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**CHAPTER 1.
PRACTICE AND PROCEDURE.**

Rule R1-1. DEFINITIONS.

The definitions contained in G.S. 62-3 of the 1963 Public Utilities Act shall be applicable to all rules and regulations of the Commission, and in addition thereto, the following terms shall be construed as herein defined unless the context indicates that a different meaning is intended:

- (1) Public Utility or Utility. — The term "public utility" or "utility" means and includes any person or any business which the Commission is authorized by law to supervise, control or regulate in any manner.
- (2) Examiner. — The term "examiner" means a member of the Commission Staff, or a Hearing Commissioner, to whom the Commission has referred a matter for the purpose of hearing and taking evidence and the making of a report and recommendation of an appropriate order or decision thereon. (G.S. 62-76.)

Rule R1-2. OFFICE HOURS AND SESSIONS.

(a) Office Hours. — The offices of the Commission in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, will be open for business daily during regular working hours for departments and agencies of State government, which normally extend from 8:00 a.m. to 5:00 p.m., except Saturdays, Sundays and holidays. Mail should be addressed to the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325 or Public Staff — North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, NC 27699-4326.

(b) Public Sessions. — Public sessions of the Commission will be held in its offices in the city of Raleigh, as the need therefor requires, from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. on Tuesday, Wednesday, Thursday and Friday of each week, and at such other places in the State and at such times as the Commission may from time to time direct. These sessions will be devoted to the general work of the Commission, including hearing complaints, applications and petitions, and holding conferences with individuals and delegations with respect to matters over which the Commission has jurisdiction. Subject to the provisions of G.S. 62-70, persons desiring a conference with the Commission should arrange therefor in advance, as scheduled investigations or hearings will not be interrupted for conferences with other parties except in cases of emergency.

(c) Executive Sessions. — The members of the Commission will devote Monday of each week exclusively to executive sessions, including making and formulating orders and decisions on matters which have been heard, planning and coordinating the work of the Commission, and advising with its staff and employees. Members of the Commission will not be available for other business on Mondays. (NCUC Docket No.

M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 04/10/00.)

Rule R1-3. PARTIES.

(a) Classification. — Parties to proceedings before the Commission are designated as applicants, petitioners, complainants, defendants, respondents, protestants, or interveners, according to the nature of the proceeding and the relationship of the parties thereto.

(b) Applicants and Petitioners. — Persons filing formal written requests with the Commission for some right, privilege, or authority within the jurisdiction of the Commission to grant are designated as applicants or petitioners. These designations are used synonymously in many sections of the statute.

(c) Public Staff of the Commission. — Persons appearing under statutory authority of G.S. 62-15.

(d) Complainants. — Persons who complain of acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation, or order issued by the Commission, are designated as complainants.

(e) Defendants. — Persons against whom a complaint is filed are termed defendants.

(f) Respondents. — Persons named in an order of investigation, rule to show cause, or complaint made by the Commission upon its own motion are termed respondents.

(g) Protestants. — Persons who oppose the granting of an application or petition are designated as protestants.

(h) Intervenors. — Persons, other than the original parties to a pending proceeding, who voluntarily become parties thereto with leave of the Commission, are designated as intervenors.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

Rule R1-4. COMMENCEMENT OF PROCEEDINGS

Proceedings may be instituted before the Commission in the following manner:

(1) By Informal Proceedings.

- a. Whenever practical, informal proceedings are recommended for speedy, amicable adjustments of complaints or controversies which do not necessarily require a formal hearing or a formal order or decision, and to that end, informal complaints may be made to the Commission or Public Staff by letter, or otherwise, setting forth the name and post-office address of the person making the complaint; the name and post-office address of the person or persons against whom the complaint is made; a concise statement of all the facts necessary to an understanding of the situation presented; and a statement of the relief desired. Matters so presented will be taken up by the Commission or Public Staff with the parties affected, by correspondence, or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without a formal order or hearing.
- b. The filing of an informal complaint is without prejudice to the right to thereafter file a formal complaint.
- c. An informal complaint will not be docketed for formal hearing and no formal order will be issued thereon, but matters thus presented may be transferred by the Commission to the Formal Docket for formal action by the Commission, in which case the complainant will be required to file a formal complaint.

(2) By Formal Proceedings. — Matters which require the taking of testimony, a formal hearing and a formal order must be instituted by filing with the Commission a formal application, petition, or complaint, as provided by Rule R1-5.

(3) By the Commission. — The Commission may institute proceedings upon its own motion, in which case the procedure shall be substantially as follows:

- a. Allegations. — Any rule to show cause, complaint, order of investigation, or other proceeding instituted by the Commission upon its own motion against any particular person or persons shall set out the grounds therefor with such clarity as to inform the respondent or respondents therein named of the issue involved and the particular information or action required by the Commission. Reasonable time shall be given within which to comply with the Commission's order, or within which to prepare a defense, depending on the nature of the proceeding and the work required.
- b. Answers. — Formal written answers or other pleadings need not be filed by respondents in such cases unless so directed by the Commission.
- c. Procedure at hearing. — In proceedings instituted by the Commission, evidence will ordinarily be offered in the following order:

1. By the Commission Staff,
 2. By the Public Staff, and
 3. By the respondents, but the presiding officer in any such proceeding may direct the order in which evidence shall be offered.
- d. Parties. — Those having an interest in the subject matter of any proceeding instituted by the Commission may become parties thereto by compliance with Rule R1-19.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

Rule R1-5. PLEADINGS, GENERALLY

(a) Application of Rule. — This rule applies to all pleadings in formal proceedings, including applications, petitions, complaints, answers, protests, and other formal written statements of facts or law on which the party making the same relies for appropriate action or relief by the Commission.

(b) Contents. — All formal pleadings shall show

- (1) The correct name and post-office address of each party by or for whom the particular pleading is filed, and the name and post-office address of their attorney, if any;
- (2) A full and clear statement of facts which said party or parties are prepared to prove by competent evidence at the hearing, the proof of which will warrant the relief sought; and
- (3) A statement of the specific relief sought.

(c) Form and Size. — All pleadings and exhibits in formal proceedings shall be printed, typewritten, or otherwise duplicated in legible form on white paper. Unless printed the impression shall be on one side of the paper only, and the lines shall be double spaced, except quotations of two or more lines which shall be single spaced and indented. The use of paper 8 1/2" x 11" with a left margin of approximately one and one-half inches is required.

(d) Signature and Verification. — Pleadings and amendments thereto shall be signed in ink and verified by one of the parties thereto who is acquainted with the facts.

Pleadings filed on behalf of a corporation or an association shall be signed and filed by a member of the Bar of the State of North Carolina admitted and licensed to practice as an attorney at law, and may be verified by an officer, attorney or agent thereof who is acquainted with the facts. This subsection does not apply to pleadings filed by the Commission.

(e) Construction. — All pleadings shall be liberally construed, and errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.

(f) Amendments. — Any pleading may be amended or corrected or any omission supplied prior to notice of hearing. After notice of hearing, it will be in order to move for leave to amend in accordance with Rule R1-7.

(g) Copies Required. — The original plus twenty-five (25) copies of all pleadings shall be filed with the Commission (unless otherwise provided by the exceptions below), and shall include a certificate that a copy thereof has been served upon each party of record in the cause or upon counsel of record in accordance with Rule R1-39.

Exception 1. For filings by Class A & B electric, telephone, and natural gas utilities under Rules R1-7, R1-15, R1-17, and R1-24, an original plus thirty (30) copies shall be provided to the Commission.

Exception 2. For filings by Class A and B water and sewer utilities for rate increases or transfers, an original plus twenty four (24) copies shall be provided to the Commission. For all other filings by Class A and B water and sewer utilities, an original plus seven (7) copies shall be provided to the Commission.

For filings by Class C water and sewer utilities for rate increases or transfers, an original plus seven (7) shall be provided to the Commission. For all other filings by Class C water and sewer utilities, an original plus seven (7) copies shall be provided to the Commission.

Exception 3. For filings of applications by motor carriers under Rule R2-8(a) (1) and (b) (1), an original and three (3) copies shall be provided to the Commission.

NOTE: A photocopy which has been signed after copying shall be considered an original.

(h) Computation of Time. — See Rule R1-27.

(i) Filing by Mail. — See Rule R1-28.

(NCUC Docket No. M-100, Sub 7, 12/30/65; NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 45, 9/27/71; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 12, 2/22/94; NCUC Docket No. W-100, Sub 17, 4/8/97; NCUC Docket No. M-100, Sub 128, 11/30/01.; NCUC Docket No. M-100, Sub 133, 2/2/06)

Rule R1-6. PROTESTS, GENERALLY

Except as provided in these rules in particular proceedings, protests shall comply with Rule R1-5. Protests shall be filed at least ten (10) days prior to the date fixed by the Commission for the hearing of the cause, unless the notice of hearing fixes the time for filing protests, in which case such notice shall govern.

Rule R1-7. MOTIONS

(a) Purpose. — Motions may be addressed to the Commission:

- (1) To make pleadings more specific, or for a bill of particulars,
- (2) To strike irrelevant or immaterial allegations in pleadings,
- (3) To make additional parties, to strike improper parties, or to substitute parties, or for leave to amend pleadings,
- (4) To dismiss a pending proceeding for want of jurisdiction,
- (5) For postponement of a hearing, or of the effective date of an order, or for an extension of time within which to comply with an order of the Commission, or for such other relief as may be appropriate.

(b) Form. — Motions, unless made during a hearing and dictated into the record, shall be in writing, signed by the party making the same or by his attorney, and if based on matters which do not appear of record shall be verified or supported by affidavit. Every written motion shall be clearly and concisely stated in a separate paragraph without argument, explanation, or other extraneous statements. The statement of the motion may be followed by one or more paragraphs of explanations, arguments, and briefs in support thereof as the party may consider appropriate. Motions dictated into the record shall likewise be first clearly stated without arguments or explanations.

(c) Copies; Notice to Parties. — Subject to the provisions of Rule R1-21(c) every motion made in a pending proceeding other than those made before the Commission or an Examiner at the time of the hearing, shall be filed with the Commission, with original plus the number of copies specified in Rule R1-5(g), and shall certify that a copy thereof has been served upon each party of record in the cause, or upon the attorney of record of each such party in accordance with Rule R1-39.

(d) Computation of Time. — See Rule R1-27.

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 133, 2/2/06.)

Rule R1-8. DOCKET NUMBERS REQUIRED ON PLEADINGS AND PAPERS

All pleadings, papers and correspondence relating to formal proceedings to which docket numbers have been assigned shall refer to such docket numbers.

Rule R1-9. COMPLAINTS AND PROCEDURE THEREON; ANSWERS

(a) Who May Complain. — Complaint may be made by the Commission on its own motion or by the Public Staff or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic, or municipal corporation, or any agency of the State of North Carolina, or any electric membership corporation organized under Chapter 117 of the General Statutes, as amended, having an interest in the subject matter of such complaint, or by any public utility.

(b) Contents. — Rule R1-5 will apply to complaints under this rule and, in addition thereto, complaints under this rule shall set forth in numbered paragraphs:

- (1) The full name and post-office address of each complainant.
- (2) The full name and post-office address of each defendant against whom complaint is made.
- (3) A clear, concise statement of the acts or things done or omitted to be done by any public utility, or the respects in which any rule, regulation, or charge fixed by or for any public utility is in violation of any provision of law or of any order or rule of the Commission, or the respects in which any rate, charge, schedule, classification, rule, regulation, or practice is unjust and unreasonable.
- (4) The particular relief desired.

(c) Procedure upon Receipt of Complaint. — Upon receipt of a complaint which is in substantial compliance with these procedural rules and which appears to state a cause of action within the jurisdiction of the Commission, the Commission shall serve a copy thereof on each defendant named in the complaint, together with an order directing that the matters complained of be satisfied or that an answer be filed to the complaint within ten (10) days after such service; provided, that the Commission may in particular cases extend or shorten the time for satisfying the complaint or for filing answer thereto.

(d) Satisfaction of Complaint. — If the defendant desires to satisfy the complaint, he shall submit to the Commission, within the time allowed for satisfaction or answer, an original plus four copies of a statement of the relief which he is willing to give, a copy of which the Commission will transmit forthwith to the complainant. On acceptance of this offer by the complainant with the approval of the Commission, no further proceedings need be taken.

(e) Answer. — The answer must admit or deny each material allegation of the complaint or allege insufficient information on which to admit or deny the same. It shall set forth any new matter relied upon as a defense and shall be so drawn as to fully advise the complainant and the Commission of the particular grounds of defense. The filing of an answer will not be deemed an admission of the sufficiency of the complaint and shall be

without prejudice to the right of the defendant to thereafter file a motion to dismiss the complaint for failure to state a cause of action.

(f) Interveners. — Any person or organization having an interest in the subject matter of the complaint may intervene and be made a party to the proceeding by complying with the provisions of Rule R1-19.

(g) Copies Required. — Every complaint and every answer under this rule shall be filed with the Commission, with original plus fifteen (15) copies, with an additional copy for each of the other parties of record in the case or their counsel of record. The Commission will serve such complaints and answers on the other parties or their counsel.

(NCUC Docket No. M-100, Sub 7, 12/30/65; NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 75, 10/27/77.)

**Rule R1-10. APPLICATIONS FOR MOTOR CARRIER OPERATING RIGHTS OF
HOUSEHOLD GOODS OR PASSENGERS**

Applications for motor carrier operating rights of household goods and passengers (certificates) must be made on forms prescribed and published by the Commission. Such forms with instructions will be furnished upon request.

(NCUC Docket No. T-100, Sub 32, 8/23/95.)

Rule R1-11. PROTESTS TO MOTOR CARRIER APPLICATIONS

(a) Contents. — Any person or carrier without specific leave to intervene may protest any motor carrier application for operating rights to transport passengers or household goods, or to an application for approval of a sale, lease, or a merger of motor carrier operating rights of household goods or passengers, upon the filing of a protest, under oath, showing that the protestant has an interest in the subject matter of the application, which protest shall set forth, among other things:

- (1) A brief but definite description of the operating rights or of other rights or interests of the protestant which will be adversely affected by the granting of the application.
- (2) The particular way and manner and the probable extent to which the protestant will be adversely affected by the granting of the application, and if the application is for operating rights (for a certificate) to transport passengers or household goods, and the protestant is a carrier, the protest shall contain information of the kind and in substantially the form and detail shown by the following illustration:

ILLUSTRATION: That the granting of the application will authorize a transportation service in competition with the transportation service which the Commission has authorized the protestant to perform under (certificate number ...), in that, transportation service of the same kind and class may be provided either by the applicant or by the protestant to, from, and between the following points and places:

- (1) On U.S. Highway 64 between Lexington and Raleigh.
- (2) On U.S. Highway 220 between Greensboro and Rockingham.
- (3) On N.C. Highway 49 between Concord and Burlington.
- (4) To, from, and between all points and places in the counties of Montgomery, Moore, Randolph and Davidson.

(b) Time for Filing. — Protests, as herein provided, must be filed with the Commission (original and three (3) copies) not less than ten (10) days prior to the date fixed for the hearing; provided, the notice of hearing may fix the time for filing protests, in which case such notice shall govern. All protests shall be signed and verified as provided in Rule R1-5, and shall certify that a copy thereof has been delivered or mailed to the applicant or to applicant's attorney, if any.

(NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. M-100, Sub 128, 11/30/01.)

Rule R1-12. LEASE, SALE, PLEDGE, MERGER, OR OTHER TRANSFER OF MOTOR CARRIER OPERATING RIGHTS

No lease, sale, pledge, merger, or other transfer of motor carrier operating rights under any certificate issued by the Commission shall become effective except after application to and written approval by the Commission, which application shall be verified, filed with the Commission (original and three (3) copies), and shall set out, among other things, the following:

- (1) The name and post-office address of each party to the proposed transaction.
- (2) An accurate description of the operating rights involved in the proposed transaction, and the certificate number of such operating rights.
- (3) A clear, concise explanation of the exact nature of the proposed transaction, and its purpose. Attach as exhibits copies of all contracts and agreements between the parties constituting a part of the proposed transaction.
- (4) A statement or an exhibit from which the Commission may determine the extent to which such operating rights have been and are being exercised. This may be shown by giving the bus-miles or truck-miles operated under the rights involved within a given period, the amount of traffic (passengers or tons of freight) handled during said period, and the gross revenue received.
- (5) A statement under oath complying with the requirements of G.S. 62-111 as to the debts and claims, if any, against the owner of said operating rights arising out of the operation.
- (6) A statement from which the Commission may determine that the transferee has the facilities, the business experience, the financial ability, and is otherwise qualified to perform the transportation service in a satisfactory manner.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. M-100, Sub 128, 11/30/01.)

Rule R1-13. PETITION FOR MOTOR CARRIER TO BECOME SELF-INSURER

(a) Contents. — A motor carrier seeking authority to become a self-insurer will be required to satisfy the Commission that it is in such financial condition as to be able to pay personal injury and property damage claims, within the limits of the self-insurance proposed, without seriously affecting its financial stability or its continued service to the public. The petition for such authority must be verified, filed in triplicate, and set forth, among other things:

- (1) The correct name and post-office address of the motor carrier seeking authority to become a self-insurer, and if not a corporation, and not an individual who is the sole owner of the business, the correct name and post-office address of each person owning an interest in the business must be given.
- (2) A brief history of the carrier's operations, giving the length of time the business has been operated under the present management, the number of over-the-road buses or trucks, or other units of rolling equipment used in the operation in North Carolina, the approximate bus-miles or truck-miles operated within the State during the last 12 months for which figures are available.
- (3) A statement showing the amount of insurance premiums paid during each year for a period of three years next preceding the filing of the application and the actual amount paid each year during said period by the applicant and the applicant's insurance carrier in settlement of personal injury and property damage claims.
- (4) The amount in which the applicant proposes to become a self-insurer, and if less than the Commission's minimum insurance requirements as provided in Rule R2-36, the amount of excess insurance applicant proposes to carry.
- (5) The plans applicant now has in effect, or proposes to put into effect if permitted to become a self-insurer, for investigating personal injury and property damage claims arising out of the operation and its plans for making available funds for the settlement of such claims.
- (6) Balance sheet, and income and profit and loss statement for the latest available period.

(b) Hearing. — The Commission may approve an application for permission to become a self-insurer without a hearing, but only upon an application which fully warrants it in finding that the applicant is qualified to become a self-insurer to the limits set out in the application.

(NCUC Docket No. M-100, Sub 40, 6/29/71.)

Rule R1-14. REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.

Rule R1-15. INVESTIGATION AND SUSPENSION PROCEEDINGS

Whenever there shall be filed with the Commission by any public utility or carrier, subject to its jurisdiction, any schedule stating new or changed rate or rates, as provided by General Statutes of North Carolina, §§ 62-134, 62-135, 62-138, 62-140, 62-142, or 62-146, the Commission may, upon protest or complaint of the Public Staff or of any interested party, or upon its own initiative, suspend such rates or charges pending an investigation of the lawfulness thereof, and to that end the following proceedings will be in order:

- (1) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas, water, or sewer service shall notify its customers proposed to be affected by such increase of such filing within 30 days of such filing, which notice shall state that the Commission shall set and shall conduct a trial or hearing with respect to such filing or application within six months of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the Commission.
- (2) **Protests or Complaints.** — Protests or complaints against any tariff or schedule of rates or charges filed with the Commission under the provisions of any of the foregoing sections of the statute should be made in writing and filed with the North Carolina Utilities Commission, Raleigh, North Carolina, with a copy to the Public Staff at least ten (10) days before the effective date of the tariff or schedule. Such protests or complaints should comply with the provisions of Rule R1-5; provided, that, in cases of emergency, notice of intention to file such protests or complaints may be given by telegram to the Commission with a copy to the Public Staff and to the publishing utility carrier, agent, broker, or freight forwarder, within the time limits herein provided, but such notice by telegram must be immediately followed by formal protests or complaints in accordance with this rule.
- (3) **Suspension Order.** — If the Commission determines upon such protest or complaint, or upon its own initiative, to suspend such schedule of rates or charges, it shall issue an order suspending the same for a period and in the manner authorized by statute in such cases. A copy of such order shall be served by the Commission on the party filing such schedule and it shall give notice thereof to such other parties as it deems adequate.
- (4) **Reply.** — Within twenty (20) days after service of the Commission's order suspending said schedule, the party filing such schedule may file with the Commission a reply with a copy to the Public Staff [original plus the number of copies specified in Rule R1-5(g)], under oath, of the particular reasons, or conditions relied upon to warrant the Commission in vacating said suspension order.
- (5) **Notice of Hearing.** — When the time and place of hearing shall have been determined, the Commission shall give due notice thereof to all parties to the proceeding and to such other parties as it deems necessary to bring the matter to the attention of those having an interest in the proceeding.

- (6) Parties. — Persons having an interest in the subject matter of proceedings under this rule and who have not filed protests or complaints, as provided by subdivision (1) hereof, may become parties to the proceeding by compliance with Rule R1-17(e).

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 73, 9/12/77; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 128, 11/30/01.)

Rule R1-16. PLEDGING ASSETS, ISSUING SECURITIES, ASSUMING OBLIGATIONS

(a) No public utility except Payphone Service Providers, Competing Local Providers, and utilities providing only intraLATA long distance service, interLATA long distance service and/or long distance operator service, shall pledge its assets, issue securities, or assume liabilities of the character specified in G.S. 62-161, except after application to and approval by the Commission. Such applications shall be made under oath, filed with the Commission with twenty (20) copies, and shall contain the following specific information:

- (1) The existing conditions relied upon to support the Commission in making the specific findings required by G.S. 62-161. The application shall set forth the particular facts and circumstances showing that the proposed issuance of securities, pledging of assets, or assumption of liabilities and obligations (i) is for some lawful object within the corporate purposes of the public utility, (ii) is compatible with the public interest, (iii) is necessary or appropriate for or consistent with the public performance by such utility of its service to the public, (iv) will not impair its ability to perform that service, and (v) is reasonably necessary and appropriate for the purposes for which it is issued.
- (2) The class and principal amount or par value of any securities to be issued or assumed.
- (3) An estimate of the expenses to be incurred in connection with the pledging of assets, the issuance and sale of securities, or the assumption of liabilities.
- (4) In case of the sale of securities, whether the sale will be to the public, to institutional investors, or otherwise, and whether the sale will be consummated by means of public bidding or by means of a negotiated transaction. If the sale is by means of a negotiated transaction, the application shall contain the proposed unit sale price of any securities to be issued together with the interest or dividend rate (common stock excepted) to be incurred thereon.
- (5) The purpose or purposes to which the proceeds obtained are to be used. If the purpose or purposes for which the proceeds obtained are to be used is to refinance or pay off short term indebtedness as defined in G.S. 62-167 and not heretofore approved by order of the Commission, the application shall set forth the purpose or purposes for which said outstanding indebtedness was incurred, and if said original indebtedness was spent on construction, the application shall list amounts by the major construction accounts and the total construction expenditures for which the proceeds of the original indebtedness were expended.
- (6) A balance sheet and an income statement for a recent representative period. The application shall also include a pro forma balance sheet and income statement showing the balance sheet and the income statement as they would be after the issuance of said security.

- (7) In any case where the applicant has filed or subsequently files a prospectus or other similar document with the Securities and Exchange Commission or with prospective investors for private placement in connection with said issue, eleven copies of such prospectus or document shall be filed with the North Carolina Utilities Commission at the time the application is filed with the Securities and Exchange Commission or with private investors.
- (8) A statement of the source and application of funds, sometimes referred to as cash flow, showing the amounts available from all sources since the last finance application, to meet any part of the purposes or projects for which the financing or issue is required, including contributions from customers or others, salvage proceeds, depreciation reserve accruals, any unused balances in prior financing applications, and retained earnings, as available for payment of construction expenditures reported under subsection (a) (5).
- (9) In the case of the sale of securities through private placement or the entering into an agreement for the sale and lease-back of assets or any other financing transaction for which the effective date of the consummation and/or implementation of the transaction is expected to take place as much as three months after the negotiation of the interest cost or other financing cost of the transaction is determined, that the utilities shall file with the Commission for approval of the proposed transaction as soon as the rates of interest and/or other financing costs are tentatively agreed on. All the other requirements under R1-16 are applicable to this particular type transaction and are to be included in the filing with a special emphasis on supporting the basis for the proposed rates of interest and financing the cost for which approval is sought.

(b) This rule does not apply to short term loans as defined in G.S. 62-167.

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 20, 9/3/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 67, 4/27/76; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. P-100, Sub 72b, 01/02/04.)

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

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

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

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

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

- (11) Working Papers to Be Available. — Supporting data and working papers underlying the above exhibits shall be made available promptly upon request in the offices of the Commission or Public Staff in Raleigh or in an office of the public utility in North Carolina designated by the Commission, for examination by all interested parties.
- (12) All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:
- For Class A and B Electric Utilities:
- (a) NCUC Form E-1, Rate Case Information Report — Electric Companies
- For Class A and B Telephone Utilities:
- (b) NCUC Form P-1, Rate Case Information Report — Telephone Companies
- For Class A and B Natural Gas Utilities:
- (c) NCUC Form G-1, Rate Case Information Report — Natural Gas Companies
- For Class A Water and Sewer Utilities:
- (d) NCUC Form W-1, Rate Case Information Report — Water and Sewer Companies
- (13) Class A & B electric, telephone and natural gas utilities shall file with and at the time of any general rate application all testimony, exhibits and other information which any such utility will rely on at the hearing on such increase. Class A and B water and sewer utilities shall file 45 days prior to the hearing on the general rate case application all testimony which such utility will rely on. Class A and B water and sewer utilities shall file with the application all exhibits supporting the general rate increase. The application, testimony and exhibits and other information shall be filed in sets which are separately numbered and separately bound, boxed, or rubber-banded. The originals shall be in Set No. 1. The Commission Staff, the Public Staff, the Attorney General and all other Intervenors or Protestants shall file all testimony, exhibits and other information to be relied upon at the hearing 20 days in advance of the scheduled hearing.

In the event any affected utility wishes to rely on G.S. 62-133 (c) and offer evidence on actual changes based on circumstances and events occurring up to the time the hearing is closed, such utility should file with any general rate application detailed estimates of any such data and such estimates should be expressly identified and presented in the context of the filed test year data and, if possible, in the context of a twelve (12) month period of time ending the last day

of the month nearest and following 120 days from the date of the application. Said period of time should contain the necessary normalizations and annualizations of all revenues, expenses and rate base items necessary for the Commission to properly investigate the impact of any individual circumstance or event occurring after the test period cited by the applicant in support of its application. Any estimate made shall be filed in sufficient detail for review by the Commission.

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

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

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

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

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

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

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

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

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

- (1) The Commission on its own motion or at the request of the Commission Staff, Public Staff, or any party in interest in any general rate case shall review the filing or application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the filing under Rule R1-17, and give notice to the applicant of the remedy provided by this rule for securing such information, and give the applicant 5 days to file such additional information in satisfaction of said letter request.
- (2) If any material data or information required by Rule R1-17 (b) is not filed with the tariff or application for rate increase and is not secured after informal request as provided in Rule R1-17 (f) (1) above, the Commission on its own motion or on motion of the Commission Staff, Public Staff, or motion of any party having an interest in the proceeding made within 30 days after the filing of said tariff or application, may order the utility to appear and show cause within a period of 20 days after issuance of said order why said filing or application should not be denied for failure to comply with any material provision of this rule, including the filing of the contents of said application as prescribed under subsection (b) above.
- (3) Such order to appear and show cause why the tariff filing or application should not be dismissed for failure to file material contents thereof shall specify with particularity the alleged deficiency or deficiencies in said tariff filing or application.
- (4) Any utility company served with such a show cause order shall have the right to file all of the data and information and exhibits alleged as deficiencies in said show cause order at any time prior to the hearing on said show cause order or at the hearing on said show cause order and thus satisfy the show cause order, whereupon such show cause order shall be dismissed before or at the hearing set thereon, and the proceeding on the tariff filing or rate application shall proceed as in the case of a properly filed tariff or application for a general rate increase.
- (5) If the Commission shall find after notice and hearing that the filing or application is incomplete and does not contain material portions of the contents required under subsection (b) necessary for

complete determination of the justness and reasonableness of the rates filed or applied for, and that the applicant has failed to file said material data and information necessary for determination of the justness and reasonableness of said rates after notice and opportunity to complete said filing as provided herein, the Commission shall deny said application or dismiss said tariff filing, without prejudice to the refiling of said application or tariff filing with the complete contents prescribed herein.

- (6) The Commission shall make its determination on such show cause order within ten (10) days after the show cause hearing provided in this subsection, and shall issue an order thereon dismissing the show cause proceeding where such deficiencies are satisfied and continuing the investigation of the application, or dismissing the filing or application for material and unsatisfied deficiencies therein as provided in this subsection.

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

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

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

- (1) Any public utility adopting the basic retail rates of its wholesale electricity supplier under the provisions of G.S. 62-134(d), including each subsequent adoption of modified basic retail rates of its wholesale supplier, shall within 30 days of such adoption file with the Commission a Report of Adoption. The Report shall include the following as a minimum:
 - (a) A balance sheet as of a date within three months of the date of adoption.
 - (b) An income statement for the twelve months ending at the date of the balance sheet.
 - (c) An estimate of the revenues to be produced by rates that have been adopted.
- (2) If the utility elects to adopt the monthly adjustments in the retail fuel charge of its wholesale supplier, then it must adopt decrease adjustments as well as increase adjustments. In such event, the utility shall file with the Commission a letter notice of each such adoption but is not required to file the Report of Adoption required under (i) (1) above.

- (3) Filings of notice of adoption of basic rate changes under (i) (1) above shall be accompanied by the filing fee required for applications for rate increases but a filing fee is not required with monthly notices of adoption of adjustments to fuel charges.
- (4) A new docket number shall be assigned to each filing under (i) (1) above. Subsequent monthly filings under (i) (2) above shall be made in the same docket until a new basic rate increase docket is established.

(j) Repealed.

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

- (1) Purpose. The purpose of this Section (k) of Rule R1-17 is to set forth the procedures by which local distribution companies can file to adjust their rates pursuant to G.S. 62-133.4. The intent of these rules is to permit LDCs to recover 100% of their prudently incurred gas costs applicable to North Carolina operations.
- (2) Definitions. As used in this Section (k) of Rule R1-17, the following definitions shall apply:
 - (a) "LDC" shall mean local distribution company.
 - (b) "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including, but not limited to, all commodity/gas charges, all direct, transaction-related costs arising from an LDC's prudent efforts to stabilize or hedge commodity gas costs, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges, storage charges, service fees and transportation charges, and other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.
 - (c) "Suppliers" shall mean any person or entity, including affiliates of the LDC, who locates, produces, purchases, sells, stores and/or transports natural gas or its equivalent for or on behalf of an LDC, or who provides hedging tools, including, but not limited to financial tools, designed to stabilize the LDC's commodity prices. Suppliers may include, but not be limited to, interstate pipeline transmission companies, producers, brokers, marketers, associations, intrastate pipeline transmission companies, joint ventures, providers of Liquefied Natural Gas, Liquefied Petroleum Gas, Synthetic Natural Gas and other hydrocarbons used as feed stock, other LDCs and end-users.

- (d) "Benchmark Commodity Gas Costs" shall mean an LDC's estimate of the City Gate Delivered Gas Costs for long-term gas supplies, excluding Demand Charges and Storage Charges as approved in the LDC's last general rate case or gas cost adjustment proceeding. The Benchmark Commodity Gas Costs may be amended from time to time as provided in Section (k)(3)(a).
- (e) "City Gate Delivered Gas Costs" shall mean the total delivered Gas Costs to an LDC at its city gate.
- (f) "Commodity and Other Charges" shall mean all Gas Costs other than Demand Charges and Storage Charges and any other gas costs determined by the Commission to be properly recoverable from sales customers.
- (g) "Demand Charges and Storage Charges" shall mean all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers, including company use and unaccounted for costs.

(3) Rate Adjustments Under these Procedures.

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

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

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

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

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

{[Volumes of gas purchased* (excluding Company Use and Unaccounted For) X (New Benchmark Commodity Gas Costs - Old Benchmark Commodity Gas Costs)] X NC Portion*} / {Volumes of gas purchased for System Supply* (excluding Company Use and Unaccounted For)* X NC Portion*} = Increase (Decrease) Per Unit

*Established by the Commission in the last general rate case

- (b) Transportation Rate. Firm and/or interruptible transportation rates shall be computed on a per unit basis by subtracting the per unit Commodity and Other Charges included in the applicable firm or interruptible sales rate schedule from the applicable firm or interruptible rate schedule exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.
 - (c) Other Changes in Purchased Gas Costs. The intent of these procedures is to permit an LDC to recover its actual prudently incurred Gas Costs. If any other Gas Costs are incurred, they will be handled as in Section (3)(a)(i) if they are similar to Demand Charges and Storage Charges, or as in Section (3)(a)(ii) if they are similar to Commodity and Other Charges.
- (4) True-up of Gas Costs.
- (a) Demand Charges and Storage Charges. On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate schedules and (b) the LDC's actual Demand Charges and Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges.

Increments and decrements for Demand Charges and Storage Charges flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case. For purposes of this true-up, company use and unaccounted for costs will be excluded since they are subject to a true-up under Section (4)(c).

- (b) Commodity and Other Charges. On a monthly basis, each LDC shall determine with respect to gas sold (including company use and unaccounted for) during the month the per unit difference between (a) the Benchmark Commodity Gas Costs most recently approved and (b) the actual Commodity and Other Charges. The product of the actual volumes multiplied by the per unit difference shall be recorded in the LDC's deferred account for commodity and other charges. Increments and decrements for Commodity and Other Charges flow to all sales rate schedules.
 - (c) Company Use and Unaccounted For. Each LDC will true-up Gas Costs associated with company use and unaccounted for volumes annually. This shall be done by comparing the actual North Carolina company use and unaccounted for volumes during the true-up period with the rate case approved North Carolina company use and unaccounted volumes used to establish rates during the twelve month true-up period. Where there is more than one approved company use and unaccounted for volumes during the true-up period, the average monthly level will be used. The resulting volumes will be multiplied by the average of the Benchmark Commodity Gas Costs at the end of each month of the true-up period, and the resulting amount will be recorded in the deferred account.
 - (d) Supplier Refunds and Direct Bills. In the event an LDC receives supplier refunds or direct bills with respect to gas previously purchased, the amount of such supplier refunds or direct bills will be recorded in the appropriate deferred account, unless directed otherwise by the Commission.
- (5) Other.
- (a) Gas Costs changes not tracked concurrently shall be recorded in each LDC's appropriate deferred account.
 - (b) The Commodity and Other Charges portion of gas inventories shall be recorded at actual cost and the difference in that cost and the cost last approved under Section (k)(3)(a)(ii) shall be recorded in the deferred account when the gas is withdrawn from inventory.

- (c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days of such filing the Commission or the Public Staff notifies the LDC that the computations may not be in compliance; provided, however, that if the Commission or the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by the LDC to provide the additional information.
 - (d) Periodically, an LDC may file to adjust its rates to refund or collect balances in these deferred accounts through decrements or increments to current rates. In filing for an increment or decrement, the LDC shall state the amount in the deferred account, the time period during which the increment or decrement is expected to be in effect, the rate classes to which the increment or decrement is to apply, and the level of volumes estimated to be delivered to those classes. Any such increments or decrements shall be made on a flat per dekatherm basis for all affected rate classes, unless otherwise ordered by the Commission.
 - (e) Notwithstanding the provisions of this Rule, an LDC may offset negotiated losses in any manner authorized by the Commission.
- (6) Annual Review.
- (a) Annual Test Periods and Filing Dates. Each LDC shall file and submit to the Commission the information required in Section (k)(6)(c) for an historical 12-month test period. This information shall be filed by Toccoa Natural Gas on or before September 1 of each year based on a test period ended June 30. This information shall be filed by Frontier Energy, LLC, on or before December 1 of each year based on a test period ended September 30. This information shall be filed by Piedmont Natural Gas Company, Inc., on or before August 1 of each year based on a test period ended May 31. This information shall be filed by Public Service Company of North Carolina, Inc., on or before June 1 of each year based on a test period ended March 31.
 - (b) Public Hearings. The Commission shall schedule an annual public hearing pursuant to G.S. 62-133.4(c) in order to

compare each LDC's prudently incurred Gas Costs with Gas Costs recovered from all its customers that it served during the test period. The public hearing for Toccoa Natural Gas shall be on the first Wednesday of November. The public hearing for Frontier Energy, LLC, shall be on the first Tuesday of March. The public hearing for Piedmont Natural Gas Company, Inc., shall be on the first Tuesday of October. The public hearing for Public Service Company of North Carolina, Inc., shall be on the second Tuesday of August. The Commission, on its own motion or the motion of any interested party, may change the date for the public hearing and/or consolidate the hearing required by this section with any other docket(s) pending before the Commission with respect to the affected LDC.

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

the testimony of the party to whom the rebuttal testimony is addressed.

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

Rule R1-18. REPARATIONS AND UNDERCHARGES

(a) **Reparation Statements; Formal Claims for Reparation Based upon Findings of the Commission.** — When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the utility charges on which reparation is claimed. The statement should not include any utility charges not covered by the Commission's findings, or any utility charges on which complaint was not filed with the Commission within the statutory period. (See G.S. 62-132.) The statement, together with the said bills on the utility charges, or true copies thereof, should then be forwarded to the utility which collected the charges for checking and certification as to its accuracy. The certificate must be signed in ink by a general accounting officer of the utility and should cover all of the information shown in the statement. If the utility which collected the charges is not a defendant in the case its certificate must be concurred in by like signature on behalf of a defendant.

(b) **Applications of Transportation Companies to Award Reparation or Waive Collection of Undercharges.** — Whenever application is made to the Commission with copies to the Public Staff to award reparation or waive collection of undercharges on shipments that have moved between points in North Carolina, in addition to full explanation in justification of said applications, Form No. 1, at the end of this rule, shall be submitted also and same shall be handled in manner outlined in the preceding subsection.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

FORM NO. 1

IMPORTANT – Before making out statement read Rule R1-18 carefully.

Form No. 1 – Form of reparation or Waiver of Undercharge Statement Under Rule R1-18

Claim No. of Richard Roe under the decision of the Utilities Commission in Docket No.

Date of Shipment	Date of delivery or tender of delivery	Date charges were paid	Car Initials	Car Number	Origin	Destination	Route	Commodity	Weight	As Charged		Should Be		Reparation on basis of the Commissioner's decision
										Rate	Amount	Rate	Amount	
Jan. 12, 1964	Jan 15, 1964	Jan. 18, 1964	W.S.S.	51683	Raleigh, NC	Asheville, NC	Sou.	Plows	30,000	\$1.0	\$300.00	\$0.90	\$270.00	\$30.00
Jan. 30, 1964	Feb. 8, 1964	Feb. 10, 1964	B	156389	Do	Do	Do	Do	30,000	0	\$300.00	\$0.90	\$270.00	\$30.00
Feb. 15, 1964	Feb. 19, 1964	Feb. 21, 1964	Sou.	158880	Do	Do	Do	Do	30,000	\$1.0	\$300.00	\$0.90	\$270.00	\$30.00
Mar. 11, 1964	Mar. 15, 1964	Mar. 17, 1964	Sou.	163897	Do	Do	Do	Do	30,000	0	\$300.00	\$0.90	\$270.00	\$30.00
										\$1.0				
										0				
										\$1.0				
										0				
Total											\$1,200.00		\$1,080.00	\$120.00

The undersigned hereby certifies that this statement has been checked against the records of the company and found correct.
June 1, 1964.

X.Y.Z. RY. CO.
Collecting Carrier defendant, ¹
By JOHN SMITH, Auditor.
Concurred in:²
A. B. C. RY. CO., Defendant,
By WILLIAM JONES, Auditor.

by JOHN DOE, Attorney
RICHARD ROE, Claimant

May 20, 1964.
.....Street, Raleigh, N.C.

¹ If not a defendant, strike out work "defendant."

² For concurring certificate in case collecting carrier is not a defendant.

Rule R1-19. INTERVENTION

(a) Contents of Petition. — Any person having an interest in the subject matter of any hearing or investigation pending before the Commission may become a party thereto and have the right to call and examine witnesses, cross-examine opposing witnesses, and be heard on all matters relative to the issues involved, by filing a verified petition with the Commission giving the docket number and title of the proceeding and the following information in separately numbered paragraphs:

- (1) The correct name and post-office address of the petitioner.
- (2) A clear, concise statement of the nature of the petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding.
- (3) A statement of the exact relief desired.

(b) When Filed. — Petitions under this rule shall be filed with the Commission not less than ten (10) days prior to the time the proceeding is called for hearing, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. A petition, which for good cause shown was not filed within the time herein limited, and which neither broadens the issues nor seeks affirmative relief, may be presented to and allowed or denied by the presiding official, in his discretion, at the time the cause is called for hearing.

(c) Copies Required. — See Rule R1-5, subsection (g).

(d) Leave. — Leave to intervene filed within the time herein provided, in compliance with this rule and showing a real interest in the subject matter of the proceeding, will be granted as a matter of course, but granting such leave does not constitute a finding by the Commission that such party will or may be affected by any order or rule made in the proceeding. Failure of any party to file answer or reply to such petition for leave to intervene does not constitute an admission of the facts stated in such petition, nor a waiver of the right to move to dismiss said petition at the time the cause is called for hearing for failure to comply with this rule.

(e) Notices of Intervention by the Public Staff. — Notices of Intervention by the Public Staff shall be deemed recognized without the issuance of any order. As a general rule, Notices of Intervention by the Public Staff need not be filed in advance of any hearing and appearances may be made and noted at the hearing. If the Public Staff elects to do so, Notices of Intervention may be filed in certain cases. The filing of testimony and exhibits and otherwise complying with all other Rules and Regulations of the Commission are not affected by this provision.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 11/03/99.)

Rule R1-20. PREHEARING CONFERENCES

(a) Purpose. — Upon written notice by the Commission in any pending proceeding, or by the chairman of the Hearing Division or any Hearing Commissioner or Examiner to whom any such proceeding has been referred for hearing, the parties or their attorneys may be directed to appear before the Commission, or such Commissioner or Examiner, at a time and place designated in such notice, for a conference for the purpose of formulating issues and consideration of:

- (1) The simplification of issues;
- (2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;
- (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof;
- (4) The procedure at the hearing;
- (5) The limitation of the number of witnesses;
- (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and
- (7) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) Facts Disclosed Privileged. — All facts disclosed during a prehearing conference shall be privileged and, unless agreed upon by the parties involved and read into the stenographic record of the proceeding, shall not be used against the participating parties either before the Commission or elsewhere unless substantiated by other evidence.

Rule R1-21. CONDUCT OF HEARINGS AND INVESTIGATIONS

(a) Open to the Public. — All formal hearings and investigations shall be open to the public.

(b) Notice.

- (1) Proceedings in Which There Is Only One Party. — In proceedings in which there is only one party, hearings may be held at any time convenient to the Commission and to the party to the proceeding, with or without a public notice, in the discretion of the Commission.
- (2) Posting of Notice. — In addition to other notice of hearings required by statute, notice of the date and place of all public hearings shall be posted on the bulletin board in the Office of the Chief Clerk of the Commission at least ten (10) days in advance of the date set for the hearing. Notice of all postponements of such hearings shall immediately be posted on said bulletin board.
- (3) Publication of Notice. — In formal proceedings the Commission may, at its discretion, in addition to other notice, give or require to be given general notice of the substance of the application, petition, or complaint and the date and place of the hearing in a newspaper, or newspapers, for such length of time as the Commission may designate.
- (4) Mailing Lists. — General mailing lists for copies of applications, petitions, protests, notices or orders will not be maintained but persons interested in specific matters under investigation should request the Commission to place their names on the mailing lists in connection with such specific matters.

(c) Motions. — Any motion made at the instance of an adverse party, the granting of which will summarily terminate a hearing of a cause, or necessitate the postponement of the same, must be filed with the Commission in writing at least ten (10) days before the date set for the hearing, which motion shall certify that a copy thereof has been served upon each party of record in the cause, or upon their attorneys of record in accordance with Rule R1-39. This rule shall not apply to motions which necessarily arise during the course of the hearing to which they relate.

(d) Procedure at Hearings. — Hearings shall be conducted by and before the Full Commission, Commission Panel, Commissioner or Examiner as provided in G.S. 62-76, and except as otherwise directed in the particular case, the presiding Commissioner or Examiner:

- (1) Shall call the proceeding for hearing, giving the title of the proceeding, its docket number, and the nature and purpose of the hearing;
- (2) Shall cause to be entered in the record the kind of notice given of the time, place, and nature of the hearing, and the date or dates such notice was given;

- (3) Shall take the appearances, which shall be filed in writing with the court reporter and shall also be stated orally for the record.

(e) Order of Receiving Evidence. — Unless otherwise directed by the presiding Commissioner or Hearing Examiner, evidence will ordinarily be received in the following order:

- (1) Upon investigation on motion of the Commission: (i) Commission Staff, (ii) Public Staff, (iii) Respondent, and (iv) rebuttal by Commission Staff or Public Staff.
- (2) In investigation and suspension proceedings: (i) Respondent, (ii) Public Staff, (iii) Commission Staff, (iv) Protestants, and (v) rebuttal by Respondent.
- (3) Upon applications and petitions: (i) Applicants or Petitioners, (ii) Protestants, (iii) Public Staff, (iv) Commission Staff, and (v) rebuttal by Applicant or Petitioner.
- (4) Upon investigations after motion by the Public Staff: (i) Public Staff, (ii) Respondent, (iii) Intervenors, (iv) Commission Staff, and (v) rebuttal by Public Staff.
- (5) Upon formal complaints: (i) Complainant, (ii) Defendant, (iii) Public Staff, (iv) Commission Staff, and (v) rebuttal by Complainant.
- (6) Upon order to show cause: (i) Commission Staff, (ii) Public Staff, (iii) Respondent, and (iv) rebuttal by Commission Staff.

(f) Testimony by Public Staff or Commission Staff.

- (1) Investigations made by the Public Staff or Commission Staff in any pending proceeding shall be reported to the Commission in writing, a true and correct copy of which shall be filed with the official records of the proceeding at least twenty (20) days prior to the hearing of the cause, and may be inspected by any party to the proceeding or by any other person.
- (2) Such report may be offered in evidence by any party to the proceeding, or by the Commission, subject to the same rules of evidence that apply to other exhibits offered in evidence.

(g) Transcript. — The transcript of matters heard before the Commission or before an Examiner shall contain the docket number, date of hearing, title of the cause, testimony offered, objections, rulings on objections, exceptions, and such motions, rulings, and orders as may be made during the course of the hearing. Unless directed by the Commission or the Examiner, the reporter's transcript of the proceedings shall not include oral arguments or contentions of the parties. Copies of transcripts will not be furnished parties unless written order therefor shall have been given to the court reporter prior to or at the close of the hearing.

(h) Discussion Pending Decision. — After the close of the hearing it is improper for the parties to discuss the case with the Commission pending the decision, or to induce

others to do so by letter, wire, or by any other means. G.S. 62-70 prohibits ex parte contacts without notice to all other parties.

(i) Notice of Orders and Decisions. — When an order or decision of the Commission, or the report and recommended order of an Examiner, as the case may be, is ready to be made and entered in the cause, copies thereof shall be mailed or delivered to all parties to the proceeding or to their attorneys. Copies to parties against whom such order or decision runs shall be under the seal of the Commission and shall be mailed to such parties by registered or certified mail unless the Commission shall direct service by some other means authorized by law. (G.S. 62-63 and G.S. 62-79.)

(NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 133, 2/2/06.)

Rule R1-22. PRACTICE BEFORE THE COMMISSION

(a) In all proceedings wherein pleadings are filed and a formal hearing is held involving the taking of testimony and the formulation of a record subject to review by the courts, no person may appear in a representative capacity other than an attorney at law, duly qualified and entitled to practice before the Supreme Court of the State of North Carolina. (See G.S. Ch. 84.)

(b) This rule does not limit the right of any individual to plead his own cause before the Commission and to call and examine witnesses in his own behalf, and to cross-examine the opposing witnesses. Neither does this rule limit the right of any individual, whether called as a witness or not, to testify in any hearing or investigation before the Commission with respect to facts pertinent to the issues involved.

Rule R1-23. APPEARANCES

Parties shall enter their appearances in proceedings before the Commission at the time the cause is called for hearing by giving their names and addresses in writing to the reporter, who will include the same in the record of the proceeding. Appearance may be made on behalf of any party by counsel, and thereafter all notices, pleadings and orders in the cause may be served upon such counsel, and such service upon counsel shall be considered valid service for all purposes upon the party represented by such counsel. The Commission may, in addition, require appearances to be stated orally, so that the identity and interest of all parties may be made known to those present and having an interest in the subject matter of the proceeding.

Rule R1-24. EVIDENCE

(a) Admissibility, Generally. — Any evidence admissible under the General Statutes of North Carolina, or under the rules of evidence applicable in civil actions in the superior court of this State, will be admissible in investigations and hearings before the Commission.

(b) Judicial Notice. — The provision with respect to judicial notice set forth in G.S. 62-65(b) will apply to investigations and hearings before the Commission.

(c) Stipulations. — The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the stenographic record at the time of the hearing, agree upon the facts or any portion thereof involved in the controversy, which stipulations shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

(d) Prepared Statements. — A witness may read into the record as his testimony statements of fact prepared by him, or written answers to questions of counsel; provided, such statements shall not include argument; provided, further, that before such statements are read or offered in evidence a copy thereof shall be delivered to the presiding officer, a copy to the reporter, and copies to opposing counsel, as may be directed by the presiding officer. The admissibility of such written statements or questions and answers shall be subject to the same rules as if such testimony were produced in the usual manner.

(e) Abstracts of Documents. — When documents are numerous, such as freight bills or bills of lading, and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract in an orderly manner of the relevant data from such documents shall be prepared and offered as an exhibit, giving other parties to the proceeding reasonable opportunity to examine both the abstract and the documents.

(f) Exhibits, Generally.

(1) Size and Identification. — It is desirable, when practical, that exhibits be on paper of uniform size not exceeding 8½" x 14", and that each exhibit be distinguished from other exhibits by a short title descriptive of the subject matter of the exhibit, by an identification number or letter and by the name of the witness, and that all exhibits produced by a single witness be assembled and bound together, properly indexed, and offered as a single exhibit.

(2) Records and Documents. — For the purpose of identification and for the purpose of the record on appeal, all records or documents in the files of

the Commission and other matters of a documentary nature when offered and admitted in evidence must be read into the stenographic record of the proceeding, or a true copy thereof offered as an exhibit. Records or documents of more than one hundred words must be offered in the form of an exhibit.

- (3) Copies. — Not less than an original plus thirty (30) copies of each exhibit shall be provided for the use of the Commission, with an extra copy for each party to the proceeding, unless the Commission shall require a larger number in the particular case.

(g) Exhibits by Expert Witnesses.

- (1) Proposed Initial Direct Testimony to Be Reduced to Writing. — The proposed initial direct testimony of an expert witness, including accountants, auditors and engineers, in rate cases and in other proceedings involving detailed and complicated computations, audits, cost studies, appraisals, tables of figures, graphs, charts, drawings, and other exhibits of a similar nature, shall be reduced to writing, which shall include a brief statement in narrative form of the qualifications of such witness (training and experience), and that the exhibits proposed to be offered in evidence were prepared by or under the direction of such witness. The witness shall explain in writing each exhibit in such detail as to make the same understandable.
- (2) Time of Filing. — The testimony for the applicant of such expert witnesses shall be filed with the Commission at least sixty (60) days prior to the date set for the hearing in general rate cases, and at least thirty (30) days prior to the date set for the hearing in all other cases. Testimony for Protestants of such expert witness in rebuttal shall be prepared in the same manner and form, and shall be filed with the Commission at least ten (10) days prior to the date fixed for the hearing. When filed, all such exhibits shall be made available immediately to adverse parties of record, and to others having an interest in the proceeding. Class A & B electric, telephone and natural gas utilities shall file with and at the time of any general rate application all testimony, exhibits and other information which any such utility will rely on at the hearing on such increase. All water and sewer utilities shall file 45 days prior to the hearing on the general rate case application all testimony which such utility will rely on. Class A and B water and sewer utilities shall file with the application all exhibits supporting the general rate increase. The Staff, Attorney General and all other Intervenor or Protestants shall file all testimony, exhibits and other information which is to be relied upon at the hearing 20 days in advance of the scheduled hearing.
- (3) Copies Required. — An original plus thirty complete copies of the testimony of each expert witness, as required by this rule, shall be filed with the Commission for its use.

- (4) Procedure at Hearing. — The testimony of an expert witness, prepared and submitted as provided by this rule, may be identified by the witness, offered in evidence, and made a part of the record without further formality or further explanation, and the witness immediately tendered for cross-examination; provided, that any party to the proceeding shall have the right to object to or move to strike all or any part of such testimony by filing such objection or motion with the Commission in writing at least five (5) days prior to the date fixed for the hearing; provided further, that if upon such objection or motion all or any part of the proposed testimony is excluded, the party offering the same shall be allowed to offer other testimony in lieu of that excluded by the same or other witnesses without the necessity of advance filing.
- (5) Relief from Subdivisions (1) to (4). — Relief from the provisions of subdivisions (1) to (4) of this subsection may be granted by the Commission, after notice of hearing and before the date of hearing, in cases in which it appears by stipulation of counsel for the respective parties that the oral testimony or exhibits of expert witnesses will not be of such technical or complicated nature as to warrant a recess of the hearing for study and preparation of cross-examination.

(h) Subpoenas. — Subpoenas may be issued by the Commission on its own motion for the attendance of witnesses or for the production of books, records, and documents considered necessary for the information of the Commission, and may be issued at the instance of a party to the proceeding upon written request therefor; provided, that the request for the production of books, papers, records, and documents shall specify the books and records desired and purpose for which the same are desired.

(i) Letters, Telegrams and Petitions. — G.S. 62-65 requires the Commission to adhere to the rules of evidence applicable to civil actions in the superior court, insofar as practicable. Letters, telegrams and petitions sent to the Commission concerning matters pending before it for hearing violate the rules of evidence, and sending such communications to the Commission, or inducing others to do so, will not be looked upon with favor by the Commission.

(j) Numbering of Testimony Lines. — Each individual sheet of testimony and, where practical, exhibits and other supporting materials, of all parties shall have each line numbered in the left-hand margin and shall be punched to fit a three-ring binder. See sample attached.

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 58, 7/18/75; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 12, 5/14/91; NCUC Docket No. W-100, Sub 12, 9/4/91; NCUC Docket No. M-100, Sub 128, 11/30/01.)

Rule R1-25. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF; SUMMARY STATEMENTS AND REPLY STATEMENTS

(a) Any party of record, including the Public Staff, to a proceeding before the Commission, Commission Panel, or before a Hearing Examiner shall, upon request of the presiding Commissioner or Examiner, file proposed findings of fact, conclusions of law, and brief in the cause on all issues. The Presiding Officer shall fix the time within which to file such proposed findings, conclusions and briefs at the hearing or thereafter, and no decision, report, or recommended order shall be made in the cause until after the expiration of the time so fixed.

(b) Contents. — Each proposed finding of fact shall be clearly and concisely stated and numbered. Such statement shall be followed by one or more paragraphs which shall set out or specifically refer to the testimony supporting such proposed findings of fact.

(c) Copies Required. — Rule R1-5, subsection (g) shall apply to the filing of briefs, proposed findings of fact, and conclusions of law. In addition, the parties shall also file a copy of their briefs, proposed findings of fact, and conclusions of law on a MS-DOS formatted 3.5 inch computer diskette containing noncompressed files created in WordPerfect, Word or an ASCII Text format. The Commission may waive the computer diskette filing requirement for good cause shown.

(d) Summary Statements. — Pursuant to G.S. 62-15(g) the Public Staff shall in all general rate cases provide to the Commission fifteen (15) days after the close of all general rate hearings Summary Statements and schedules in comparative form setting forth the position of the applicant, the Public Staff and such other intervenors as may be required, with regard to all material facts and matters of which the Public Staff has knowledge or is aware which must or should be considered in determining a public utility's cost of service and/or in the fixing of just and reasonable rates.

With regard to matters at issue, the Summaries shall include such schedules and written narrative explanation so as to clearly and completely show and convey reconciliation of the difference between the parties to the proceeding.

The above mentioned Summary Statements, schedules and reconciliations shall include, but not be limited to, the following:

- (1) Original cost net investment with each component shown separately, e.g., utility plant in service, accumulated depreciation, working capital (show components of working capital separately, e.g., cash, minimum bank balances, materials and supplies, etc.);
- (2) Operating income for return with each component shown separately, i.e., operating revenues, operation and maintenance expenses with fuel expense shown separately, depreciation expense, taxes — other than income, current income taxes — state, current income taxes — federal, investment tax credit — net, deferred income taxes — net, and interest on customer deposits;

- (3) Total company capitalization including absolute dollar amounts and ratios. Also show the annualized embedded cost of debt, the preferred dividend requirement, the end-of-period return on common equity and the end-of-period overall rate of return under present and company proposed rates;
- (4) Calculations of current and deferred state and federal income tax expense; and
- (5) Calculation of replacement cost and fair value.

(e) In rate proceedings involving operating ratios, such operating ratios shall be presented in addition to applicable data set forth above.

(f) Copies. — Twelve copies shall be furnished to the Chief Clerk and additional copies provided to all parties.

(g) Reply Statements. — Any party desiring to do so may file Reply Statements to the Summary Statement within five (5) days of receipt thereof.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 125, 3/7/95.)

Rule R1-26. RECOMMENDED DECISION OF COMMISSION PANEL, HEARING COMMISSIONER OR AN EXAMINER

(a) Contents. — A Commission Panel, Hearing Commissioner or Examiner to whom a matter has been referred for hearing, as provided in G.S. 62-76 shall include the following in the report to the Commission:

- (1) The docket number and title of the proceeding.
- (2) The time and place of the hearing.
- (3) The appearances entered at the hearing.
- (4) A concise statement of the issues, or of the relief sought.
- (5) Findings of fact set forth separately.
- (6) Conclusions of law.
- (7) A recommended order in the cause.

(b) Service. — Copies of the report shall be served upon counsel of record for the parties who have appeared in the proceeding, or if not represented by counsel, then upon the parties.

(c) Exceptions. — Every report and recommended order made by a Commission Panel, a Hearing Commissioner or an Examiner shall fix a time not less than fifteen (15) days from the receipt thereof by the parties to the proceeding within which any party to the proceeding may file exceptions to such report and recommended order, and no report and recommended order shall become effective until the expiration of the time so fixed for the filing of exceptions, and if exceptions are filed within the time allowed, the report and recommended order shall be automatically suspended pending the ruling and order of the Commission on said exceptions.

Each exception shall be numbered and shall plainly and concisely state in a separate paragraph without unnecessary repetition and without argument the precise matter to which exception is taken. Arguments, explanations, excerpts from court decisions or references to other pertinent matters may be stated in one or more paragraphs following the statement of the exception.

Exceptions shall be typewritten or printed and filed with the Commission in triplicate, and shall show by certificate or statement that a copy thereof has been mailed or delivered to each party of record in the case and to their counsel.

(NCUC Docket No. M-100, Sub 22, 9/15/69; NCUC Docket No. M-100, Sub 75, 10/27/77.)

Rule R1-27. COMPUTATION OF TIME

The time within which any pleading, motion, notice, brief, or exceptions may be filed, or the time within which any act is required to be performed or may be performed, as provided by any rule or order of the Commission, shall be so computed as to exclude the first day and include the last day; provided, that when the last day of any such period falls on Saturday, Sunday, a legal holiday under the laws of this State, or a day on which the offices of the Commission for any reason are not open for business, the computation of time shall omit such day and begin on the first day thereafter which does not fall on any such day. (Not applicable in the computing of time for filing transportation tariffs and minimum rate schedules. See Rule R4-10.)

(NCUC Docket No. M-100, Sub 3, 7/30/64.)

Rule R1-28. GIVING NOTICE OR FILING PAPERS WITH THE COMMISSION BY MAIL

Any notice, motion, pleading, or other document or paper may be filed with or served on the Commission by United States mail, unless required by statute to be filed or served by some other agency, but the same shall not be deemed filed or served until the day and date actually received at the office of the Commission in Raleigh. Rule R1-27 also applies to giving notice of filing papers by mail.

Rule R1-29. SERVICE OF PROCESS AND NOTICES

Service of any process, order, or notice required by statute shall be deemed to have been made personally on the party to be served when a true copy thereof under the seal of the Commission shall have been delivered to the party to be served by an authorized agent of the Commission, or by mailing the same to such party by registered or certified mail. (G.S. 62-63.)

Rule R1-30. DEVIATION FROM RULES

In special cases, the Commission may permit deviation from these rules insofar as it finds compliance therewith to be impossible or impracticable.

Rule R1-31. SCHEDULE OF FEES

The fees and charges of the Commission are set forth in G.S. 62-300.

Rule R1-32. FILING OF ANNUAL REPORTS BY PUBLIC UTILITIES

(This rule is not applicable to interexchange carriers, pursuant to *Order Modifying Ceiling Rate Plan and Financial Reporting Requirements*, Docket No. P-100, Sub 72, December 9, 1993, and to competing local providers, pursuant to Rule R17 2(j).)

(a) Pursuant to the provisions of G.S. 62-36 relating to annual reports by utilities, all public utilities doing business in the State of North Carolina and subject to regulation as to franchises, rates or services by the North Carolina Utilities Commission shall file annual reports of the operations of said public utility as soon as possible after the close of the calendar year, but in no event later than the 30th day of April of each year for the preceding calendar year. Such annual reports shall be under oath and shall be prepared on forms approved or furnished by the Utilities Commission for the respective utility services offered by such companies; to wit, the appropriate approved form respectively for electric service, telephone service, water service, natural gas service, motor carriers of household goods, motor carriers of passengers, and common carriers by water. Where prescribed by the forms furnished or approved by the Commission, such public utilities shall make such annual reports in accordance with the classification of such utility as prescribed by the instructions for said forms; to wit, Class A, Class B, or Class C utility companies, or other classifications, for the respective utility services. All operating data, financial statistics, and other accounting and financial information required for said form shall be furnished in accordance with the respective Uniform System of Accounts prescribed for the said respective utility services, unless otherwise specifically provided by the Commission. The Chief Clerk shall, immediately upon the filing of any annual report, transmit the same to the Public Staff for retention and use in accordance with its statutory duties.

(b) All such annual reports shall show the utility's total operations. If the utility operates in other states in addition to North Carolina, the report shall also show separately stated either the utility's total operations in North Carolina or its total operations in intrastate commerce in North Carolina. Any utility which elects to separately state its total operations in intrastate commerce in North Carolina rather than its total operations in North Carolina shall include therein any interstate operations over which the Commission has rate-making jurisdiction.

(c) The separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina may be shown by supplementary addenda or by different colored insert pages in sequence to the report of total operations. The underlying basis for all separations and allocations used in obtaining the separate statement shall be given in sufficient detail to permit analysis thereof by the Commission.

(d) In the case of public utilities which file annual reports with federal agencies such as the Federal Energy Regulatory Commission, Federal Communications Commission, or Department of Transportation, a copy of said report to the federal agency will comply with this rule insofar as it requires a report of total company operations; provided all said

copies shall contain supplementary addenda or different colored insert sheets in sequence showing the required separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina.

(e) The separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina shall show for the separately stated operations

- (1) The original cost of the utility's plant and equipment used therein,
- (2) The portion of the cost thereof which has been consumed by previous use recovered in depreciation expenses,
- (3) The gross revenues derived therefrom,
- (4) The operating and maintenance expenses, actual investment currently consumed through depreciation, and taxes attributable thereto, and
- (5) The net utility operating income derived therefrom.

(f) Common carriers of passengers and household goods will be in compliance with the provisions of this rule by completing the annual report form prescribed by the Commission.

(g) In addition to filing FERC Form No. 1 as revised by the Federal Energy Regulatory Commission effective on February 5, 1982, for reports to be filed on or before April 30, 1983, and for reports filed thereafter, Electric Companies shall also file the following financial schedules in addition to the revised FERC Form No. 1, or modify the revised FERC Form No. 1 schedules as follows:

- (1) The following schedules previously included in FERC Form No. 1 but not included in the revised FERC Form No. 1 shall continue to be filed in Revised Form No. 1 and assigned the page numbers indicated below:

<u>Schedule Title</u>	Page Number of Previous Form No. 1	Page Number To Be Assigned Revised Form No. 1
Investments	202	216
Accumulated provision for uncollectible accounts	204	219
Production fuel and oil stocks	209	218-A
Miscellaneous current and accrued assets	210	221
Preliminary survey and investigation charges	212	222
Deferred losses from disposition of utility plant	214-A	222-A
Unamortized loss and gain on reacquired debt	214-B	222-B
Miscellaneous current and accrued liabilities	224	262

Operating reserves	226	263
Investment tax credits generated and utilized	228	274
Gain or loss on disposition of property	300	305
Income from utility plant leased to others	301	306
Particulars concerning certain other income accounts	303	307
Extraordinary items	306	319
Plant acquisition adjustments and accumulated provision for amortization of plant acquisition adjustments	407	325
Sales of electricity — by communities	410-411	302-303
Lease rentals charged	421A-D	328A-D

- (2) The schedule entitled "Charges for Outside Professional and Consultative Services," which was Page 354 of previous Form No. 1 shall be filed as Page 324 of revised Form No. 1, but the previous \$10,000 limit may be increased to \$50,000.
- (3) For Page Numbers 102 and 250 of revised Form No. 1 the electric companies shall file the information requested by these schedules instead of making reference to Securities and Exchange Commission 10-K Report Form.
- (4) The limit of \$5,000 required in Line Number 5 of Page 333 of revised Form No. 1 shall be decreased from \$5,000 to \$1,000.
- (5) A column (e) entitled "Increase or Decrease" shall be added to Pages 110-113 of revised Form No. 1.
- (6) Columns (c) through (j) of Pages 214C-D of previous Form No. 1 shall be added as Columns (c) through (j) of Page 224 of revised Form No. 1. Column (c) of Page 224 of revised Form No. 1 shall be changed to Column (k).
- (7) The information requested in instruction 1.B of Page 106 of previous Form No. 1 which was omitted from Page 106 of revised Form No. 1 shall continue to be provided on Page 106 of revised Form No. 1.
- (8) Page 337 of revised Form No. 1 shall be filed based on the instructions for Page 304 of previous Form No. 1.
- (9) Pages 350 and 351 of revised Form No. 1 shall be filed based on the instructions for Pages 353-353A of previous Form No. 1.
- (10) A summary of operation and maintenance expenses shall be inserted on Page 323 of revised Form No. 1 in the same format as contained on Page 420 of previous Form No. 1.

(NCUC Docket No. M-100, Sub 4, 7/21/65; 11/16/65; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. E-100, Sub 45, 5/24/82; NCUC Docket No. T-100, Sub 32,

8/23/95; NCUC Docket No. R-100, Sub 4, 03/09/99; NCUC Docket No. P-100, Sub 72b,
01/02/04; NCUC Docket No. M-100, Sub 132, 11/03/04.)

Rule R1-33. Filing of annual reports by municipalities.

Pursuant to the provisions of G.S. 62-47, the annual reports therein required to be filed by every municipality furnishing gas, electricity, or telephone service shall be filed on a fiscal year basis for an annual reporting period from July 1st of each year through June 30th of the succeeding year. Beginning with the fiscal year July 1, 1964 — June 30, 1965, and continuing thereafter, such municipal annual reports shall be filed as soon as possible after the close of the fiscal year, but in no event later than November 15th next following the end of said fiscal year. Each such annual report of a municipality furnishing gas, electricity, or telephone service shall be made upon annual report forms furnished or approved by the North Carolina Utilities Commission for the respective service; to wit, the approved annual report form for gas service, the approved annual report form for electric service, and the approved annual report form for telephone service. Such annual reports shall be verified by the oath of the general manager or superintendent of such utility service in accordance with the requirements of G.S. 62-47. The Chief Clerk shall, immediately upon the filing of any annual report, transmit the same to the Public Staff for retention and use in accordance with its statutory duties.

(NCUC Docket No. M-100, Sub 4, 7/21/65; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 123, 8/10/93; NCUC Docket No. M-100, Sub 132, 11/03/04.)

Rule R1-34. Exceptions to number of copies to be filed.

In any case where the provisions of this chapter require the filing of a specific number of copies of any document and it appears that there is no reasonable or substantial need for said specific number of copies of documents under the procedures to be observed in the proceeding in which the document is to be filed, or where it is not feasible for other reasons to provide the specific number of copies, upon request of the party filing the document or on its own motion, the Commission may authorize a lesser number of copies by notifying the parties in writing of the number of copies to be filed.

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74.)

Rule R1-35. Use of accelerated depreciation by electric, water, sewer, gas and telephone utility companies under Federal Tax Reform Act of 1969.

(a) Electric, water, sewer, gas and telephone utility companies operating in North Carolina are hereby authorized, but not required, to use liberalized or accelerated depreciation and are authorized to normalize the difference between the federal and State income taxes due with the use of accelerated depreciation and the federal and State income tax which would be due with the use of various straight-line depreciation methods for their regular books of account and for rate-making purposes, to the extent such accelerated depreciation and normalization thereof is authorized by Section 441 of the Federal Tax Reform Act of 1969 as enacted by Congress in December of 1969, subject to the terms and conditions provided in this rule.

(b) The accelerated depreciation and normalization of the results thereof for accounting and rate-making purposes shall be authorized on all utility property which qualifies for accelerated depreciation under Section 441 of the Federal Tax Reform Act of 1969.

(c) Utility companies using accelerated depreciation and normalization thereof under this rule shall record deferred operating federal income taxes in a temporary income account to be designated as "Operating federal income taxes deferred — accelerated tax depreciation"; deferred operating State income taxes in an account designated "Other operating taxes"; deferred nonoperating federal income taxes in an account designated "Federal income taxes — nonoperating taxes"; and deferred nonoperating State income taxes in an account designated "Other nonoperating taxes", and contra credits shall be made to corresponding subdivisions of a temporary balance sheet account to be designated "Reserve for accumulated deferred income taxes — accelerated tax depreciation."

(d) The deferred federal and State income tax funds made available temporarily by the adoption of such accelerated depreciation and normalization thereof on the utility company books should be utilized by said utility company for construction of utility plant, and in no event shall the same be transferred to earned surplus.

(e) Any utility company which has used accelerated depreciation with flow-through methods of accounting as defined in Section 441 of the Federal Tax Reform Act of 1969 is authorized, but not required, to continue such flow-through methods of accounting to the full extent allowed under said Section 441 of the Federal Tax Reform Act of 1969.

(NCUC Docket No. M-100, Sub 32, 5/28/70.)

Rule R1-36. Repealed by NCUC Docket No. E-100, Sub 47, 2/27/84.

Rule R1-37. REPEALED BY NCUC DOCKET NO. E-100, SUB 113, 3/13/08.)

Rule R1-38. REPEALED BY NCUC DOCKET NO. E-100, SUB 113, 3/13/08.)

R1-39. Methods of Service to Parties.

Service of pleadings, motions, or other papers to parties of record or to the attorney of record of such party, unless otherwise specified by the Commission, shall be made by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party. (NCUC Docket No. M-100, Sub 133, 02/02/06.)