following stipulations:

Stipulations

1. The appropriate test period for use in this docket is December 31, 1986.

2. The appropriate attrition period for which the revised rates will be in effect is the 12-month period ending October 31, 1988.

3. The appropriate rate base for use in this proceeding is $74,824,306. This rate base was computed by modifying the Company's rate base as filed by the following adjustments:

a. Plant in Service was reduced by $649,607;

b. Accumulated Depreciation was decreased by $334,894;

c. Deferred Income Taxes were increased by $1,199,132;

d. Contributions in Aid of Construction/Customer Advances were decreased by $43,266;

e. Injuries and Damages Reserve was decreased by $40,002; and

f. Working Capital was reduced by $2,011,248.

4. The appropriate overall rate of return for the Company is 11.04%. This return is based on a capital structure consisting of 48.76% common equity at a cost of 12.75%, 38.59% long-term debt at a cost of 9.68% and 12.65% short-term at a cost of 8.56%.

5. The appropriate Net Operating Income under present rates for use in this proceeding is $6,989,180. This Net Operating Income was computed by making the following adjustments to the Company's revenues and expenses as filed:

a. Operating Revenues were increased by $215,000 to reflect differences between the methods used by the Company and the Staff to project customer additions and customer usage.

b. Operating Expenses were reduced by $2,061,977 to reflect changes in the customer growth factor and inflation factor used for computing certain attrition period expenses and to reflect the following specific adjustments:

(1) Cost of gas was reduced by (i) $2,416,643 to reflect a reduction in demand charges from the Company's pipeline supplier and (ii) $627,511 to adjust for a reduction in Unaccounted For Gas, the use of a lower Btu correction factor and a reclassification of LNG processing costs of $384,967 to Distribution Expenses;

(2) Salaries and Wages were reduced by $50,848;

(3) Employee Benefits Expenses were increased by $170,115;

(4) Distribution Expenses were (i) reduced $83,738 to adjust expenses for data services and (ii) increased $384,967 to reclassify LNG processing costs from Cost of Gas;

(5) Uncollectable Expense was increased by $43,472;

(6) Advertising Expenses were reduced by $93,559;

(7) Administrative and General Expenses were reduced by (i) $66,283 to eliminate certain non-recurring expenses and (ii) $13,433 to adjust the allocation of home office expenses;

(8) Depreciation Expense were reduced by $8,178;

(9) Property Taxes were reduced by $162,970;

(10) Gross Receipts Taxes were reduced by $369,170;

(11) FICA Taxes were reduced by $13,053;

(12) Unemployment Taxes were reduced by $198;

(13) Franchise Taxes were increased by $20,878;,

(14) The Tennessee Public Service Commission Fee was reduced by $13,826;

(15) Various other operating expenses were increased by $2,903 to adjust for miscellaneous items not detailed herein;

(16) State Excise Taxes were increased by $58,997 to reflect the tax effect of the above adjustments; and

(17) Federal Income Taxes were increased by $1,176,101 to reflect the tax effect of the above adjustments and to increase the amortization of excess deferred taxes by $24,290.

6. The additional Gross Revenue required to produce the return on investment agreed to above is $2,061,041, as shown in Exhibit A.

7. The Company will continue to use cost reductions from spot gas purchases to reduce rates to limited availability industrial customers in the manner approved in Docket Nos. U-86-7474 and U-86-7494.

8. The Company will conduct, or cause to be conducted, a depreciation study as of October 31, 1988, and the Company will present the results of such study to the Commission as soon as practicable thereafter.

9. The Company and the Staff will jointly select a qualified consultant to perform a management audit of the Nashville Gas Company division of Piedmont Natural Gas Company, Inc. The scope of the audit will be jointly agreed to by the Company and the Staff, and bids will be sought as soon as practicable after February 15, 1988. The cost of the audit will be recovered by the Company in its next general rate proceeding.

10. The Company and the Staff agree to waive cross examination with respect to all stipulated matters.

11. The stipulations contained above are for the purpose of this proceeding only and are not intended to bind any party in

any future proceeding with respect to any matter subject to any such stipulation or any legal principle which may be embodied in any such stipulation.

Further Pre-Hearing Procedures

An on the record pre-hearing conference will be held at 2:30 p.m. on October 7, 1987. At that pre-hearing conference, the parties will be given an opportunity to make statements to the Commission, and the following procedures shall be recommended to the Commission for the hearing of this matter on October 8, 1987:

1. The order of witnesses will be as follows:

For the Company:

a. The testimony of the following witnesses will be copied into the record, the witnesses will be requested to summarize their testimony, and the witnesses will be available for cross-examination by any party wishing to do so:

John H. Maxheim--Direct and Rebuttal

Ware F. Schiefer--Direct only

b. All parties waive cross-examination of the following witnesses, and the testimony of these witnesses will be copied into the record without the necessity of the witnesses taking the stand:

Barry L. Guy--Direct only

Bill R. Morris--Direct and Rebuttal

Charles W. Fleenor--Direct and Rebuttal

C. M. Butler, III--Direct only

Ann H. Boggs--Rebuttal only

J. William Denny--Direct only

<u>For the Intervenors</u>:

a. If the Commission denies the motion to strike the testimony of Donald E. Johnstone, his testimony will be copied into the record, he will be given the opportunity to summarize his testimony and he will be available for cross-examination by all parties who have an interest in this proceeding which is adverse to the interest of those parties who sponsor Mr. Johnstone's testimony.

b. There will be no further witnesses for the intervenors.

<u>For the Staff</u>:

a. The testimony of the following witness will be copied into the record, the witness will be requested to summarize his testimony, and the witness will be available for cross-examination by any party wishing to do so:

Christopher C. Klein

b. All parties waive cross-examination of the following witnesses, and the testimony of these witnesses will be copied into the record without the necessity of the witnesses taking the stand:

William H. Novak

Joseph T. Werner

David Hood

R. Scott Savage

Exhibits

The following exhibits may be offered at the hearing and made a part of the record in this case without the necessity of further evidence or identification:

Exhibit No.	Pre-hearing No.	Description of Exhibit
1		Certificate of publication of notice
2	WFS-1	Present rate schedules
3	WFS-2	Proposed rate schedules
4	WFS-4	Price comparison (Rate 3 vs No. 2 Oil)
5	WFS-5	Price comparison (Rate 4 vs No. 2 & No. 6 Oil)
6	WFS-6	Cost of service study
7		Net property additions
8		Photographs of old building
9	BLG-1	Net Operating Income, Rate Base and Return on Rate Base
10		Company's Worksheets 1-28
11	CMB-1 - CMB-5	Rate of Return Exhibits
12		Staff Accounting Exhibit
13		Staff Management Exhibit
14		Staff Capital Exhibit
15	JHM-1	Normal Property Additions
16	JHM-2	Return on Investment Allowed Versus Actual

17	BRM-1	Publications Showing Projections of Inflation Period

The exhibit attached to the testimony of Donald E. Johnstone shall be identified as hearing Exhibit No. 18; however, its admission into evidence is subject to the ruling of the Commission on the Company's motion to strike.

Suspension Period

The Administrative Law Judge recognizes that the correct suspension period for the proposed rates is November 15, 1987, and not December 11, 1987, as mistakenly set forth in the Commission's latest suspension order.

Entered this the 7th day of October, 1987.

Ralph Christian
Administrative Law Judge

APPROVED FOR ENTRY:

Leslie B. Enoch II

Jerry W. Amos

Attorneys for Petitioner

Henry Walker
General Counsel
Tennessee Public Service Commission

Exhibit A

Nashville Gas Company
A Division Of Piedmont Natural Gas Company, Inc.
Calculation of Rate Award

Line		
1	Rate Base	$74,824,306
2	Rate of Return	11.04%
3	Net Operating Income (L1 X L2)	$ 8,257,051
4	Net Operating Income Before Rate Increase	$ 6,989,180
5	Additional Net Operating Income Required (L3 - L4)	$ 1,267,871
6	Retention Factor	.619440
7	Gross Revenue Required (L5/L6)	$ 2,061,041

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE
November 28, 1989

IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC. - FOR AN ADJUSTMENT OF ITS RATES AND CHARGES.

DOCKET NO. U-89-10491

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Nashville Gas Company (the "Company") for a general rate increase. This matter was heard on November 3, 1989, before Chairman Keith Bissell, Commissioner Frank Cochran, and Commissioner Steve Hewlett.

Pursuant to T.C.A. Section 4-5-306, the parties held a pre-hearing conference on October 27, 1989. Mack Cherry, Administrative Law Judge, presided. On October 31, 1989, Judge Cherry issued a pre-hearing order (a copy of which is attached) for the Commission's consideration. The Judge's order set forth a settlement between the Company, the Commission Staff and certain industrial customers (the "Intervenors") which resolved, or made provision for the resolution of, all issues.

At the hearing, the Company, the Commission Staff and the Intervenors offered evidence in support of the settlement. After considering the evidence and the entire record, we are of the opinion that the settlement should be approved subject to the modification set forth below.

The settlement results in a 15% increase in residential rates. The Commission has determined that the Company should use $4,000,000 of the funds which have previously been placed into the spot gas savings account established by the Commission in Docket Nos. U-86-7474 and U-87-7494 to offset a portion of the increase in residential rates during the remainder of the 1989-90 winter and the 1990-91 winter. This action by the Commission will reduce the increase in residential rates during the 1989-90 winter and 1990-91 winter by approximately one-half.

IT IS THEREFORE ORDERED:

(1) The tariffs filed by Nashville Gas Company on June 9, 1989, designed to produce $9,486,895 in additional annual revenues be and the same are hereby denied.

(2) The stipulations set forth in the attached Pre-Hearing Order are hereby incorporated by reference in this Order and approved as modified herein.

(3) The tariffs filed by Nashville Gas Company designed to produce $7,865,350 in additional annual revenues are hereby approved for service rendered on or after December 1, 1989.

(4) The rates approved above for residential customers shall be reduced by 4.795 cents per therm during the period beginning December 1, 1989 and ending March 31, 1990 and for the period November 1, 1990 and ending on March 31, 1991 or such earlier date as the aggregate amount of the reduction shall equal $4,000,000. During such period of time as the reduction shall be in effect, the Company is authorized to offset the reduction by crediting its spot savings account by an amount equal to the reduction.

(5) Any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

(6) Any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
October 31, 1989

IN RE:	APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR AN ADJUSTMENT OF ITS RATES AND CHARGES)	DOCKET NO. U-89-10491

PRE-HEARING ORDER

This matter is before the Commission upon petition of Nashville Gas Company (the "Company") for a general rate increase. The Commission designated the undersigned Administrative Law Judge to conduct pre-trial conferences pursuant to T.C.A. 4-5-306 and to preside over other pre-hearing matters as may arise. A pre-hearing conference was held at 9:30 a.m. on October 27, 1989, at which time the following counsel appeared:

For the Company:	Leslie B. Enoch, II Jerry W. Amos
For the Staff:	Billye Sanders
For the Intervenors:	Daniel R. Loftus

In its application, the Company sought a revenue increase of $9,486,895. The Company also sought to increase its reconnection fees, to switch from volumetric to therm billing, to make changes in its rate design, to revise and update its tariff language and to revise the method in which it adjusts its rates to reflect changes in its cost of gas. The Commission Staff (the "Staff") and certain Intervenors have investigated the Company's request and have proposed certain modifications and adjustments thereto. The Company, the Staff and the Intervenors have held several settlement conferences in an attempt to resolve their differences. As a result of these conferences, the Company, the Staff and the Intervenors have agreed to the following stipulations:

<u>Stipulations</u>

1. The appropriate test period for use in this docket is the 12-month period ended April 30, 1989.

2. The appropriate attrition period for which the revised rates will be in effect is the 12-month period ending December 31, 1990.

3. The appropriate rate base for use in this proceeding is $107,005,752.

4. The appropriate operating revenue, operating expenses and net operating income under present rates for the attrition period are $95,625,522, $88,467,715 and $7,225,307.

5. The additional operating revenue required are $7,865,350 as shown in Exhibit A.

6. The agreed upon revenue requirement yields an overall rate of return for the Company is 11.33%, which includes a cost of common equity of 12.93%.

7. The rates shown in Exhibit B are designed to give the Company a reasonable opportunity to earn the revenues agreed to above. For the purpose of this proceeding, the parties have agreed to the rate design implicit in these rates. Among other things, this rate design encompasses the general principles set forth as Option 3 in the testimony of Staff Witness Klein, a change from volumetric billing to therm billing, the use of step rates in interruptible sales and transportation rates, an increase of

reconnection fees from $20 to $35, a transportation threshold of 100 dekatherms per day and 35,000 dekatherms per year, a summer/winter differential intended to recognize the additional cost of serving heating only customers and a mechanism designed to account for the differences in the wholesale cost of gas to Nashville and Hartsville. The Parties have also agreed to miscellaneous changes in the tariff language as proposed by the Company.

8. The revenues agreed to above do not include any revenues for the transportation of customer owned gas for Bridgestone Tire & Rubber Company ("Bridgestone"). The Company has agreed that any transportation revenue received from Bridgestone during the attrition period will be placed in a deferred account for refund as ordered by the Commission.

9. In its petition, the Company requested a revision in the Commission's Purchased Gas Adjustment (PGA) Rule (Rule No. 1220-4-1-.12). The parties have agreed that they will continue to negotiate appropriate revisions to the PGA Rule and that the PGA Rule will be set for hearing not later than April 1, 1990 if appropriate revisions have not been agreed to and approved by the Commission prior to that date. The parties have further agreed that, until such time as the Commission has issued a final order with respect to any such hearing or negotiated agreement on the PGA Rule, the existing PGA and spot gas savings procedures will remain in effect and that any gas inventory charges imposed upon the Company by its wholesale gas suppliers can be recovered through the

existing PGA procedures.

10. The parties agree that the pre-filed testimony and exhibits of Company Witnesses Maxheim, Schiefer, Fleenor, Guy, Morris, Boggs and Murry, Staff Witnesses Hickerson, Klein, Novak, Johns, Baugh and Blanton and Intervenors Witnesses Johnstone and Carlson may be entered into the record of this proceeding and that the right to cross-examine with respect to such pre-filed testimony and exhibits is waived.

Non-Severability of Stipulations

The above stipulations are the result of give and take negotiations among the parties and represent a compromise in the public interest. Each of the stipulations is dependent upon all of the stipulations being approved without modification by the Commission; therefore, the Stipulations shall not be binding until the Commission shall have issued an order approving all of them without modification.

No Precedential Effect

The stipulations contained above are for the purpose of this proceeding only and are not intended to bind any party in any future proceeding with respect to any matter subject to any such stipulation or to any accounting, engineering or legal principle which may be embodied in any such stipulation.

Reserved Issue

The Intervenors may wish to present an alternative rate design to become effective not earlier than 12 months after the effective date of the rates set forth in Exhibit B. If such an alternative rate design is presented, it will (1) be revenue neutral to the Company, (2) result in an increase in residential facilities charges of not more than $1.00 per month and (3) provide that any transportation revenue collected from Bridgestone under the provisions of paragraph 8 above will be used to offset any increase in residential rates caused by any such change in rate design.

Suspension Period

The Administrative Law Judge recognizes that the correct suspension period for the proposed rates is December 11, 1989, and not January 3, 1990, as mistakenly set forth in the Commission's latest suspension order.

Entered this the 31st day of October, 1989.

Mack H. Cherry

Mack Cherry
Administrative Law Judge

Approved for Entry:

Leslie B. Enoch II

Jerry W. Amos

Attorneys for Petitioner

D. Billye Sanders, Asst. Gen. Coun.

Billye Sanders
Assistant General Counsel
Tennessee Public
Service Commission

Daniel R. Loftus

Daniel R. Loftus
Attorney for Intervenors

NASHVILLE GAS COMPANY
Results Of Operation
For The 12 Months Ending December 31, 1990

Line No.		Staff As Filed	Company As Filed	Settled Amount
1	Rate Base	$ 107,251,568 A/	107,269,101	107,055,752
2	Operating Income At Present Rates	7,337,275 B/	6,666,860	7,225,307
3	Earned Rate Of Return	6.84%C/	6.22%	6.75%
4	Fair Rate Of Return	11.25%D/	11.60%	11.33%
5	Required Operating Income	12,067,310 E/	12,441,681	12,128,791
6	Operating Income Deficiency	4,730,036 F/	5,774,821	4,903,484
7	Gross Revenue Conversion Factor	1.604033 G/	1.642845	1.604033
8	Revenue Deficiency	$ 7,587,134	$ 9,486,895	$ 7,865,350

A/ Staff Exhibit, Schedule 2.
B/ Staff Exhibit, Schedule 8.
C/ Line 2 / Line 1.
D/ Staff Capital Exhibit, Schedule 1.
E/ Line 1 * Line 4.
F/ Line 5 - Line 2.
G/ Staff Exhibit, Schedule 16.

89-10491
Joint Exhibit
Schedule 2

NASHVILLE GAS COMPANY
Comparative Rate Base
For The 12 Months Ending December 31, 1990

Line No.		Staff As Filed A/	Company As Filed B/	Settled Amount
1	Utility Plant In Service	$ 158,889,985	$ 154,614,912	$ 158,889,985
2	UPIS - Cathodic Protection	1,375,000	0	1,375,000
3	Construction Work In Progress	7,274,358	9,134,683	7,274,358
4	Working Capital	(1,153,154)	668,152	(1,398,970)
5	Total Additions	$ 166,386,189	$ 164,417,747	$ 166,140,373
6	Accumulated Depreciation	$ 49,169,780	$ 47,576,648	$ 49,169,780
7	Unamortized ITC	94,000	95,314	94,000
8	Contributions In Aid Of Construction	2,789,212	2,847,132	2,789,212
9	Customer Advances	175,078	152,825	175,078
10	Accumulated Deferred Income Taxes	6,651,076	7,207,452	6,651,076
11	ADIT - Unbilled Revenues	255,475	(730,725)	255,475
12	Total Deductions	$ 59,134,621	$ 57,148,646	$ 59,134,621
13	Rate Base	$ 107,251,568	$ 107,269,101	$ 107,005,752

A/ Staff Exhibit, Schedule 2.
B/ Company Exhibit BLG-1.

89-10491
Joint Exhibit A
Schedule 3

NASHVILLE GAS COMPANY
Comparative Income Statement
For The 12 Months Ending December 31, 1990

Line No.		Staff As Filed A/	Company As Filed B/	Settled Amount
1	Sale And Transportation Of Gas	$ 94,817,417	$ 96,771,306	$ 94,817,417
2	Other Operating Revenue	808,105	654,055	808,105
3	Total Operating Revenue	$ 95,625,522	$ 97,425,361	$ 95,625,522
4	Salaries And Wages	$ 9,458,418	$ 9,472,270	$ 9,458,418
5	Employee Benefits	3,690,879	4,015,870	3,690,879
6	Purchased Gas Expense	57,887,641	59,890,654	57,922,219
7	Distribution Expense	4,224,860	4,445,074	4,279,485
8	Uncollectible Accounts Expense	333,278	351,034	333,278
9	Customer Relations Expense	842,867	823,141	842,867
	Administative And General Expense	2,244,852	2,112,904	2,244,852
11	Interest on Customer Deposits	211,220	197,455	211,220
12	Miscellaneous Expense	71,184	67,792	71,184
13	Depreciation Expense	5,378,791	5,861,741	5,378,791
14	Taxes Other Than Income Taxes	3,546,192	3,338,295	3,546,192
15	Tennessee Excise Taxes	69,193	68,718	59,637
16	Federal Income Taxes	479,597	149,553	428,693
17	Total Operating Expense	$ 88,438,972	$ 90,794,501	$ 88,467,715
18	Net Operating Income	$ 7,186,550	$ 6,630,860	$ 7,157,807
19	AFUDC	150,725	36,000	67,500
20	Net Operating Income For Return	$ 7,337,275	$ 6,666,860	$ 7,225,307

A/ Staff Exhibit, Schedule 8.
B/ Company Exhibit, Schedule BLG-1.

ATTR PD END 12/31/90 NASHVILLE GAS COMPANY, EXHIBIT B
A DIVISION OF PIEDMONT NATURAL GAS COMPANY INC.
COMPARISON OF CURRENT RATES TO PROPOSED RATES

November 2, 1989		CURRENT RATES (MCF)	PROPOSED RATES (DT's)
RESIDENTIAL			
YEAR AROUND AND HEATING USAGE			
	FACILITIES CHARGE	$5.00	$5.00
	WINTER	$4.2590	$4.9208
	SUMMER	$4.2060	$4.5796
AIR CONDITIONING			
	FACILITIES CHARGE	$5.00	$5.00
	WINTER	$4.2590	$4.9208
	SUMMER	$4.2060	$4.5796
	DISCOUNTED	$3.8060	$4.1896
GENERAL SERVICE			
YEAR AROUND AND HEATING USAGE			
	FACILITIES CHARGE	$10.00	$12.00
	WINTER	$4.5820	$5.0971
	SUMMER	$4.5230	$4.7559
AIR CONDITIONING			
	FACILITIES CHARGE	$10.00	$12.00
	WINTER	$4.5820	$5.0971
	SUMMER	$4.5230	$4.7559
	DISCOUNTED	$4.1230	$4.3660
INDUSTRIAL SALES			
	FACILITIES CHARGE	$200.00	$0.00
	PEAK DEMAND CHARGE	$0.00	$7.6601
	1ST STEP (0-1500)	$4.4010	$3.1817
	2ND STEP (1501-4000)	$3.9230	$3.1329
	3RD STEP (4001-9000)	$3.9230	$3.0842
	4TH STEP (OVER 9000)	$3.9230	$3.0354
INTERRUPTIBLE SALES			
	FACILITIES CHARGE	$200.00	$200.00
	1ST STEP (0-1500)	$3.2350	$3.1817
	2ND STEP (1501-4000)	$3.2350	$3.1329
	3RD STEP (4001-9000)	$3.2350	$3.0842
	4TH STEP (OVER 9000)	$3.2350	$3.0354
FIRM TRANSPORTATION			
	PEAK DEMAND CHARGE	$0.00	$7.6601
	1ST STEP (0-1500)	$1.4800	$0.6337
	2ND STEP (1501-4000)	$1.4800	$0.5849
	3RD STEP (4001-9000)	$1.4800	$0.5362
	4TH STEP (OVER 9000)	$1.4800	$0.4874
INTERRUPTIBLE TRANSPORTATION			
	FACILITIES CHARGE	$0.00	$200.00
	1ST STEP (0-1500)	$0.8221	$0.6337
	2ND STEP (1501-4000)	$0.8221	$0.5849
	3RD STEP (4001-9000)	$0.8221	$0.5362
	4TH STEP (OVER 9000)	$0.8221	$0.4874
FORD		$0.8125	$0.6938
SMYRNA	DAILY DEMAND	$3.041	$2.965
	MONTHLY DEMAND	$0.0750	$0.0731
RECONNECTION FEES		$20.00	$35.00

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE
September 27, 1991

IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR AN ADJUSTMENT OF ITS RATES AND CHARGES.

DOCKET NO. 91-02636

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Nashville Gas Company (the "Company") for a general rate increase. This matter was heard on August 27, 1991, before Chairman Steve Hewlett, Commissioner Keith Bissell and Commissioner Frank Cochran.

Pursuant to T.C.A. Section 4-5-306, the parties held a Pre-Hearing Conference on August 20, 1991. Ralph Christian, Administrative Law Judge, presided. On August 26, 1991, Judge Christian issued a Pre-Hearing Order (a copy of which is attached as Exhibit A) for the Commission's consideration. The Judge's order set forth certain stipulations between the Company, the Commission Staff, Ford Motor Company (Ford) and Associated Valley Industries Intervention Group (AVIIG).

The stipulations set forth in the Pre-Hearing Order resolved all issues relating to rate base, operating revenue, operating expenses, net operating income and overall return. The stipulations also resolved certain other issues relating to the treatment of revenue relating to the transportation of gas for DuPont under DuPont's Rate 9 contract, the transportation of gas for public housing authorities and "human needs" customers, the movement of customers between certain rate schedules, the filing of reports with the Staff, the appropriate charges for broken meter locks and fall turn-on and reconnection, and the forum for determination of the Company's proposed Weather Normalization Adjustment (WNA). The stipulations did not resolve various rate design issues.

At the hearing, the parties advised the Commission that they had reached an agreement with respect to the appropriate rates to be charged to Ford. This agreement is set forth in a Supplemental Pre-hearing Order (a copy of which is attached as Exhibit B). The parties also advised the Commission that they had been unable to resolve other rate design issues.

At the hearing, three separate proposals were presented to the Commission for its consideration. The Commission has considered these proposals and has determined that the proposal put forth by AVIIG should be approved. The rates resulting from this proposal are set forth in Exhibit C to this order.

The approved rates result in an 8.01% annual increase in the rates for residential and commercial customers; however, at the hearing, the Company advised the Commission that it would make a Purchased Gas Adjustment (PGA) filing to be effective simultaneously with the effective date of the rates approved herein. The PGA filing is expected to offset the increases in residential and commercial rates for approximately one year or until rates are changed through a subsequent PGA.

The Commission has also considered the various changes in tariff language proposed by the Company and, except as set forth herein, the Commission finds the proposed tariff language as modified by the stipulations to be fair and reasonable and hereby approves the same. Notwithstanding the foregoing, the Commission finds that the Applicability and Character of Service section of Rate Schedules No. 7I and 7F (Interruptible and Firm Transportation Service) should be amended to read as set forth in Exhibit D.

IT IS THEREFORE ORDERED:

(1) The rates filed by Nashville Gas Company on March 28, 1991, designed to produce $7,952,954 in additional annual revenue be and the same are hereby denied.

(2) The stipulations set forth in both the Pre-Hearing Order attached as Exhibit A and the Supplemental Pre-Hearing Order attached as Exhibit B are hereby incorporated by reference in this Order and are approved.

(3) The rates set forth in Exhibit C to this Order, designed to produce $5,246,513 in additional revenue, are hereby approved for service rendered on and after October 1, 1991.

(4) The tariff language proposed by the Company as modified by the stipulations and in Exhibit D to this Order is approved.

(5) The Company shall file tariffs consistent with this Order.

(6) The Company shall file a Special Contract with Ford Motor Company consistent with this Order.

(7) The Company shall file a PGA to be effective on and after October 1, 1991 which shall at least offset the 8.01% increase in additional revenue to be generated by the rates approved herein for residential and commercial customers.

(8) Any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

(9) Any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within thirty (30) days from and after the date of this Order.

Stephen D. Hewlett
CHAIRMAN

Frank D. Cochran
COMMISSIONER

Keith Bissell
COMMISSIONER

ATTEST

Paul Allen
EXECUTIVE DIRECTOR

EXHIBIT A

RECD TN PUBLIC SERVICE COMM.
1991 AUG 26 PM 4:43
OFFICE OF THE EXECUTIVE DIRECTOR

Before the Tennessee Public Service Commission
Nashville, Tennessee
August 26, 1991

In Re:	Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc., for an Adjustment of its Rates and Charges	))))	Docket No. 91-02636

Pre-Hearing Order

This matter is before the Commission upon petition of Nashville Gas Company (the "Company") for a general rate increase. The Commission designated the undersigned Administrative Law Judge to conduct pre-trial conferences pursuant to T.C.A. 4-5-306 and to preside over other pre-hearing matters as may arise. A pre-hearing conference was held at 10:00 a.m. on August 20, 1991, at which time the following appeared:

For the Company: Leslie B. Enoch, II, Esquire
Jerry W. Amos, Esquire

For the Staff: Henry Walker, Esquire
D. Billye Sanders, Esquire

For Ford Motor Company: James A. Nichols, Esquire
James P. Ziety, Esquire

For AVIIG: Daniel R. Loftus, Esquire

In its application, the Company sought a revenue increase of $7,952,954. The Commission Staff (the "Staff") investigated the Company's request and proposed certain modifications and adjustments thereto. No other party prefiled any testimony or exhibits with respect to the revenue increase required by Piedmont. However, both Associated Valley Industries Intervention Group (AVIIG) and Ford filed testimony and exhibits with respect to various rate design issues.

Revenue Requirements

At the pre-hearing conference on August 20, 1991, the Company and the Staff resolved their differences as to the Company's requirement for additional revenues. This agreement is reflected in the following stipulations. (See attached Staff exhibit which shows a comparison of the Company's case, the Staff's case and the settlement amounts.) No party opposes these stipulations:

Stipulations

1. The appropriate test period for use in this docket is the 12-month period ended December 31, 1990.

2. The appropriate attrition period for which the revised rates will be in effect is the 12-month period ending September 30, 1992.

3. The appropriate rate base for use in this proceeding is $126,520,045.

4. The appropriate operating revenue, operating expenses and net operating income under present rates for the attrition period are $107,429,958, $96,710,465 and $10,719,493.

5. The additional operating revenue required is $5,246,513.

6. The agreed upon revenue requirement yields an overall rate of return for the Company of 11.06%. [1]

7. The revenues agreed to above include $318,956 of annual revenue relating to the projected transportation of gas for DuPont under DuPont's Rate 9 contract. It is agreed that the actual revenue received from DuPont will be "trued-up" annually under a transportation

[1]This corresponds to a capital structure of 9.94% short term debt at a cost of 9.0%, 39.56% long term debt at a cost of 9.75% and 50.5% common equity at 12.50%.

adjustment mechanism (TAM). The TAM will run for consecutive 12-month periods beginning with the date new rates are placed into effect in this case and will continue through the date that new rates are established in the Company's next general rate case. Any amounts collected by the Company under DuPont's Rate 9 contract in excess of $318,956 annually will be placed in a deferred account for future disposition by the Commission. If the Company should collect less than $318,956 during any annual true-up period, the Company will be permitted to add an annual surcharge to its rates to recover the under-collection.

8. A Public Housing Authority or "human needs" customer will not be permitted to transport gas under the Company's interruptible transportation rate schedule unless and until it provides an affidavit to the Company stating that it has a firm gas supply which is not subject to interruption. An Authority or "human needs" customer who provides such an affidavit will not be subject to the overrun penalties of the interruptible transportation rate schedule.

9. The Company will amend its proposed tariffs to provide that once a customer is placed on Rate 2, that customer will not be moved to Rates 3 (7F) or 4 (7I) until its usage is 110% or more of the minimum use required by such rate schedules, and to provide that once a customer is properly placed on Rate 3 (7F) or Rate 4 (7I), that customer will not be moved to Rate 2 until its usage is 90% or less than the minimum usage for such rate schedules.

10. The Company will provide a monthly report to the Commission's Accounting Division containing the sales and transportation volumes, customers and demand billing determinants by tariff rate. The Company will also file with the Accounting Division on a monthly basis, a schedule showing the consumption by customer for rates 3, 4, 7F and 7I.

11. The Company will amend its proposed tariffs to set forth the $45 charge which the Company is authorized to make in the case of broken meter locks and to incorporate the Company's current Fall Turn-on and Reconnect Charges.

12. The issue of the proposed Weather Normalization Adjustment (WNA) will not be addressed in this docket, but will be determined in the pending rulemaking Docket No. 91-01712.

13. The parties agree that the pre-filed testimony and exhibits of Company witnesses Guy, Morris, and Murry and Staff witnesses Baugh and Bustin may be entered into the record of this proceeding and that the right to cross-examine with respect to such pre-filed testimony and exhibits is waived. The parties agree not to cross-examine any witness with respect to any of the issues settled by this stipulation. The parties further agree that, subject to change to accommodate any scheduling problems for specific witnesses, the order of witness will be as follows:

<u>For the Company</u>:

John H. Maxheim
Chuck W. Fleenor
Ware F. Schiefer

<u>For Ford</u>:

Gary W. Sitzman
Frederick C. Levantrosser
Douglas L. Burton

<u>For AVIIG</u>:

Donald E. Johnstone

For the Staff:

William H. Novak
Christopher C. Klein

14. The parties agree that they will continue to negotiate in good faith to resolve the various issues not resolved by these stipulations, including various rate design issues, and will report to the Administrative Law Judge and/or the Commission of their progress not later than the beginning of the hearing scheduled for August 27, 1991.

Non-Severability of Stipulations

The above stipulations are the result of give and take negotiations among the parties and represent a compromise in the public interest. Each of the stipulations is dependent upon all of the stipulations being approved without modifications by the Commission; therefore, the Stipulations shall not be binding until the Commission shall have issued an order approving all of them without modification.

No Precedential Effect

The stipulations contained above are for the purpose of this proceeding only and are not intended to bind any party in any future proceeding with respect to any matter subject to any such stipulation or to any accounting, engineering or legal principle which may be embodied in any such stipulation.

Reserved Issues

The above stipulations do not resolve various rate design issues, and any party to this proceeding may present evidence on these unresolved issues, provided that any such rate design shall produce the revenue set forth in the above stipulation.

Entered this the 26th day of August, 1991.

Administrative Law Judge

Approved for Entry:

Leslie B. Enoch, II

Jerry W. Amos

Attorneys for Petitioner

D. Billye Sanders

Billye Sanders
Assistant General Counsel
Tennessee Public Service Commission

Daniel R. Loftus

Daniel R. Loftus
Attorney for AVIIG

James A. Nichols
Attorney for Ford Motor Company

NASHVILLE GAS COMPANY
Results of Operations
For the 12 Months Ending September 30, 1992

Line No.		Company A/	Staff B/	Settlement Amount
1	Rate Base	130,799,623	126,520,045	126,520,045
2	Operating Revenues at Present Rates	107,443,740	107,429,958	107,429,958
3	Operating Expenses at Present Rates	96,720,795	96,293,980	96,710,465
4	Operating Income at Present Rates	10,722,945	11,135,978	10,719,493
5	Earned Rate of Return	8.20%	8.80%	8.47%
6	Fair Rate of Return	11.99%	10.49%	11.06%
7	Required Operating Income	15,688,044	13,271,517	13,993,117
8	Operating Income Deficiency	4,965,099	2,135,539	3,273,624
9	Gross Revenue Conversion Factor	1.601794	1.602662	1.602662
10	Revenue Deficiency	$ 7,952,954	$ 3,422,547	$ 5,246,513

A/ Company Filing.
B/ Staff Accounting Exhibits.

EXHIBIT B

Before the Tennessee Public Service Commission
Nashville, Tennessee
August 27, 1991

In Re:	Application of Nashville Gas Company,) a Division of Piedmont Natural Gas) Company, Inc., for an Adjustment of its) Rates and Charges)	Docket No. 91-02636

Supplemental Pre-Hearing Order

On August 26, 1991, the undersigned Administrative Law Judge issued a pre-hearing order setting forth certain stipulations by which the parties agreed that Nashville Gas Company (the "Company") is entitled to sales and transportation rates which will produce operating revenue from the sale and transportation of gas in the amount of $111,610,142 (including additional revenue of $5,246,513). At the time of entry of that order, the parties had not agreed to an appropriate rate design which would permit the Company to recover the additional operating revenue requirement; however, the parties agreed to continue to negotiate in good faith on an appropriate rate design. As a result of the further negotiations, the parties have stipulated as follows:

Stipulations

1. The following rate design will apply to Ford Motor Company ("Ford"):

a. Ford will pay a monthly demand charge of $54,476 for the right to demand up to 10,000 dekatherms per day of firm transportation service. This demand charge is based on a D-1 charge of $3.75 per Dt per month and a D-2 charge of $.0707 per Dt for Tennessee Gas Pipeline Company ("Tennessee Pipeline") which is included in the cost of gas stipulated to in this case and will be adjusted upward or downward to reflect changes in Tennessee Pipeline's demand charges included in the Company's rates.

b. As soon as permitted by Tennessee Pipeline's tariffs and any required orders of the Federal Energy Regulatory Commission, the Company will convert not less than 10,000 dekatherms per day of CD capacity to firm FT capacity and will assign 10,000 dekatherms per day of FT capacity to Ford. After the assignment and the release by Tennessee Pipeline of any rights to collect any demand charges from the Company with respect to the assigned capacity, Ford will be responsible for paying any demand charges assessed by Tennessee Pipeline with respect to the assigned capacity and Ford will be relieved of any obligation under paragraph 1 above to pay the Company any demand charges for service rendered after the date of assignment.

c. Ford will pay an additional demand charge in an amount that will permit the Company to recover (a) any fees charged to the Company by Tennessee Pipeline in connection with the conversion of 10,000 dekatherms per day from CD service to FT service (the "Exit Fee") and (b) an amount equal to the Company's rate of return on rate base in this docket (11.06%) on the unpaid balance. This demand charge will be paid monthly for 60 months beginning with the first month following the receipt by Piedmont of a bill from Tennessee Pipeline for the Exit Fee; and provided that Ford shall at anytime have the right to satisfy its obligations with respect to the Exit Fee in full by paying the then remaining unpaid balance and accrued interest thereon up to the date of such payment. The demand charge set the Exit Fee is greater than $434,400, Ford may elect not to accept the assignment of capacity pursuant to paragraph b above, in which event the demand charge set forth in this paragraph c shall not be applicable.

d. Ford will pay a commodity charge of $.25 for each dekatherm of gas transported by the Company for Ford.

e. In addition to the amounts set forth above, Ford will pay any franchise fees assessed by the City of Nashville and any other fees and charges assessed by the TPSC or any other duly constituted governmental body with respect to gas transported by the Company to Ford.

f. The rates agreed to herein are subject to the jurisdiction of and to change by the Commission.

2. The parties agree that the pre-filed testimony and exhibits of Ford witnesses Levantrosser, Burton and Sitzman may be entered into the record of this proceeding and that the right to cross-examine with respect to such pre-filed testimony and exhibits is waived. The parties agree not to cross-examine any witness with respect to any of the issues settled by this stipulation.

Non-Severability of Stipulations

The above stipulations are the result of give and take negotiations among the parties and represent a compromise in the public interest. Each of the stipulations is dependent upon all of the stipulations being approved without modifications by the Commission; therefore, the stipulations shall not be binding until the Commission shall have issued an order approving all of them without modification.

No Precedential Effect

The stipulations contained above are for the purpose of this proceeding only and are not intended to bind any party in any future proceeding with respect to any matter subject to any such stipulation or to any accounting, engineering, rate design or legal principle which may be embodied in any such stipulation.

Reserved Issues

The above stipulations do not resolve various rate design issues concerning the allocation of the Company's revenue requirements to any customer (other than Ford) or to any class of customers, and any party to this proceeding may present evidence on these unresolved issues, provided that any such rate design shall produce the revenue set forth in the August 26, 1991 Pre-Hearing Order.

Entered this the 27th day of August, 1991.

Administrative Law Judge

Approved for Entry:

Leslie B. Enoch, II

Jerry W. Amos

Attorneys for Petitioner

D. Billye Sanders

Billye Sanders
Assistant General Counsel
Tennessee Public Service Commission

Daniel R. Loftus
Attorney for AVIIG

James A. Nichols
Attorney for Ford Motor Company

EXHIBIT C

NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY INC. COMPARISON OF CURRENT RATES TO APPROVED RATES

TST PD END 12/31/90

16-Sep-91	CURRENT NASHVILLE RATES ($/dt's) <1>	APPROVED RATES ($/dt's) <2>	PERCENT INCREASE <3>
RESIDENTIAL			
FACILITIES CHARGE	$5.00	$5.00	8.01%
WINTER	$5.1439	$5.6001	
SUMMER	$4.8027	$5.2501	
AIR CONDITIONING DISCOUNT	$4.4127	$4.8501	
GENERAL SERVICE			
FACILITIES CHARGE	$12.00	$12.00	8.01%
WINTER	$5.3202	$5.7645	
SUMMER	$4.9790	$5.4145	
AIR CONDITIONING DISCOUNT	$4.5891	$5.0145	
FIRM INDUSTRIAL SALES			
BILLING DETERMINATES	$8.93109	$8.93109	-0.19%
1ST STEP (0-1500)	$3.3114	$3.3114	
2ND STEP (1501-4000)	$3.2626	$3.2626	
3RD STEP (4001-9000)	$3.2139	$3.2139	
4TH STEP (OVER 9000)	$3.1651	$2.9277	
INTERRUPTIBLE SALES	$200.00	$200.00	-1.00%
1ST STEP (0-1500)	$3.3114	$3.3114	
2ND STEP (1501-4000)	$3.2626	$3.2626	
3RD STEP (4001-9000)	$3.2139	$3.2139	
4TH STEP (OVER 9000)	$3.1651	$2.9277	
FIRM TRANSPORTATION			
BILLING DETERMINATES	$8.93109	$8.93109	
1ST STEP (0-1500)	$0.6337	$0.6337	-5.63%
2ND STEP (1501-4000)	$0.5849	$0.5849	
3RD STEP (4001-9000)	$0.5362	$0.5362	
4TH STEP (OVER 9000)	$0.4874	$0.2500	
INTERRUPTIBLE TRANSPORTATION	$200.00	$200.00	-22.80%
1ST STEP (0-1500)	$0.6337	$0.6337	
2ND STEP (1501-4000)	$0.5849	$0.5849	
3RD STEP (4001-9000)	$0.5362	$0.5362	
4TH STEP (OVER 9000)	$0.4874	$0.2500	
RESALE SERVICE			
CUSTOMER CHARGE	$200.00	$200.00	0.00%
DAILY DEMAND CHARGE	$3.7500	$3.7500	
MONTHLY DEMAND CHARGE	$0.0707	$0.0707	
COMMODITY CHARGE	$2.6297	$2.6297	
FORD COMMODITY	$0.787	$0.250	-39.42%
MONTHLY FACILITIES		$54,476	

EXHIBIT D

RATE SCHEDULES NO. 7I AND 7F

Interruptible and Firm Transportation Service

APPLICABILITY AND CHARACTER OF SERVICE

Receipts and deliveries of gas hereunder shall be at uniform rates of flow with no significant fluctuations or imbalance. Any imbalances shall be corrected, insofar as practicable, during the month in which they occur. The Company reserves the right to limit the amount of such imbalances to avoid operating problems and to comply with balancing requirements of any pipeline transporting gas hereunder. Customer will be responsible for any imbalance charges assessed by the pipeline in connection with the Company transporting customer's gas. The Company reserves the right to contact customer's shipper to reduce nominations when in the judgment of the Company any imbalance may occur. Company will use its best efforts to notify the customer before proceeding with a unilateral reduction and will notify customer of any reduction to customer's nomination that has been instituted by the Company.

If the quantity of the customer's transportation gas nominated and shipped to Nashville's city gate exceeds the amount consumed by the customer during any month by more than 5%, the Company may purchase said gas in a quantity that will reduce the imbalance to zero. The price paid will be Company's lowest priced city gate cost of gas for the month.

If the quantity of the customer's transportation gas nominated and shipped to Nashville's city gate is less than the amount consumed by the customer, the customer will be charged the applicable tariff rate for the excess gas consumed.

During the term of this agreement, customer may not obtain natural gas from a pipeline or shipper other than the pipeline or shipper customer used at the inception of this agreement, unless customer has (a) given Company at least ten working days notice before the first day of the month in which the proposed change is to take place or (b) received the Company's prior permission to make the change. Any such changes in pipeline or shipper, must begin on the first day of the month unless otherwise agreed to by Company.

Not fewer than ten working days before the beginning of each calendar month, customer shall nominate an estimated daily quantity for all of the days in the coming month.

Before the fifth day of each month, or as soon as possible thereafter, customer shall provide a copy of shipper's written verification of actual quantities delivered during the preceding month.

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NOVEMBER 3, 1994 Nashville, Tennessee

IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR (1) AN ADJUSTMENT OF ITS RATES AND CHARGES AND (2) APPROVAL OF A NEW RATE DESIGN TO ACCOMMODATE CHANGES IN THE NATURAL GAS INDUSTRY RESULTING FROM FERC ORDER NO. 636

DOCKET NO. 94-01054

ORDER

This matter is before the Commission upon its own motion to determine the appropriate distribution of supplier refunds and accumulated interest in the amount of $4,437,530.07 to customers of the Nashville Gas Company (Company). This refund adjustment was discussed in the hearing in this docket, and it was intended by the Commission that it become effective on or about the time on which the new rates in this docket were to be implemented by the Company.

The Company filed a document in the hearing in this matter and later with the Commission Staff which basically proposed two options for distribution of the refund adjustment. The first alternative proposed by the Company would apply the refund across the board to all customer rate classes. The second alternative would apply the entire refund amount to residential and commercial sales rates.

Associated Valley Industries (AVI) filed a petition requesting the Commission to decide this issue in a separate docket, to set it for formal evidentiary hearing; and to permit AVI to intervene and participate as a party in this new docket. The Commission in an

Order issued on October 14, 1994 denied this request and determined that the refund issue was properly included in the instant docket in which AVI was already a party of record. AVI submitted a Petition to Reconsider this action to the Commission but the petition was later formally withdrawn along with AVI's objection to the refund allocation ultimately decided by the Commission.

The Commission considered this refund allocation issue at its regularly scheduled Commission Conference held on October 18, 1994. It was concluded after careful consideration of the entire record in this docket, the Company's filing in support of the two refund alternatives, all applicable statutes and regulations particularly the provisions of T.C.A. 65-5-203; that the refund should be evenly distributed among the residential and commercial sales rates only of the Nashville Gas Company on or about the same time as the increase in rates ordered in this docket is implemented by the Company.

IT IS THEREFORE ORDERED:

1. That the refund adjustment to be distributed in this docket shall be applied to all residential and commercial rates of the Nashville Gas Company on or about the time at which the rate increase ordered in this docket is implemented;

2. That any party aggrieved with the Commission's decision in this matter may file a Petition to Reconsider with the Commission within ten (10) days from and after the effective date of this Order;

3. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition

for review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

FRANK COCHRAN, CHAIRMAN
KEITH BISSELL, COMMISSIONER
STEVE HEWLETT, COMMISSIONER

PAUL ALLEN, EXECUTIVE DIRECTOR

TRANSMITTAL LETTER

I have attached a copy of a recent Commission Order which is being sent to parties of record and/or other interested parties.

Paul Allen
Executive Director

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

October 20, 1994 **Nashville, Tennessee**

IN RE: APPLICATION OF NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC. FOR (1) AN ADJUSTMENT OF ITS RATES AND CHARGES AND (2) APPROVAL OF A NEW RATE DESIGN TO ACCOMMODATE CHANGES IN THE NATURAL GAS INDUSTRY RESULTING FROM FERC ORDER NO. 636.

DOCKET NO. 94-01054

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Nashville Gas Company (the "Company") for a general rate increase. This matter was heard on September 15, 1994, before Chairman Frank Cochran, Commissioner Keith Bissell, and Commissioner Steve Hewlett.

At the hearing, the Commission was advised that the Company, the Consumer Advocate Division (CAD) of the office of the Attorney General of Tennessee, and Associated Valley Industries Intervention Group (AVI) had entered into a stipulation resolving all issues in dispute among them, including all issues relating to rate base, operating revenues, operating expenses, net operating income, overall return and rate design. Under the stipulation, the Company is permitted to increase its rates by $6,800,000 or by $4,310,102 less than requested by the Company. A copy of the stipulation was filed with the Commission and is attached to this Order in Exhibit A.

At the hearing, the Company advised the Commission that it would make a Purchased Gas Adjustment (PGA) filing to be effective simultaneously with the effective date of the rates approved herein. The PGA filing is expected to reduce the increase in rates from $6.8 million to approximately $2.5 million for approximately one year or until rates are changed through a subsequent PGA.

The Commission has carefully considered the stipulation and finds it to be fair and reasonable and hereby approves the same;

however, nothing in this order shall be deemed to establish any new practice or policy by the Commission.

IT IS THEREFORE ORDERED:

1. That the rates filed by Nashville Gas Company on April 29, 1994, designed to produce $11,110,102 in additional annual revenues be and the same are hereby denied.

2. That the stipulation attached to this Order as Exhibit A is hereby incorporated by reference in this Order and is approved.

3. That the rates set forth in Schedule II of Exhibit A to this Order, designed to produce $6,800,000 in additional revenue, set hereby approved for service rendered on and after October 28, 1994.

4. That in future true-ups under its Purchase Gas Adjustment (PGA), the Company shall use the gas costs set forth in Schedule II, page 1 of Exhibit A.

5. That the Company and the Commission Staff shall resolve the "R" values, base load factors and heat factors to be used in future filings under its Weather Normalization Adjustment (WNA) and submit the same to the Commission prior to the effective date of these rates.

6. That effective January 1, 1995, the Company shall be permitted during each calendar year to debit its Actual Cost Adjustment (ACA) Account under its PGA by the amount by which its actual annual LNG power costs exceeds $578,189 and shall be required to credit its ACA Account by the amount by which its actual annual LNG power costs are less than $578,189.

7. That the tariff language proposed by the Company as modified by the stipulation is approved.

8. That the Company shall file tariffs consistent with this Order.

9. That the Company shall file a PGA to be effective on and after October 28, 1994, to refund approximately $4.3 million which will offset a like amount of the first year's increase in additional revenue to be generated by the rates approved herein.

10. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

11. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST

EXECUTIVE DIRECTOR

Before The
Tennessee Public Service Commission

In re:	)	
	)	
Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. for (1) an Adjustment of its Rates and Charges and (2) Approval of a New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636.	)	Docket No. 94-01054
	)	

Stipulation

Nashville Gas Company, Inc. (Nashville or the Company), the Consumer Advocate Division (CAD) of the State of Tennessee Attorney General's Office, and Associated Valley Industries Intervention Group (AVI) hereby stipulate and agree that:

1. On April 29, 1994, Nashville filed for a rate increase that would produce $11,110,102 per year in additional revenues from its customers. The CAD undertook an investigation of the Company's filing, and the CAD prefiled testimony recommending an annual increase of $3,775.944. AVI also prefiled testimony addressing certain rate design and tariff issues. Since the filing of testimony by the CAD and AVI, the parties have undertaken extensive discussions of all disputed issues in this case. As a result of these discussions, the parties have agreed and jointly recommend to the Commission, that the Commission issue an order authorizing the Company to increase its rates by $6,800,000 effective October 28, 1994.

2. Support for the stipulated rate increase of $6,800,000 is found in Schedule I attached hereto and in the following stipulations:

a. The appropriate test period for use in this docket is the 12-month period ended December 31, 1993.

b. The appropriate attrition period for which the revised rates will be in effect is the 12-month period ending September 30, 1995.

c. The appropriate rate base for use in this proceeding is $168,409,697.

d. The appropriate operating revenue, operating expenses and net operating income under present rates for the attrition period are $124,757,327, $111,704,233 and $13,053,094 respectively.

e. The additional operating revenue required is $6,800,000.

f. The agreed upon revenue requirement yields an overall rate of return for the Company of 10.22%.

3. The parties stipulate and agree that the rates set forth in Schedule II attached to this stipulation under the column entitled "Proposed Rate" will provide the Company with a reasonable opportunity to recover $6,800,000 of additional revenues. The parties further agree that the proposed rates are just and reasonable to all customer classes.

4. The parties stipulate and agree that the gas costs embedded in the proposed rates and to be used in future true-ups of gas costs under the Company's Purchased Gas Adjustment (PGA) are set forth in Schedule II, page 1, attached to this stipulation. The calculation of the demand and commodity gas costs are set forth in Schedule II, page 2.

5. The parties stipulate and agree that the "R" values, base load factors and heat factors to be used in the Company's Weather Normalization Adjustment (WNA) in the future may be resolved between the Company and the Commission Staff.

6. The expenses allowed in the stipulated base rates for LNG power costs are $578,189. Effective January 1, 1995, the Company will be permitted during each calendar year to debit its Actual Cost Adjustment (ACA) Account under its PGA by the amount by which its actual annual LNG power costs exceed $578,189 and shall be required to credit its ACA Account by the amount by which its actual annual LNG power costs are less than $578,189.

7. The Company filed revised tariffs as Exhibit CWF-8. In addition, the Company furnished draft copies of a Firm Transportation Agreement, an Interruptible Transportation Agreement and a Balancing Agreement to the other parties. AVI raised certain issues with respect to the revised language included in the tariffs for Rate Schedules 7F and 7I and to the agreements. The parties agree to resolve these issues as set forth in this paragraph 7. The Company agrees not to seek approval of the revised tariffs for Rate Schedules 7F and 7I or the agreements in this docket; however, this agreement is without prejudice to the right of the Company to seek approval of these or similar tariffs and/or agreements in another proceeding. The Company's tariffs for Rate Schedules 7F and 7I shall be the existing tariffs as amended to include the following new paragraph:

<u>BALANCING</u>

It shall be the customer's responsibility to maintain a daily and monthly balance with its transporting pipelines to avoid any assessment of penalties against the Company. If the Company is assessed a penalty by a customer's transporting pipeline, the Company shall have the right to pass-through all such penalties to the customer to the extent the customer is responsible for causing the Company to be assessed such penalties.

All other tariffs (except the tariffs for Rate Schedules 7F and 7I) will be approved as filed.

8. In its prefiled testimony, the Company proposed a manufactured gas plant clean-up cost tracker. The Company has agreed to withdraw this proposal without prejudice to its right to seek approval of the same or a similar tracker in another proceeding.

9. The parties agree to waive their right to cross-examine all witnesses with respect to prefiled testimony and exhibits.

10. The parties agree to support this stipulation in any proceeding before the Commission in this docket; however, the parties further agree that the settlement of any issue pursuant to this stipulation shall not be cited as precedent in any other proceeding before this Commission. The provisions of this stipulation do not necessarily reflect the positions asserted by any party, and no party to this stipulation waives the right to assert any position in any future proceeding except to the extent set forth herein.

11. This stipulation is the product of give-and-take negotiations, and no portion of this stipulation shall be binding on the parties unless the entire stipulation is accepted by the Commission.

The foregoing is agreed and stipulated to, this the 15th day of September, 1994.

Piedmont Natural Gas Company, Inc.

By:____________________

Consumer Advocate Division

By:____________________

Associated Valley Industries Intervention Group

By:____________________

Schedule I

Nashville Gas Company
Net Operating Income and Rate of Return
12 Months Ending 9/30/95

		(1) Test Period	(2) Attrition Adjustments	(3) After Attrition Adjustments	(4) Adjustments For Proposed Revenues	(5) After Adjustments For Proposed Revenues
1	Operating Revenues					
2	Sale of Gas	$118,887,275	$4,803,723	$123,690,998	$6,800,002	$130,491,000
3	Other Operating Revenues	1,015,809	50,520	1,066,329	60,248	1,126,577
4	Total Operating Revenue	$119,903,084	$4,854,243	$124,757,327	$6,860,250	$131,617,577
5	Operating Expenses					
6	Cost of Gas	$66,290,126	$453,060	$66,743,186	$0	$66,743,186
7	Other Operation & Maintenance	25,411,763	1,289,014	26,700,777	42,527	26,743,304
8	Depreciation	7,398,646	1,622,099	9,020,745	0	9,020,745
9	General Taxes	4,832,511	650,855	5,483,366	0	5,483,366
10	State Income Taxes	692,784	(112,784)	580,000	409,063	989,063
11	Federal Income Taxes	3,038,003	(67,798)	2,970,205	2,243,031	5,213,236
12	Total Operating Expenses	$107,663,833	$3,834,446	$111,498,279	$2,694,621	$114,192,900
13	Net Operating Income	$12,239,251	$1,019,797	$13,259,048	$4,165,629	$17,424,677
14	Interest on Customers' Deposits	(240,629)	(32,475)	(273,104)	0	(273,104)
15	Charitable Contributions	(66,978)	(4,159)	(71,137)	0	(71,137)
16	AFUDC	249,758	(111,471)	138,287	0	138,287
17	Net Operating Income for Return	$12,181,402	$871,692	$13,053,094	$4,165,629	$17,218,723
		Average Test Period	Attrition Adjustments	After Attrition Adjustments	Adjustments For Proposed Revenues	After Adjustments For Proposed Revenues
	Original Cost Rate Base					
18	Plant in Service	$214,842,011	$45,915,904	$260,757,915	$0	$260,757,915
19	CWIP	9,409,199	(6,096,441)	3,312,758	0	3,312,758
20	Accumulated Depreciation	(68,260,378)	(13,490,369)	(81,750,747)	0	(81,750,747)
21	Customer Advances for Construction	(228,416)	22,831	(205,585)	0	(205,585)
22	Contributions in Aid of Construction	(3,680,271)	(405,179)	(4,085,450)	0	(4,085,450)
23	Net Plant in Service	$152,082,145	$25,946,746	$178,028,891	$0	$178,028,891
24	Unamortized ITC-Pre '71	(70,594)	13,224	(57,370)	0	(57,370)
25	Allowance For Working Capital	864,672	(403,675)	460,997	0	460,997
26	Accumulated Deferred Income Taxes	(9,575,229)	(447,592)	(10,022,821)	0	(10,022,821)
27	Total Original Cost Rate Base	$143,300,994	$25,108,703	$168,409,697	$0	$168,409,697
28	Return on Rate Base	8.50%		7.75%		10.22%

**Nashville Gas Company,
a Division of
Piedmont Natural Gas Company, Inc.
Schedule of Proposed Rates,
Demand & Commodity Components,
and Weather Normalization Adjustment Factors**

Docket 94-01054

ll units are therms

	1/1/94 Current Rates	Proposed Rates	Proposed Demand Component	Proposed Commodity Component
esidential	$5.00	$6.00		
Winter	$0.58156	$0.61066	$0.08027	$0.24221
Summer	$0.54656	$0.57566	$0.08027	$0.24221
'C Discount	$0.50656	$0.53566	$0.08027	$0.24221
eneral Service	$12.00	$20.00		
Winter	$0.59800	$0.62520	$0.08027	$0.24221
Summer	$0.56300	$0.59020	$0.08027	$0.24221
C Discount	$0.52300	$0.55020	$0.08027	$0.24221
rm Indust Sales	$1.31535	$1.30000	$0.90106	
1-15,000	$0.31818	$0.31621		$0.24221
15,001-40,000	$0.31330	$0.31021		$0.24221
40,001-90,000	$0.30843	$0.29121		$0.24221
90,001 & Over	$0.27981	$0.26321		$0.24221
r Ind Transport	$0.00	$75.00		
	$1.31535	$1.30000	$0.90106	
1-15,000	$0.06337	$0.07400		
15,001-40,000	$0.05849	$0.06800		
40,001-90,000	$0.05362	$0.04900		
90,001 & Over	$0.02500	$0.02100		
erruptible Sales	$200.00	$200.00		
1-15,000	$0.31818	$0.31621		$0.24221
15,001-40,000	$0.31330	$0.31021		$0.24221
40,001-90,000	$0.30843	$0.29121		$0.24221
90,001 & Over	$0.27981	$0.26321		$0.24221
errupt Transport	$200.00	$275.00		
1-15,000	$0.06337	$0.07400		
15,001-40,000	$0.05849	$0.06800		
40,001-90,000	$0.05362	$0.04900		
90,001 & Over	$0.02500	$0.02100		
d Motor Company	No Change			
	$200.00			
yrna - Demand	$0.77135	$1.00000	$0.90106	
Commodity	$0.25001	$0.28500		$0.24221

Nashville Gas Company,
a Division of
Piedmont Natural Gas Company, Inc.
Calculation of Cost of Gas

Docket 94-01054

COMMODITY					
TEXAS EASTERN/WOODWARD			165,525 Dth @	3.0500	504,851
COLUMBIA GAS TRANSMISSION		FTS	1,200,000 Dth @	0.0353	42,360
		Fuel	Dth @	1.94%	54,047
COLUMBIA GULF TRANSMISSION		FTS-1	1,124,660 Dth @	0.0310	34,864
		Fuel	Dth @	3.069%	80,132
		Gas Rate	Dth @	2.3216	2,611,011
TENNESSEE GAS PIPELINE SYSTEM:		FT-A (Z1)	17,167,009 Dth @	0.0045	77,252
		Fuel	17,167,009 Dth @	1.91%	749,130
		FT-A (Z0)	3,176,757 Dth @	0.0054	17,154
		Fuel	3,176,757 Dth @	2.79%	202,496
		Gas Rate	20,343,766 Dth @	2.2847	46,479,402
LNG STORAGE.		Injection	(400,000) Dth @	2.3361	(934,440)
		Withdrawal	400,000 Dth @	2.0943	837,720
HATTIESBURG STORAGE:		Commodity	200,000 Dth @	0.0200	4,000
TGP STORAGE	Market Area	Injection	2,901,943 Dth @	0.0179	51,945
		Withdrawal	2,901,943 Dth @	0.0179	51,945
		Fuel	2,901,943 Dth @	1.49%	98,788
	Production Area	Injection	672,091 Dth @	0.0053	3,562
		Withdrawal	672,091 Dth @	0.0053	3,562
		Fuel	672,091 Dth @	1.49%	22,879
COLUMBIA STORAGE		Injection	600,000 Dth @	0.0091	5,460
		Withdrawal	600,000 Dth @	0.0091	5,460
		Fuel	1,200,000 Dth @	0.22%	6,129
TOTAL COMMODITY					51,009,710
DEMAND					
TENNESSEE GAS PIPLINE:					
Transportation	FT-A Zone 1		109,700 Dth @	7.3700	9,701,868
	FT-A Zone 0		20,300 Dth @	9.5700	2,331,252
					12,033,120
Storage	Market Area	Deliverability	49,828 Dth @	1.2400	741,441
		Space	2,901,943 Dth @	0.0137	477,079
	Production Area	Deliverability	6,072 Dth @	2.8400	206,934
		Space	672,091 Dth @	0.0249	200,821
					1,626,275
COLUMBIA GAS TRANSMISSION:					
Transportation	FTS		10,000 Dth @	7.3070	876,840
Storage.	FSS - SCQ		600,000 Dth @	0.0278	200,160
	FSS - MDQ		10,000 Dth @	1.3080	156,960
					357,120
COLUMBIA GULF TRANSMISSION:					
Transportation: FTS-1 (Winter)			5,000 Dth @	2.6906	67,265
Transportation: FTS-1 (Summer)			4,601 Dth @	2.6906	86,656
					153,921
HATTIESBURG STORAGE:		MDQ	20,000 Dth @	0.5800	139,200
		CAPACITY	200,000 Dth @	0.2050	492,000
					631,200
ODORANT COST					55,000
TOTAL DEMAND					15,678,476
TOTAL GAS COST					66,743,186
COMMODITY COST OF GAS PER DT @ 21,060,079 DT SALES					$2.4221

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

November 9, 1989 Nashville, Tennessee

IN RE: PETITION OF UNITED CITIES GAS COMPANY TO PLACE INTO EFFECT A REVISED NATURAL GAS TARIFF, AND FOR OTHER AND ADDITIONAL AUTHORITY, APPROVAL, AND RELIEF

DOCKET NO. 89-10017

ORDER

This matter is before the Commission upon the Petition of United Cities Gas Company for a rate increase of $8,910,730 in annual revenue. The Petition was filed on May 11, 1989, and was heard by the Commission on October 11, 1989, Chairman Keith Bissell, and Commissioners Steve Hewlett and Frank Cochran presiding.

Appearances were entered as follows:

For the Petitioner:

Jack M. Irion
James L. Bomar, Jr.
Bomar, Shofner, Irion & Rambo
104 Depot Street, P.O. Box 129
Shelbyville, TN 37160

Mark G. Thessin
Director of Regulatory Affairs
United Cities Gas Company
5300 Maryland Way
Brentwood, TN 37027

For the Intervenors
Ball Zinc, General Electric and Mahle, Inc:

Daniel R. Loftus
Boult, Cummings, Conners & Berry
P.O. Box 198062
Nashville, TN 37219

For the Intervenor
Nashville Gas Company:

Leslie B. Enoch, II
Nashville Gas, Division of Piedmont Gas
665 Mainstream Drive
Nashville, TN 37228

For the Commission Staff:

Henry Walker, General Counsel
D. Billye Sanders, Assistant General Counsel
460 James Robertson Parkway
Nashville, TN 37219

The Commission considered the Petition, Exhibits, testimony of witnesses, and the resolution of the issues as described below at its Commission Conference held on October 31, 1989. In accordance with Tennessee Code Annotated §4-5-314, the Commission makes the following findings of fact and conclusions of law:

I. Description of Petitioner.

United Cities Gas Company ("United Cities," "Company," or "Petitioner") is a natural gas distribution company, organized and existing under the laws of the States of Illinois and Virginia. It operates franchises in the following areas of Tennessee which will be affected by the revised tariffs filed herewith, to-wit:

(1) Bristol, Tennessee, and environs in Sullivan County;

(2) Columbia, Tennessee, and environs in Maury County;

(3) Elizabethton, Tennessee, and environs in Carter County;

(4) Franklin and Nolensville, Tennessee, and environs in Williamson County;

(5) Greeneville, Tennessee, and environs in Greene County;

(6) Johnson City and Jonesboro, Tennessee, and environs in Washington County;

(7) Kingsport, Tennessee, and environs in Sullivan County;

(8) Lynchburg, Tennessee, and environs in Moore County;

(9) Maryville and Alcoa, Tennessee, and environs in Blount County;

(10) Morristown, Tennessee, and environs in Hamblen County;

(11) Murfreesboro, Tennessee, and environs in Rutherford County;

(12) Shelbyville, Tennessee, and environs in Bedford County;

(13) Spring Hill, Tennessee, and environs in Maury and Williamson County;

(14) Union City, Tennessee, and environs in Obion County.

United Cities serves the above-named communities in Tennessee with natural gas purchased from various natural gas pipelines in accordance with tariffs approved by the Federal Energy Regulatory Commission. United Cities also has a program of spot-market gas purchases for the purpose of obtaining natural gas supplies at lower costs, while continuing to maintain a reliable gas supply for its customers. Such spot-market gas purchases are made on all pipeline systems serving Tennessee which offer open-access transportation services (Texas Gas

Transmission Corporation and Texas Eastern Transmission Corporation, but not East Tennessee Natural Gas Company). In cases of such transportation, these services are obtained from the pipelines in accordance with the transportation tariffs of such pipelines which tariffs are also approved by the Federal Energy Regulatory Commission.

United Cities last filed an application for general rate relief in the year 1986 in Docket No. U-86-7442. Since 1970, United Cities' rates have been subject to a Purchased Gas Adjustment (PGA) provision in its rate tariff which permits the Company to track increases or decreases in its purchased gas cost. United Cities has submitted with this filing a revised PGA provision which it claims will eliminate alleged deficiencies in the current PGA. This matter and the resolution thereof will be specifically discussed hereinbelow.

II. Criteria for Establishing Just and Reasonable Rates.

The Commission has traditionally considered petitions such as this one, filed pursuant to Tennessee Code Annotated §65-5-203, in light of the following considerations:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return.
2. The proper level of revenues for the utility.
3. The proper level of expenses for the utility.
4. The rate of return the utility should earn.

III. Prehearing Conference and Resolution of Issues.

The parties attended a prehearing conference on October 4, 1989. At that time various stipulations (Stipulation) were entered into between United Cities and the Commission's Staff (Staff). This Stipulation, together with a listing of the issues remaining for determination, were attached to a Prehearing Conference Order entered on October 10, 1989. A copy of said Prehearing Conference Order and said Stipulation is attached as an Appendix to this Order.

Many of the issues remaining unresolved at the conclusion of the prehearing conference related, either directly or indirectly, to the Staff's recommendation for a management audit. At the commencement of the hearing on October 11, 1989, the Commission, through its Chairman, stated that the question of whether a management audit would or would not be ordered for United Cities was a matter for decision by the Commission itself in the context of another proceeding. That proceeding involves a Purchased Gas Adjustment Compliance Audit issued on May 4, 1989, along with a Staff memorandum dated May 17, 1989, and Company responses dated March 23, 1989 and May 30, 1989. Therefore, the Commission determined that this matter would not be an issue in this case. The Commission then instructed the parties to reopen their settlement discussions. Pursuant to these instructions, the parties did reopen their settlement discussions and came to a resolution as to all issues except the Company's proposal to change the format of its tariffs and bills to customers, which is referred to in this docket as "zero base rates." That settlement and the issue of zero base rates are now before the Commission for consideration.

IV. The Settlement.

A. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described below. Neither United Cities, the Commission, its Staff, any of the Intervenors, nor any other party or person shall be prejudiced or bound thereby in any other proceeding except as specifically provided herein. Neither United Cities, the Commission, its Staff, any of the Intervenors, nor any other party or person shall be deemed to have approved, accepted or agreed to any concept, methodology, theory, or principle underlying or supposed to underly any of the matters provided for in said settlement except as specifically provided.

B. Revenue Deficiency.

For purposes of determining the revenue deficiency, and for no other purpose, the parties agreed to use as a starting point the Staff's test period, rate base, revenues, expenses, and rate of return. After extensive discussions the Company and the Staff agreed upon a revenue deficiency of $6,776,688. This figure is found in the Joint Exhibit attached to the Stipulation, both of which are part of the Appendix to this Order. This specific revenue deficiency is found in said Joint Exhibit under the column entitled "Johnson City Property." It is derived from an acceptance of the Staff's base case (Staff's base case is its filed case, as corrected for two depreciation changes to which the Staff agreed. These changes were in the nature of mathematical corrections and do not relate to other depreciation issues which are described below). This base case is identified in the Joint Exhibit as "Staff Position." Starting from that base position, the parties agreed that the Company would accept the Staff's overall rate of return of 11.16%, and the Staff would concede a rate base issue concerned with certain property located in Johnson City, Tennessee. The combination of those two agreements is reflected in the Joint Exhibit, as heretofore stated, under the column entitled "Johnson City Property." These two items constitute all unresolved issues with any revenue impact if the Staff's base case is utilized as the starting point. Other issues are discussed below. The Commission, upon consideration of all evidence, finds the settlement as to the revenue deficiency to be appropriate and approves the same.

C. The Franklin Issue.

One disputed issue involves the proper rate base treatment of the Company's acquisition of the Franklin, Tennessee municipal gas system. This matter has been an issue in the Company's last three general rate cases and is presently the subject of an appeal by the Commission to the Tennessee Supreme Court from a ruling of the Tennessee Court of Appeals affirming in part and reversing in part the Commission's previous Order on this matter. In its filed case the Company accounted for this issue in accordance with the Court of Appeals decision. The Staff accounted for said issue in accordance with the Commission's prior Order. By way of settlement, the parties agreed to handle this issue as in the Staff's case with the understanding that whatever decision is ultimately rendered by the Supreme Court, the same will be implemented as expeditiously as possible. The Commission approves and adopts this resolution.

D. The Barnsley Underground Storage Field.

The Staff did not object to the Company's inclusion or allocation of the costs of a storage project known as the Barnsley Underground Storage Field although certain accounting adjustments were made. To the extent that Commission approval of this project is required, the parties agreed that the project should be approved. The Company previously agreed to furnish necessary information to the Commission's Engineering Staff, and has already done so. The Engineering Staff gave its approval of the project on September 6, 1989. The Commission agrees with this approach and approves the project.

E. Horton Highway Utility District.

The Company has contracted to acquire the above-named utility district and included rate base treatment for said acquisition in its filed case. The Staff excluded the costs associated with this acquisition since the matter is currently the subject of litigation. The parties agreed that this matter should not be addressed by the Commission at this time, but rather should be addressed at such time as said litigation has been concluded. In the event the acquisition should be consummated prior to the Company's next rate case, it is agreed that the Company, in beginning service to Horton's customers, will charge Horton's current rates until the next rate case decision by this Commission. The Commission approves and adopts this resolution.

F. Depreciation Issues.

United Cities merged with Tennessee-Virginia Energy Corporation (TVEC) in December of 1986. At the time of said merger the approved depreciation rates for the TVEC properties were somewhat higher than the rates for the United Cities' properties. The rates for the United Cities' properties have been determined by a depreciation study as of December 31, 1985, which was filed with the Commission's Staff on August 13, 1987. That depreciation study has been supplemented with further studies on a number of occasions. Said depreciation study was undertaken as a commitment by the Company in a previous rate case with the understanding that it would be updated every five years. The Company has also undertaken to include the TVEC properties in its next study, for the period ending December 31, 1990. The rates in said study and the methodology utilized to determine said rates have never been specifically approved by the Commission although the rates themselves have been utilized.

The parties agreed that United Cities would accept the reduction in depreciation expense made by the Staff, whereby, the TVEC properties and the United Cities' properties would be subject to the same depreciation rates. The Staff agreed that the rates and methodology contained in the aforementioned depreciation study are correct and can, with appropriate updating and changes, be utilized in the Company's study to be completed for the period ending December 31, 1990, and in any other depreciation studies thereafter. The Commission approves and adopts said resolution.

G. PGA Issues.

There were a number of PGA or PGA-related issues presented by the Company. These items include the Company's proposal for a full-recovery PGA or a PGA combined with what is usually referred to as an annual true-up. Other issues also involve the treatment of demand charges and other related issues. The majority of these issues have been the subject of a generic proceeding for a number of years, however, no determination has ever come out of that proceeding. They are also the subject of other individual company cases pending before the Commission. The parties agreed to simply defer these PGA issues until a later date, with the understanding that if they are not otherwise determined through some other proceeding, the parties will agree upon procedures whereby a separate hearing on these issues alone would be held at some time prior to April 1, 1990. The Commission approves and adopts this resolution.

H. Rate Design.

United Cities and the Staff have agreed to implement a rate design which tends to move all of the Company's rates across the State of Tennessee toward parity, the ultimate goal being to reach a point of uniform state-wide rates with a recognition of the differences in gas cost by areas. The Commission's economist, Dr. Chris Klein, filed testimony in which he outlined three options relative to rate design. The Company and the Staff have agreed to Option No. 3 as it relates to the distribution of the revenue deficiency among the various classes of customers. The Company, the Staff and the industrial intervenors have further agreed to a two-block declining rate for the interruptible class. This modification of Dr. Klein's Option No. 3 is revenue neutral. The Company and the Staff have further agreed to defer implementation of a two-part demand/commodity rate for large commercial and industrial end users until the Company's next rate case. A study relative to the impact of such rates will be completed by the Company before December 1990. Any required installation of special metering equipment will be completed prior to the Company's next general rate filing. The Commission approves and adopts said resolution as to rate design.

I. Rules and Regulations.

The Company submitted revised Rules and Regulations with its filing, which Rules and Regulations constituted an updating and consolidation of its two existing sets of Rules and Regulations (one for United Cities and one for TVEC). The Staff does not object to these new Rules and Regulations, and agrees that the updating and consolidation is desirable. The Commission agrees, and, therefore, approves the same.

J. Zero Base Rates.

The Company proposed that it implement zero base rates. This issue is separate and apart from the PGA issues which have been deferred by agreement. Zero base rates provide a two-part rate schedule under which the commodity cost is broken into two parts - one rate for the Company's margin and another for a gas element. The Company contends that this would enable the consumer to more readily identify the various components of their utility expense. After further discussion, however, the Company agreed to drop this proposal in this case, and further agreed to simplify its bill pursuant to the Commission's directive.

V. <u>Commission Determination</u>.

The Commission has fully reviewed the settlement as described above and finds it to be reasonable and in the public interest. Therefore, in addition to the specific actions of the Commission as described above, the Commission approves and ratifies the foregoing settlement and resolution of the issues as a whole and orders that the same be implemented as indicated below.

IT IS, THEREFORE, ORDERED:

1. That the Petition of United Cities Gas Company for a rate increase of $8,910,730 is denied.

2. That the Company's shall file tariffs consistent with this Order and designed to produce $6,776,688 in additional annual revenue, to become effective as of November 13, 1989, for service rendered on and after that date.

3. That at such time as the Tennessee Supreme Court renders a final and unappealable decision with respect to the Franklin issue, the Company and the Staff shall cooperate for the purpose of implementing said decision in a timely matter.

4. That the Commission approves the Company's storage facility known as the Barnsley Underground Storage Project.

5. That the Commission declines to act upon the proposed acquisition of the Horton Highway Utility District. When

litigation involving said acquisition is completed, the Company may, without prejudice, file for approval at that time.

6. That the Company's existing depreciation rates are approved for both the United Cities' properties and the TVEC properties. The methodology of the Company's depreciation study described hereinabove is likewise approved for use in its upcoming depreciation studies.

7. That the PGA issues described above are deferred. If not otherwise determined through a generic or other proceeding, these matters will be set for hearing on a separate basis no later than April 1, 1990.

8. That the agreed-upon rate design as described above and to be incorporated in the tariff sheets mentioned hereinabove is approved.

9. That the Company's proposed Rules and Regulations are approved as filed.

10. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

11. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

Chairman

Commissioner

Commissioner

ATTEST:

Executive Director

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

January 13, 1995 Nashville, Tennessee

IN RE: Petition of United Cities Gas Company To Place Into Effect Revised Tariff Sheets

Docket No. 92-02987

Final Order

This matter is before the Commission as a result of a management audit conducted by the Liberty Consulting Group (Liberty). This audit was agreed to by stipulation between the Commission's Staff (Staff) and United Cities Gas Company (the Company) in the Company's last rate case.

The results of the management audit, dated September 21, 1994, were provided to the Commission on October 4, 1994. There were several areas of disagreement between Liberty and the Company. Because of these disagreements, the Staff in a memorandum dated October 25, 1994, requested that a hearing be conducted to resolve these disputes. The Consumer Advocate (CA) filed a memorandum on October 28, 1994, supporting the position of the Staff; and in addition, petitioned the Commission to convene a Show Cause Proceeding based upon the audit findings.

The Commission first considered this matter at its regularly scheduled Commission Conference scheduled on October 31, 1994. The matter was continued at that time to enable the Company time to file a response to the requests for a hearing.

This matter was subsequently considered at the Commission Conference held on November 29, 1994. It was concluded after careful consideration of the entire record including all the written submissions of the parties in the docket, all applicable rules and statutes that a hearing on the findings of the management audit was not necessary at this time and that the petition for a Show Cause should be denied.

United Cities is a public utility, engaged in the distribution and sale of natural gas in various communities throughout the State of Tennessee. It is anticipated that the Company will be filing a rate case in early 1995 and that the results of the management audit could be considered at that time. To assure this, the Commission finds that the Company shall include in its next general rate case filing its position with regard to those management audit recommendations with which it disagrees, together with a detailed explanation of why it believes these recommendations should not be implemented. The CA may file for intervention in this proceeding and present its position as to the audit findings at that time as well. The Commission will consider the appropriateness of these findings and their rate impact at that time.

If, however, the Company has not filed such a rate petition by May 15, 1995, the Commission Staff should be directed to prepare a Show Cause order directing the Company to appear and show cause why the audit recommendations should not be fully implemented. In addition, the Company shall file a report with the Commission not later than April 1, 1995, on the progress that they have made in implementing the recommendations with which there was either partial or complete agreement. This report should include a quantification of the savings associated with each of the recommendations and when the Company expects those savings to be achieved.

IT IS THEREFORE ORDERED:

1. That the Staff's recommendation for a hearing on the management audit is denied.

2. That the Consumer Advocate's Petition for a Show Cause is likewise denied.

3. That United Cities shall file a report with the Commission no later than April 1, 1995, on the progress they have made in implementing the recommendations of the management audit, as described herein.

4. That the Company shall include in its next rate filing a statement of position with regard to the management audit recommendations with which it disagrees, as described herein.

5. That if the Company has not filed a rate petition by May 15, 1995, the Commission's Staff is directed to prepare a Show Cause Order, as described herein.

6. That any party aggrieved with the Commission's decision in this matter may file a Petition to Reconsider with the

Commission within ten (10) days from and after the effective date of this Order.

7. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, with sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
September 21, 1992 Nashville, Tennessee

IN RE: PETITION OF UNITED CITIES GAS COMPANY TO PLACE INTO EFFECT REVISED TARIFF SHEETS

DOCKET NO. 92-02987

ORDER

This matter is before the Tennessee Public Service Commission upon the Petition of United Cities Gas Company for a rate increase of $2,896,960 in annual revenue. The Petition was filed on March 30, 1992, and was heard by the Commission on September 2, 1992, Commissioner Frank Cochran, and Commissioner Keith Bissell presiding.

Appearances were entered as follows:

For the Petitioner:

Jack M. Irion
Bomar, Shofner, Irion & Rambo
104 Depot Street, P.O. Box 129
Shelbyville, TN 37160

For the Intervenors
Associated Valley Industries Intervenor Group:

Daniel R. Loftus
Boult, Cummings, Conners & Berry
P.O. Box 198062
Nashville, Tn 37219

For the Commission Staff:

D. Billye Sanders, Assistant General Counsel
460 James Robertson Parkway
Nashville, TN 37243-0505

In addition, there were two Petitions to Intervene filed on behalf of Nashville Gas Company and Chattanooga Gas Company, both filed on September 1, 1992. Upon objection of the Staff and

(4) Franklin and Nolensville, Tennessee, and environs in Williamson County;

(5) Greeneville, Tennessee, and environs in Greene County;

(6) Johnson City and Jonesboro, Tennessee, and environs in Washington County;

(7) Kingsport, Tennessee, and environs in Sullivan County;

(8) Lynchburg, Tennessee, and environs in Moore County;

(9) Maryville and Alcoa, Tennessee, and environs in Blount County;

(10) Morristown, Tennessee, and environs in Hamblen County;

(11) Murfreesboro, Tennessee, and environs in Rutherford County;

(12) Shelbyville, Tennessee, and environs in Bedford County;

(13) Spring Hill, Tennessee, and environs in Maury and Williamson County;

(14) Union City, Tennessee, and environs in Obion County.

United Cities last filed an application for general rate relief in the year 1989 in Docket No. U-89-10017. Since 1970, United Cities' rates have been subject to a Purchased Gas Adjustment (PGA) provision in its rate tariff which permits the Company to track increases or decreases in its purchased gas cost. This PGA has recently been revised pursuant to the generic proceeding in Docket No. G-86-1. United Cities' rates are also subject to an experimental Weather Normalization Adjustment (WNA) which was approved pursuant to the generic proceeding in Docket No. 91-01712.

this Order. It should be noted that this stipulation is an agreement between the Staff and the Company only. The industrial Intervenors are not a party thereto. Upon representation of the parties that a complete settlement might be possible, the Commission allowed additional time for further discussions. These further discussions ultimately led to a settlement among all three parties on the issue of rate design. Once the rate design issue was resolved, it was announced at the hearing that the industrial intervenors (AVIG), while not necessarily supporting the stipulation agreement, between the Company and Staff, did not oppose the same.

IV. The Settlement.

A. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described below. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be prejudiced or bound thereby in any other proceeding except as specifically provided herein. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be deemed to have approved, accepted or agreed to any concept, methodology, theory, or principle underlying or supposed to underlie any of the matters provided for in said settlement except as specifically provided.

per mcf (i.e., from $.76 to $.650). An equal percentage of the rate shift due to the reduction in rates for the above classes of customers will be spread among commercial and residential customers.

In reaching just and reasonable rates the Commission considers, among other things, the utility's total cost, the value of the service provided to individual customers or customer groups, the impact of the rate change on the various classes of customers, and customers' ability to convert to alternate fuels. Taking these factors into consideration, the rate design appears to be reasonable and is approved.

D. Other Issues.

The remaining issues in this proceeding were likewise settled as between United Cities and the Commission's Staff. Their agreements are set forth in the attached and incorporated stipulation to which reference is hereby made.

V. Commission Determination.

The Commission has fully reviewed the settlement as described above and finds it to be reasonable and in the public interest. Therefore, the Commission approves and ratifies the foregoing settlement and resolution of the issues as a whole and orders that the same be implemented as indicted below.

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 2, 1992

IN RE: PETITION OF UNITED CITIES GAS COMPANY TO PLACE INTO EFFECT REVISED TARIFF SHEETS.

DOCKET NO. 92-02987

PRE-HEARING CONFERENCE ORDER

This Pre-hearing Conference was held pursuant to a Notice of Hearing and Procedural Schedule issued in this matter July 31, 1992.

The Pre-Hearing Conference took place August 27, 1992 in Nashville, Tennessee before Administrative Judge Mack H. Cherry. Representatives of United Cities Gas Company (Petitioner), the Associated Valley Industries Intervention Group (Intervener) and the Commission Staff attended.

The following determinations and agreements were reached.

I.

The hearing will commence at 10 a.m., September 2, 1992 at the Commission Hearing Room in Nashville as opposed to 9:30 a.m. reflected in the original Notice of Hearing.

II.

The parties agreed to provide stipulations which could be made a part of this Pre-hearing Conference Order not later than Monday afternoon, August 31, 1992. It was learned Monday that the parties had reached agreement. However, this agreement has not been reduced to writing at this time. It will be submitted at the time of the hearing.

III.

Since the agreement between the parties has not yet been reduced to writing, there exists the contingency that any agreement might be premature. In the event the parties do not come to agreement as earlier anticipated, the parties

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee

IN RE: UNITED CITIES GAS COMPANY REQUEST FOR A RATE INCREASE
DOCKET NO. 92-02987

STIPULATIONS BETWEEN THE COMMISSION STAFF
AND UNITED CITIES GAS COMPANY

At the prehearing conference on August 27, 1992, in this docket, the Administrative Judge instructed the parties to submit a list of stipulations and issues remaining in this docket. Subsequent to the prehearing conference all issues have been resolved as between the Commission Staff (Staff) and United Cities Gas Company (United Cities or Company). These stipulations are not, however, necessarily joined in by the Intervenor. As was anticipated at the prehearing conference, the other party in this case, Associated Valley Industries Intervention Group (AVIIG) did not participate in the development of these stipulations.

Stipulations

1. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described below. Neither United Cities, the Commission, its Staff, nor AVIIG shall be prejudiced or bound thereby in any other proceeding except as specifically provided charges on any portion of the deferred balance as determined recoverable in the generic docket. Carrying charges will be computed on the same basis as such charges are presently computed for PGA balances.

4. <u>Management Audit</u>.

United Cities has agreed to a management audit on matters other than purchased gas costs which are currently being audited. Said audit shall be conducted by a nationally recognized accounting or consulting firm. The consultant shall be selected by the Commission upon recommendation of the Staff, with the right of the Company to object to said recommendation. The Company will be involved in the selection of the finalist list from which the Staff will make its recommendation, and any dispute between the Company and Staff during this process shall be resolved by the Commission. The costs of this audit, as specified in the consultant's contract, with carrying charges computed on the same basis as such charges are presently computed for PGA balances, shall be deferred until the Company's next rate case. The audit shall begin on or after April 1, 1993.

5. <u>Accumulated Deferred Federal Income Taxed (ADFIT)</u>

ADFIT are currently reflected on the Company's books on a Company-wide basis. The Company has agreed to separate future accruals of the Tennessee portion of ADFIT. The Company and Staff agreed to do a study to determine how, consistent with IRS or more. The commodity margin for this rate will be the Company's current interruptible margin.

e. An equal percentage of the agreed-upon revenue increase will be spread to all customers other than the demand-commodity, interruptible, and transportation customers.

f. The Company has agreed to require a one-time contribution in aid of construction for telemetering equipment and applicable taxes from all new customers on its large firm tariff and all transportation customers (new and existing).

g. Other agreed-to rates and/or tariff provisions include: (1) an experimental school rate to encourage the use of air conditioning equipment (Schedule 3), (2) an economic development rate to encourage new gas load and to promote jobs and industrial growth (Schedule 4), (3) tariff provisions applicable to mobile home parks, (4) balancing provisions applicable to transportation customers which mirror the similar provisions of the Company's upstream pipeline supplier.

9. Should the Commission modify the stipulations, the parties reserve the right to present testimony on the various issues raised in this case.

Respectfully submitted this 2nd day of September, 1992.

Jack M. Irion

Jack Irion, Attorney
for United Cities Gas Company

D. Billye Sanders, Asst Gen. Couns

D. Billye Sanders
Assistant General Counsel

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
December 27, 1990 NASHVILLE, TENNESSEE

IN RE: PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE

DOCKET NO. 90-05735

ORDER

This matter is before the Tennessee Public Service Commission upon the filing of a Petition by Kingsport Power Company (the "Company") for an increase in rates for electric service. This matter was heard on December 4, 1990, before Chairman Keith Bissell, Commissioner Frank Cochran and Commissioner Steve Hewlett in Nashville, Tennessee. The following appearances were entered:

APPEARANCES:

Mr. T. Arthur Scott, Jr., Hunter, Smith & Davis, Post Office Box 3740, Kingsport, Tennessee 37664 and Mr. James R. Bacha, Rate Counsel, American Electric Power Service Corporation, One Riverside Plaza, Columbus, Ohio 43215, appearing on behalf of the Petitioner Kingsport Power Company.

Ms. D. Billye Sanders, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, appearing on behalf of the Commission Staff.

Mr. Daniel R. Loftus, Boult, Cummings, Conners & Berry, 222 Third Avenue North, Nashville, Tennessee 37201, appearing for the Intervenor, Air Products and Chemicals, Inc.

Mr. Arthur Smith, President, Kingsport Power Users Association, c/o D. Bruce Shine, Esq., 433 East Center Street, Suite 201, Kingsport, Tennessee 37660, appearing by consent of the parties in the absence of the attorney for Kingsport Power Users Association.

Kingsport Power Company, a wholly-owned subsidiary of American Electric Power Company, Inc. ("AEP"), serves approximately 39,000 customers living in a 220 square mile area in the Counties of Sullivan, Hawkins, and Washington, Tennessee, including the City of Kingsport and the Town of Mt. Carmel. The Company has no power generating facilities of its own and distributes electric power which it purchases from Appalachian Power Company ("APCO"), another subsidiary of AEP, whose wholesale rates are regulated by the Federal Energy Regulatory Commission ("FERC").

In its petition, the Company requests a revenue increase of $2,016,172 consisting of base rate increases of $386,049 for a purchased power expense pass-through due to rates placed into effect by APCO, subject to refund, effective August 4, 1990, as a result of action by FERC in FERC Docket No. ER90-133-000 and $1,630,123 for increased capital and operating expenses, based upon a historical test year ended December 31, 1989, adjusted for known and reasonably anticipated changes through December 31, 1991, the end of the first year that new rates resulting from this proceeding are expected to be in effect. The proposed tariffs as filed with the Petition allocate the pass-through portion equally across the various classes of customers of the Company with the balance of the proposed increase being allocated entirely to the residential class of customers.

Prefiled testimony on behalf of the Company was entered by Mr. Thomas A. Rotenberry, President, Kingsport Power Company; Mr. Gregory W. Smith, Administrative Assistant to the President of Kingsport Power Company; Mr. Armando A. Pena, Vice President-Finance of American Electric Power Service Corporation; Mr. Louis R. Jahn, Manager-Rate Research and Design Division of the Rate Department of American Electric Power Service Corporation; Ms. Arleen D. L'Ecuyer, Rate Analyst in the Rate Research and Design Division of the Rate Department of American Electric Power Service Corporation; and Mr. W. Joe Mason, Jr., Assistant

Professor of Finance, College of Business, East Tennessee State University. Mr. Jahn and Mr. Mason also filed rebuttal testimony.

The Commission Staff presented prefiled testimony through its witnesses Mr. William H. Novak, Accounting Division Manager, Tennessee Public Service Commission and Dr. Christopher C. Klein, Staff Economist, Tennessee Public Service Commission.

The Intervenor, Kingsport Power Users Association, filed no testimony.

The Intervenor, Air Products and Chemicals, Inc. (Air Products), prefiled testimony by Mr. Maurice Brubaker consultant with Drazen-Brubaker & Associates, Inc.

All parties of record were informed of a settlement conference that was held on September 11, 1990 and which was continued on September 20, 1990. The September 20, 1990 settlement conference culminated in the Company and the Staff reaching an agreement (the "Settlement Agreement") (see Appendix) on certain issues in this proceeding, which Settlement Agreement was filed with the Commission on November 14, 1990 and submitted to the Commission for approval at the hearing on November 20, 1990.

At the hearing, upon motion of the Company the portion of the proceeding dealing with interruptible rates was severed. Accordingly, the prefiled testimony of Maurice Brubaker and the rebuttal testimony of Mr. Louis R. Jahn commencing on page 6 of his rebuttal testimony beginning with "interruptible power (IRP service)" was deleted from this proceeding.

At the hearing the Company and Staff witnesses summarized their prefiled testimony and they were cross-examined by the legal counsel of

Air Products and the President of the Kingsport Power Users Association regarding allocation of the rate increase recommended by the Company and the Staff in the Settlement Agreement.

The Commission considered this matter at the regularly scheduled Commission Conference on December 4, 1990. Based on the entire record, the Commission concludes that approval of the Settlement Agreement is in the public interest and that the increase in base rates of $500,000 on an annual basis will result in just and reasonable rates.

IT IS THEREFORE ORDERED:

1. That the attached Settlement Agreement between Kingsport Power Company and the Commission Staff, dated November 9, 1990, is hereby approved in its entirety.

2. That Kingsport Power is directed to file tariffs implementing an increase to its base rates of $500,000 on an annual basis, using forecasted test year 1991 revenues and billing determinants, for service rendered on and after January 1, 1991.

3. That the accounting and rate recovery procedures set forth in the Settlement Agreement with respect to increased base purchased power expense is hereby approved.

4. That all matters relating to the consideration by this Commission of interruptible power service shall be established in a separate docket and that the parties to this proceeding shall participate in a prehearing conference to attempt to identify issues, establish discovery schedules and set a date for hearing.

5. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

6. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

ATTEST

COMMISSIONER

EXECUTIVE DIRECTOR

RECEIVED

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BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

NASHVILLE, TENNESSEE

IN RE: PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE
Docket No. 90-05735

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the 9th day of November, 1990, by and between Kingsport Power Company ("Kingsport Power") and the Staff of the Tennessee Public Service Commission ("Staff").

WITNESSETH:

WHEREAS, Kingsport Power filed its Petition on July 3, 1990, which requested an increase in base rates of $2,016,172, consisting of a base increase of $386,049 for a purchased power expense pass-through and $1,630,123 for increased capital and operating expenses, based upon a historical test year ended December 31, 1989, adjusted for known and reasonably anticipated changes through December 31, 1991, the end of the first year that new rates resulting from this proceeding are expected to be in effect; and

WHEREAS, the Tennessee Public Service Commission ("Commission") issued an Order on July 30, 1990, suspending the proposed tariffs for the above-captioned docket to determine the justness and reasonableness of this matter; and

WHEREAS, by orders entered August 30, 1990, the Commission allowed the intervention of the Kingsport Power Users Association ("KPUA") and Air Products and Chemicals, Inc. (Air Products); and

WHEREAS, the Staff evaluated Kingsport Power's Petition and developed its own position and

WHEREAS, all parties of record were informed of a settlement conference that was held on September 11, 1990 and which was continued on September 20, 1990; and

WHEREAS, Kingsport Power, Arthur Smith of KPUA and the Staff met on September 11, 1990, discussed their respective positions on all issues in this case in an effort to resolve their differences; and

WHEREAS, Kingsport Power, Air Products, by their attorney, and Staff met on September 20, 1990 and included Arthur Smith by telephone to continue the earlier settlement conference; and

WHEREAS, the September 20, 1990 settlement conference culminated in Kingsport Power and the Staff reaching an agreement on certain issues in this proceeding, which agreement is set forth below;

NOW, THEREFORE, for and in consideration of the premises and conditions set forth herein, Kingsport Power and the Staff hereby agree as follows:

1. Kingsport Power will increase its base rates by $500,000, on an annual basis, using forecasted test year 1991 revenues and billing determinants, for service rendered on and after January 1, 1991. The parties agree only on the total amount of the

revenue increase and it is explicitly understood that there is no agreement among the parties as to any of the specific components or amounts used in the determination of such revenue increase except that Kingsport Power and Staff agree that the base rate increase of $500,000 was determined using an 11.9% overall rate of return, including a 13.0% rate of return on common equity.

2. The revenue increase is agreed to be allocated entirely to the residential class of customers. The agreed upon rate for the RS tariff will have a customer charge of $5.85 per month and an energy charge of 4.715¢ per kilowatt hour.

3. Until January 1, 1992, no application for an increase in base rates will be filed by Kingsport Power, no complaint will be filed by Staff regarding Kingsport Power's rate levels, and no show cause order seeking any reduction in Kingsport Power's rates will be issued. This moratorium will not apply to the base purchased power expense discussed in paragraph 6 below, nor will this moratorium apply to base rate changes required by increases or decreases in Kingsport Power's wholesale power costs. In the event of such cost changes, Kingsport Power will make an appropriate filing with the Commission during this one year moratorium period to reflect such changes in its base rates.

4. Kingsport Power agrees to submit to the Commission for its approval a tariff or tariffs for street lighting or to submit the contracts with the affected municipalities to the Commission for approval.

5. Kingsport Power agrees to change its accounting for employee discounts or to file a special tariff or tariffs to reflect the discounts.

6. Kingsport Power and Staff agree that the base purchased power expense increase from Appalachian Power Company ("Appalachian Power") shall be accounted for in a deferred account, Account 186-Miscellaneous Deferred Debits, effective as of August 4, 1990, the date the Federal Energy Regulatory Commission ("FERC") has made effective, subject to refund, Appalachian Power's rate increase to Kingsport Power in FERC Docket No. ER90-133-000. Kingsport Power will record interest on the deferred base purchased power expense increase using the overall rate of return approved by this Commission in Docket No. 90-05735. Upon issuance of a final FERC order in Docket No. ER90-133-000, the total deferred base purchased power expense increase, determined pursuant to that final FERC order, including interest, shall be recovered by means of a surcharge. Should the final FERC order in Docket No. ER90-133-000 have the effect of reducing Kingsport Power's base purchased power expense below the levels in effect prior to August 4, 1990 ("deferred base purchased power expense decrease") then Kingsport Power shall refund this deferred base purchased power expense decrease, exclusive of interest, by means of a credit. The parties agree that the accounting and recovery mechanism set forth above may be subject to a separate order by the Commission prior to approval of this Settlement Agreement.

It is further agreed that following a final FERC order in Docket No. ER90-133-000, Kingsport Power will file revised tariffs designed to reflect, on a prospective basis, the increase or decrease in its base purchased power expense determined pursuant to the final FERC order.

7. This Settlement Agreement contemplates a full resolution of all issues raised by Kingsport Power and Staff in this proceeding.

8. The making of this Settlement Agreement shall not be deemed in any respect to constitute any precedent for the future or an admission by any party hereto that any computations, formula, allegations or contentions made by any other party in these proceedings is true or valid. Moreover, this Settlement Agreement establishes no principles and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation.

9. If this Settlement Agreement is not approved in its entirety by the Commission, without additions, deletions or revisions, then it shall be null and void in all respects, it shall be deemed withdrawn, it shall not constitute any part of the record in this proceeding and it shall not be used by any party for any purpose whatsoever; provided, however, that this Settlement Agreement shall still be binding on Kingsport Power and the Staff regardless of the Commission's allocation of the agreed upon rate increase. In the event that this Settlement Agreement is not so approved by the Commission, the parties reserve the right to continue litigating the issues in this proceeding, for ultimate determination by the Commission.

10. The parties to this Settlement Agreement will not appeal, challenge or contest an Order of the Commission that accepts and approves this Settlement Agreement without modification.

11. The parties have arrived at this Settlement Agreement after full and fair consideration of all the evidence filed in this proceeding, as well as the positions of the various parties as to the technical issues raised in this proceeding. It is the further position of the parties that the Commission's approval of this Settlement Agreement will promote the public interest, will result in rates which are just and reasonable during the term of this Agreement, will aid the expeditious conclusion of this proceeding, and will minimize the additional time and expense which otherwise would have to be devoted to this matter by the Commission and the parties.

12. It is the understanding of the parties that this agreement is to be considered by the Commission at the scheduled hearing on November 20, 1990.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

KINGSPORT POWER COMPANY
("Kingsport Power")

Dated: November 9, 1990

By: T. Arthur Scott, Jr.

THE STAFF OF THE TENNESSEE PUBLIC
SERVICE COMMISSION ("Staff")

Dated: Nov. 13, 1990

By: D. Billye Sanders
Asst. General Counsel

KR/HSTAS/1692

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BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
November 3, 1992

IN RE: THE PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE.

DOCKET NO. 92-04425

O R D E R

This matter is before the Tennessee Public Service Commission upon the petition of Kingsport Power Company as set forth in the above caption.

This matter was heard on October 28, 1992 before Administrative Judge Ralph B. Christian. On October 30, 1992 the Administrative Judge issued an initial order recommending that the settlement reached by the parties be approved as being in the public interest. (Attachment A).

After considering the record, including the Administrative Judge's initial order and all applicable statutes, the Commission finds that the Administrative Judge's initial order should be adopted and the settlement agreement approved.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's initial order, dated October 30, 1992 in this docket is adopted and incorporated by reference, including the attached Settlement Agreement and the findings and conclusions of the Administrative Judge.

2. That Kingsport Power shall submit tariffs consistent with the Settlement Agreement and effective on or after the date of this order.

3. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

4. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

NASHVILLE, TENNESSEE

IN RE: PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE
Docket No. 92-04425

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the 26th day of October, 1992, by and between Kingsport Power Company ("Kingsport Power"), Air Products and Chemicals, Inc. ("Air Products"), Kingsport Power Users Association ("KPUA") and the Staff of the Tennessee Public Service Commission ("Staff").

WITNESSETH:

WHEREAS, Kingsport Power filed its Petition on May 26, 1992, which requested an increase in base rates of $5,463,716, consisting of a base increase of $5,089,134 for a purchased power expense pass-through and $374,582 for increased capital and operating expenses, based upon a historical test year ended December 31, 1991, adjusted for known and reasonably anticipated changes through December 31, 1993, the end of the first year that new rates resulting from this proceeding are expected to be in effect; and

WHEREAS, the Tennessee Public Service Commission ("Commission") issued Orders on June 25, 1992, July 8, 1992 and September 23, 1992, suspending the proposed tariffs for the above-captioned docket to determine the justness and reasonableness of this matter; and

WHEREAS, by orders entered September 10, 1992 and June 25, 1992, the Commission allowed the intervention of the KPUA and Air Products; and

WHEREAS, the Staff evaluated Kingsport Power's Petition and developed its own position; and

WHEREAS, all parties of record were informed of a settlement conference that was held on October 15, 1992; and

WHEREAS, Kingsport Power and the Staff met on October 15, 1992 and discussed their respective positions on all issues in this case in an effort to resolve their differences; and

WHEREAS, settlement discussions continued thereafter; and

WHEREAS, at the Pre-hearing Conference held in Nashville on October 26, 1992, the settlement discussions culminated in Kingsport Power, Air Products, KPUA and the Staff reaching an agreement to resolve this case, which agreement is set forth below;

NOW, THEREFORE, for and in consideration of the premises and conditions set forth herein, Kingsport Power, Air Products, KPUA and the Staff hereby agree as follows:

1. Kingsport Power will increase its base rates by $4,625,000 to $81,766,960, on an annual basis, using forecasted rate year 1993 revenues and billing determinants as shown on Exhibit _____ (LRJ-1), for service rendered on and after the date of approval of this agreement. The parties agree only on the total amount of the revenue increase and it is explicitly understood that there is no agreement among the parties as to any of the specific components or amounts used in the determination of such revenue

increase except that Kingsport Power, Air Products, KPUA and Staff agree that (1) the agreed-to $4,625,000 rate increase consists of a $4,920,871 pass-through of an increase in purchased power expense and a decrease of $295,871 for local operations and (2) the base rate increase of $4,625,000 was determined using a 10.7% overall rate of return and a 12% return on equity.

2. Kingsport Power, Air Products, KPUA and Staff agree that the portion of the increase in base rates attributable to the base purchased power expense increase from Appalachian Power Company ("APCo") shall be passed through, subject to refund, pending a final order from the Federal Energy Regulatory Commission ("FERC") in APCo's Docket No. ER92-324-000. Upon issuance of a final FERC order in Docket No. ER92-324-000, the base purchased power expense increase allowed in this Agreement, which is in excess of the base purchased power increase ultimately determined by the FERC, shall be refunded by means of a negative surcharge. It is further agreed that the refund shall apply only to amounts collected by Kingsport Power subsequent to the adoption of this Agreement by this Commission and that, following a final FERC order in Docket No. ER92-324-000, Kingsport Power will file revised tariffs designed to reflect, on a prospective basis, the decrease in its base purchased power expense determined pursuant to the final FERC order.

3. Any refund applicable to the FERC's final order in APCo's Docket No. ER90-133-000, which covers the period between August 4, 1990 and September 14, 1992, shall be made in accordance

with the Settlement Agreement approved by the Commission's December 27, 1990 Order in Docket No. 90-05735.

4. The revenue increase is agreed to be allocated according to the attached schedule.

5. The tariff changes summarized in Exhibit____(LRJ-6) are agreed to. In addition, the following new and revised tariffs are also agreed to:

Tariff	Rate Design Modification
RS (Residential Electric Service), RS-E (Residential Electric Service - Employee)	Introduce storage water heating provision.
RS-TOD (Residential Time-of-Day Electric Service)	Introduce new tariff for general use time differentiated service. Limit availability to the first 250 customers.
SGS (Small General Service)	Introduce energy storage provision.
MGS-TOD (Medium General Service Time-of-Day)	Introduce new time-of-day (TOD) general use tariff for secondary service customers with demands over 10 KW but less than 150 KW. Limit availability to first 100 customers.
LGS (Large General Service)	Revise minimum billing demand provision to be 60% of the greater of (a) the customer's contract capacity, (b) the customer's highest previously established monthly billing demand during the past 11 months or (c) 100 KVA. Revise Term of Contract provision to require contracts for customers with annual average demands over 500 KW with contract requirements at the company's option for customers with demands of 500 KW or less; waive initial term provision for existing customers

	expanding service, but not requiring additional facilities; require initial period of one year with six months' notice to discontinue service.
IP (Industrial Power)	Revise Demand Measurement provision to establish the minimum monthly billing demand to be 60% of the greater of (a) the customer's contract capacity or (b) the customer's highest previously established monthly billing demand during the past 11 months. In no event shall the monthly billing demand be less than 3,000 KW.

6. The agreed-to base rates reflect Other Postretirement Employee Benefits ("OPEB") expense on a pay-as-you-go basis. The parties have agreed that Kingsport will be authorized to defer, as a regulatory asset, OPEB expense calculated in accordance with Statement of Financial Accounting Standards ("SFAS") No. 106, in excess of pay-as-you-go levels. Also, the parties have agreed that Kingsport Power will be authorized to defer the 1990 Voluntary Employees' Beneficiary Association ("VEBA") contribution and the accrual of deferred earnings on that contribution pending recovery and inclusion of the unrecovered balance in rate base. A generic proceeding will be initiated no later than the first quarter of 1993 to determine the manner in which the SFAS 106 costs will be treated for ratemaking purposes. In that proceeding, the Commission will decide whether an amount in excess of the current pay-as-you-go basis may be recovered.

7. This Settlement Agreement contemplates a full settlement of this proceeding.

8. The making of this Settlement Agreement shall not be deemed in any respect to constitute any precedent for the future or an admission by any party hereto that any computations, formula, allegations or contentions made by any other party in these proceedings is true or valid. Moreover, this Settlement Agreement establishes no principles and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation.

9. If this Settlement Agreement is not approved in its entirety by the Commission, without additions, deletions or revisions, then it shall be null and void in all respects, it shall be deemed withdrawn, it shall not constitute any part of the record in this proceeding and it shall not be used by any party for any purpose whatsoever. This Agreement shall be submitted to the Administrative Law Judge at Kingsport, Tennessee, on October 28, 1992, at which time all pre-filed testimony and exhibits will be introduced into the record. In the event that this Settlement Agreement is not so approved by the Commission, the parties reserve the right to continue litigating the issues in this proceeding, for ultimate determination by the Commission.

10. The parties to this Settlement Agreement will not appeal, challenge or contest an Order of the Commission that accepts and approves this Settlement Agreement without modification.

11. The parties have arrived at this Settlement Agreement after full and fair consideration of all the evidence filed in this proceeding, as well as the positions of the various parties as to

the technical issues raised in this proceeding. It is the further position of the parties that the Commission's approval of this Settlement Agreement will promote the public interest, will result in rates which are just and reasonable during the term of this Agreement, will aid the expeditious conclusion of this proceeding, and will minimize the additional time and expense which otherwise would have to be devoted to this matter by the Commission and the parties.

12. It is the understanding of the parties that this agreement is to be considered by the Commission at the scheduled Commission conference on November 3, 1992 or, if the conference is cancelled or rescheduled, then no later than November 6, 1992. The agreed upon rate increase will become effective on the date of the Commission's order, for service rendered on and after that date.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

KINGSPORT POWER COMPANY
("Kingsport Power")

Dated: 10/29/92

By: T. Arthur Scott, Jr.

THE STAFF OF THE TENNESSEE PUBLIC SERVICE COMMISSION ("Staff")

Dated: 10/29/92

By: [signature]

AIR PRODUCTS AND CHEMICALS, INC.
("Air Products")

Dated: 10/29/92

By: Daniel A. Loftus

KINGSPORT POWER USERS ASSOCIATION
("KPUA")

Dated: 10/29/92

By: [illegible]

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KINGSPORT POWER COMPANY

Allocation of Purchased Power
and Local Increases
Twelve Months Ended December 31, 1991

Class	Going-Level Revenue Less Purchased Power	Purchased Power Pass Through	Going-Level Revenue	Purchased Power % Increase	Local Increase	Total Increase	Total % Increase
(1)	(2)	(3)	(4)=(2+3)	(5)=(3/2)	(6)	(7)=(3+6)	(8)=(7/2)
Residential Service (RS)	31,302,534	1,970,978	33,273,512	6.30	114,000	2,084,978	6.66
Small General Service (SGS)	1,028,767	38,827	1,067,594	3.77	28,635	67,462	6.56
Medium General Service (MGS)	4,187,001	190,646	4,377,647	4.55	70,260	260,906	6.23
Electric Heating General (EHG)	1,998,755	101,118	2,099,873	5.06	33,702	134,820	6.75
Church Service (CS)	404,176	18,652	422,828	4.61	6,786	25,438	6.29
Public Schools (PS)	1,608,200	110,250	1,718,450	6.86	0	110,250	6.86
Large General Service (LGS)	11,470,147	690,627	12,160,774	6.02	158,134	848,761	7.40
Industrial Power (IP)	24,326,731	1,794,203	26,120,934	7.38	(724,970)	1,069,233	4.40
Outdoor Lighting (OL)	444,107	5,570	449,677	1.25	17,582	23,152	5.21
Total Excluding SL	76,770,418	4,920,871	81,691,289	6.41	(295,871)	4,625,000	6.02
Street Lighting (SL)	371,542	0	371,542	0.00	0	0	0.00
Total Including SL	77,141,960	4,920,871	82,062,831	6.38	(295,871)	4,625,000	6.00

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

October 30, 1992

IN RE: THE PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE.

DOCKET NO. 92-04425

ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.

Having reviewed the Initial Order in the above-captioned matter on October 30, 1992, the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that it will review all issues raised in the record of this proceeding before the Administrative Judge.

Any party may note an exception to the Initial Order by filing a brief with the Commission within zero days of the date of this order. Reply briefs may also be filed within zero days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.

Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must indicate that copies of the request and proposed order have been served on all parties.

The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. Section 4-5-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies will be suspended and will begin to run ab initio, from the date of the final order disposition of the petition to reconsider.

CHAIRMAN STEVE HEWLETT

COMMISSIONER FRANK COCHRAN

COMMISSIONER KEITH BISSELL

ATTEST TO:

PAUL ALLEN
EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
October 30, 1992

IN RE: THE PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE.

DOCKET NO. 92-04425

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Kingsport Power Company as set forth in the above caption.

The matter was heard October 28, 1992, in Kingsport, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

T. ARTHUR SCOTT, JR., Attorney at Law, P.O. Box 3740, Kingsport, Tennessee 37664, appearing on behalf of the Petitioner, Kingsport Power Company.

D. BRUCE SHINE, Attorney at Law, 433 East Center Street, Suite 201, Kingsport, Tennessee 37660 and ARTHUR SMITH, President of Kingsport Power Users Association, appearing on behalf of Kingsport Power Users Association.

BILLY K. HOUSEWRIGHT, Route 1, Old Union Road, Church Hill, Tennessee 37642, appearing on behalf of the Commission Staff.

Kingsport Power Company filed its petition on May 26, 1992 to change and increase certain tariffs, rates and charges for electric service. The parties have reached a settlement in the instant matter and have prepared a Settlement Agreement for the Tennessee Public Service Commission's consideration. The Settlement Agreement was placed into evidence and is herein attached. The following testimony and exhibits were received into evidence: the pre-filed and rebuttal testimony of Petitioner, Kingsport Power Company together with their exhibits; the pre-filed and rebuttal testimony of Intervener, Air Products together with their exhibits; and the direct and rebuttal testimony of the Tennessee Public Service Commission's Staff together with their exhibits. The remaining Interveners did not file pre-filed testimony.

PUBLIC WITNESSES

East Tennessee Coordinator, Tennessee Hunger Coalition

Rachel Bliss, East Tennessee Coordinator, Tennessee Hunger Coalition, testified on behalf of her organization. Ms. Bliss thanked Kingsport Power Company for keeping its past rates down and testified as follows:

> And Kingsport is proud of its low rates, and I think that these low rates could help us with trying to get the city to grow as it has in the last few years.
>
> I realize it is probably time for some increases, but not at the expense of residential customers only. We believe that the increase should be spread equally between the residential people, business, and industry, where all share the burden evenly. In these times of tight money, we are asking if the raise could be a gradual raise over three or four years rather than an abrupt increase, that I think

is being proposed, because right now unemployment is higher than it has been in the past and also under-employment, which isn't usually measured is also at a very high time.

As being coordinator for the Hunger Coalition and also as a former worker as a food -- in the Food Stamp program, I have seen personally how many people have had to choose between paying high utility rates and buying food. And I have also worked with other charitable groups in the area like St. Vincent De Paul and Kingsport Community Ministries. I have talked to some of those members, and some of their most prominent requests are to help with electric bills so their power won't be cut off.

I have talked with people with the Low Income Energy Assistance Program, and in the eight counties, northeast Tennessee area -- I couldn't get the Kingsport statistics -- but 1600 families last year were approved for low income energy assistance, and that has been cut for the upcoming year. It used to be that the cut off was $8,000 income per household. This coming year it is down to $5,000 per household. Last year the Low Income Energy Assistance Program helped 541 families to meet emergency electrical needs in the eight county area.

I want to compliment the power company on the neighbor-to-neighbor program, but I'm afraid if the rates go up too high, people are going to cut back on their neighbor-to-neighbor donations, and this will cause a lot of stress for low income people.

I want to say that Kingsport Power has been a good efficient corporate citizen in Kingsport, and I want them to continue to do this and to really keep their rates as low as possible, especially on the residences. Kingsport is a community that is growing older. Older people live on fixed incomes, and next year they are only getting a three percent raise. And I believe that we need to keep those increases as low as possible. Thank you.

<u>Kingsport Resident</u>

Cindy Risk, a Kingsport resident, testified on behalf of herself. Ms. Risk testified as follows:

From personal experience of going without heat in order to by food, it has been sometime ago, but it was because of my circumstances. I mean, there is -- it is hard to choose between the two, but sometimes you have to. I don't know what else to say. It's embarrassing sometimes to go to churches and -- well, it is embarrassing to go to churches and beg for a voucher or some kind of form that you have to fill out in order to get heat or even food.

I mean, it's embarrassing for anyone. And sometimes they give it to you and sometimes they don't, because they have a quota. They are only allowed to give so-many vouchers and only allowed -- you know, they have to live according to whatever their rules are, or whatever rules that are established in order for them to give whatever they have.

It is -- I can remember growing up, and my father did the same thing. He would sneak out at night and turn on the heat, the gas, when it was turned off. And, you know, he would turn it on in order for us to stay warm. So, it is not a thing that has been -- that is just happening now; it has been going on for a long time, where people have choices and have to make choices. I mean, my children are old enough to where if the heat were cut off now, they would probably survive with blankets and such.

But, I think that in order for you to appreciate what I'm talking about, you had to have to be there. I think that most people who have -- who are used to not having, understand what I'm saying. But, those who have never been hungry or done without heat or things of that nature, I don't think that they understand where I'm coming from.

I know they feel sorry, and I know that they have compassion, because if it wasn't for compassion and sorry, I would have never got the vouchers or the understanding. Because Kingsport Power Company has a person, and he's always been understanding with me, whenever I talk with him about my heat bill and such, because he's a very compassionate person.

... I don't want you to feel sorry for me. I want you to understand that it is economically hard for people of low income to survive these days no matter what their income is. My husband works at Loven (phonetically) Incorporated, and he's a concrete truck driver, and he works very hard. He works six day a week and is still not -- it seems that we live, you know, just according to -- from paycheck to paycheck, which most people do. But, the way the economy is going, no one can stay at home, the mother or the father, in order to survive. I don't know what else to say.

WHEREFORE, having considered the testimony, the evidence of record, and the statutory criteria, the Administrative Judge finds that the Settlement Agreement is in the public interest and should be approved.

Since the Administrative Judge is recommending the Settlement Agreement be approved and because all of the parties joined in the agreement, it is deemed unnecessary to allow time for exceptions and replies.

IT IS THEREFORE ORDERED:

That the attached Settlement Agreement be approved.

R. B. Christian, II

RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

NASHVILLE, TENNESSEE

IN RE: PETITION OF KINGSPORT POWER COMPANY TO CHANGE AND INCREASE CERTAIN TARIFFS, RATES AND CHARGES FOR ELECTRIC SERVICE
Docket No. 92-04425

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the 26th day of October, 1992, by and between Kingsport Power Company ("Kingsport Power"), Air Products and Chemicals, Inc. ("Air Products"), Kingsport Power Users Association ("KPUA") and the Staff of the Tennessee Public Service Commission ("Staff").

WITNESSETH:

WHEREAS, Kingsport Power filed its Petition on May 26, 1992, which requested an increase in base rates of $5,463,716, consisting of a base increase of $5,089,134 for a purchased power expense pass-through and $374,582 for increased capital and operating expenses, based upon a historical test year ended December 31, 1991, adjusted for known and reasonably anticipated changes through December 31, 1993, the end of the first year that new rates resulting from this proceeding are expected to be in effect; and

WHEREAS, the Tennessee Public Service Commission ("Commission") issued Orders on June 25, 1992, July 8, 1992 and September 23, 1992, suspending the proposed tariffs for the above-captioned docket to determine the justness and reasonableness of this matter; and

WHEREAS, by orders entered September 10, 1992 and June 25, 1992, the Commission allowed the intervention of the KPUA and Air Products; and

WHEREAS, the Staff evaluated Kingsport Power's Petition and developed its own position; and

WHEREAS, all parties of record were informed of a settlement conference that was held on October 15, 1992; and

WHEREAS, Kingsport Power and the Staff met on October 15, 1992 and discussed their respective positions on all issues in this case in an effort to resolve their differences; and

WHEREAS, settlement discussions continued thereafter; and

WHEREAS, at the Pre-hearing Conference held in Nashville on October 26, 1992, the settlement discussions culminated in Kingsport Power, Air Products, KPUA and the Staff reaching an agreement to resolve this case, which agreement is set forth below;

NOW, THEREFORE, for and in consideration of the premises and conditions set forth herein, Kingsport Power, Air Products, KPUA and the Staff hereby agree as follows:

1. Kingsport Power will increase its base rates by $4,625,000 to $81,766,960, on an annual basis, using forecasted rate year 1993 revenues and billing determinants as shown on Exhibit _____ (LRJ-1), for service rendered on and after the date of approval of this agreement. The parties agree only on the total amount of the revenue increase and it is explicitly understood that there is no agreement among the parties as to any of the specific components or amounts used in the determination of such revenue