JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

REPORT TO THE 1995 GENERAL ASSEMBLY OF NORTH CAROLINA

1996 REGULAR SESSION

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May 29, 1996

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY, 1996 REGULAR SESSION:

Pursuant to Article 12A of Chapter 120 of the North Carolina General Statutes, and Chapters 412 and 542 of the 1995 Session Laws, the Joint Legislative Utility Review Committee herewith submits its report to the General Assembly.

Senator David W. Hoyle
Senate Cochairman

Rep. W.W. "Dub" Dickson
House Cochairman

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1995 - 1996

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INTRODUCTION

The Joint Legislative Utility Review Committee is a permanent committee of the General Assembly, as provided in Article 12A of Chapter 120 of the General Statutes. The Committee consists of ten members, five each from the Senate and the House of Representatives. (Chapter 542 of the 1995 Session Laws amended G.S. 120-70.2, changing the number of Committee members from six to ten.) The House members are appointed by the Speaker of the House. The Senate members are appointed by the President Pro Tempore of the Senate. Members must be sitting members of the General Assembly. They serve at the pleasure of the appointing officer. A Senate cochairman and a House cochairman are designated by the respective appointing officer.

The general purpose of the Committee is to evaluate the actions of the State Utilities Commission and the Public Staff, and to analyze the operations of the utility companies operating in North Carolina. The Committee also stays abreast of regulatory changes relating to utilities at the federal level, judicial decisions, and technical changes affecting utilities. The Committee is authorized to make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties of the Committee (G.S. 120-70.3(7)).

The stated powers and purposes of the Committee include undertaking specific studies as may be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly (G.S. 120-70.3(8)).

The General Assembly requested the Committee to study the following and report to the 1996 Regular Session:

1. Encouragement of additional interstate natural gas pipelines in North Carolina by amending Chapter 62 of the General Statutes to provide that facilities selling electric power and thermal energy generated with natural gas from such pipelines be exempted from regulation as public utilities, or by making other changes to Chapter 62.
2. Whether further changes are needed to Chapter 159B of the General Statutes, in addition to amendments made by Chapter 412 of the 1995 Session Laws. (Appendix A and B.)

This report of the Joint Legislative Utility Review Committee is made in response to the specific request of the General Assembly, and as part of the Committee's general and ongoing obligation to provide information and recommendations to the General Assembly relating to public utilities. It covers the period of time from the Committee's 1995 report, which ended with activities on December 22, 1994, through April 26, 1996.

OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the Overhead High-Voltage Line Act as set out in Appendix C. It is the opinion of the Committee that this act will prevent injuries to, and save the lives of, persons who work in close proximity to high-voltage power lines.

Explanation of Proposed Legislation

The proposed legislation creates a new Article 19A in Chapter 95 of the General Statutes. It provides certain minimum clearances between covered equipment and items, and overhead high-voltage power lines. It also provides for warning signs to be affixed to covered equipment. Finally, it provides that persons working closer to high-voltage power lines than the clearances specified in this Article must notify the power company so that the power company can take the necessary steps to allow for the safe conduct of the work.

Proposed G.S. 95-229.5 describes the purpose of Article 19A as being to promote safety and protection of persons working in the vicinity of high-voltage overhead lines, and to specify the conditions of such work and the precautions that must be taken.

Proposed G.S. 95-229.6 provides definitions. Among the definitions are descriptions of "covered equipment," which includes objects that may be brought within ten feet of a high-voltage line during use, such as cranes, power shovels, dump trucks, pile drivers, and so on. "High-voltage line" means lines in excess of 600 volts. There is also a description of the warning signs required to be posted on covered equipment.

Proposed G.S. 95-229.7 sets out the responsibility of employers of persons using covered equipment and of individuals using covered equipment to acquaint themselves and their employees with the provisions of this Article.

Proposed G.S. 95-229.8 provides that unless danger of contact with high-voltage lines has been guarded against as provided in Article 19A, persons, and tools or materials used by them, may not be brought within six feet of the line, and covered equipment may not be brought within ten feet of the line. Exceptions include covered equipment lawfully driven or transported on public streets and highways in compliance with legal height restrictions, refuse collection equipment, and agricultural equipment. These may be brought within four feet of the line. There are also restrictions for aircraft and storage of material. If a line has been insulated or deenergized by the power company as required in the Article, clearance may be reduced to not less than two feet. If the lines have been moved or raised to accommodate the work, without also being insulated or deenergized, reduced clearance is not permitted.

Proposed G.S. 95-229.9 specifies how warning signs are to be posted on or around covered equipment.

Proposed G.S. 95-229.10 requires anyone who will be carrying on work or activities in closer proximity to a high-voltage line than is specified in G.S. 95-229.8 must notify the owner or operator of the high-voltage line in advance. Notification must be as early as practical, but not less than 48 hours in advance, excluding Saturdays, Sundays, and legal State and federal holidays. In emergency situations, notification is as soon as possible under the circumstances. This proposed section also specifies the

information to be contained in the notice, and the records to be kept of the notice. It also allows for the operation of an association for central receipt of notification of activities.

Proposed G.S. 95-229.11 provides for the power company to take the necessary precautionary measures after arrangements for payment have been negotiated between the power company and the person responsible for the work or activity which is to occur. If the parties should fail to agree on the amount of payment due for the safety precautions, the power company must commence providing precautionary measures upon payment of the undisputed amount in accordance with the agreement reached. The amount in dispute may be resolved by arbitration or other legal means. The power company must begin the precautionary safety arrangements within five working days after payment, but no earlier than the agreed construction date. The various types of precautionary arrangements are described. In the case of residential property, the power company is responsible for the expenses involved in safety precautions, up to $1,000 .

Proposed G.S. 95-229.12 provides for indemnification of the power company by the person responsible for the work being done if that person allows work to proceed in violation of Article 19A and any damages occur as a result.

Proposed G.S. 95-229.13 provides for an exemption to the operation of Article 19A by persons having a preexisting agreement with the power company. These include railroads, telecommunications systems, and other systems including traffic signals.

Proposed G.S. 95-229.14 specifies that Article 19A does not change any rights persons may have under other provisions of law, whether statutory, regulatory, or common law. A violation of Article 19A does not create a presumption of contributory

negligence. The obligations of the power company in the construction, maintenance, and operation of the high-voltage lines are not diminished by Article 19A.

Proposed G.S. 19A-229.15 is a severability clause.

The effective date is October 1, 1996.

Background

The Overhead High-Voltage Line Safety Act was originally introduced as Senate Bill 987 in the 1993 Legislative Session. The bill went as far as the House Judiciary I Committee, but the House did not act on it before the end of the 1994 Regular Session.

On October 25, 1995, the Joint Legislative Utility Review Committee took up a redrafted version of the act. The bill considered by the 1993 General Assembly provided for enforcement of the act to be carried out by the North Carolina Department of Labor. It also provided that a violation of the terms of the act would be a misdemeanor. Those two provisions were controversial in the 1993 Session, and they were removed from the draft presented to the Committee. The Committee heard presentations on behalf of the investor owned utilities and the cooperatives, who were the main proponents of the bill. The Committee also heard from the Carolinas Association of General Contractors, the North Carolina Academy of Trial Lawyers, and the North Carolina Department of Transportation. After listening to the concerns of the interested parties, the Committee instructed the representatives of the interested parties to meet with Committee Counsel in an attempt to resolve the concerns expressed to the Committee.

On February 28, 1996, a revised bill was presented to the Committee. The concerns of all parties, except the North Carolina Academy of Trial Lawyers, had been resolved.

The Academy of Trial Lawyers suggested further changes in two sections of the bill. G.S. 95-229.12 provides that a person responsible for work to be done must indemnify the owner or operator of the high-voltage lines, or third parties, if any, for any damages or expenses incurred if the responsible party allows work to proceed in violation of the Overhead High-Voltage Line Safety Act, and as a result, physical or electrical contact is made with the high-voltage line. The Academy of Trial Lawyers wanted additional language to provide that the owner or operator of the high-voltage line would not be indemnified for damages attributable to its own negligence. G.S. 95-229.14 provides that the Overhead High-Voltage Line Safety Act does not alter the responsibility of a power company to fulfill its duty under current law in the construction, maintenance, and supply of electricity. The Academy of Trial Lawyers' position was that the common law duty of a supplier of electricity to use a high degree of care should be codified in this section.

The Committee felt that there would be ample time for debate of these disagreements during the legislative session, and it voted to recommend the bill as drafted for consideration in the 1996 Regular Session.

RESALE OF WATER AND SEWER SERVICES

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the legislation set out in Appendix D, authorizing the Utilities Commission to adopt specific procedures for the purpose of allowing resale of water and sewer services to persons occupying the same contiguous premises. It is the opinion of the Committee that this can result in a more equitable distribution of this expense among tenants of multifamily buildings, and that it may reduce the quantity of water consumed.

Explanation of Proposed Legislation

The proposed legislation adds a new subsection to G.S. 62-110. G.S. 62-110 is the section in Chapter 62 of the General Statutes that requires a public utility to obtain a certificate of public convenience and necessity in order to provide service.

Under the definition of a public utility found in G.S. 62-3, if the owner of an apartment building were to make individual charges to his tenants for the consumption of water or sewage services, he would be considered a public utility and would have to obtain a certificate of convenience and necessity pursuant to the terms of G.S. 62-110. (There is an existing exception for a person who sells water to less than ten residential customers.) As a public utility, rates would have to be set in a general rate case just as they are for such public utilities as electric power suppliers. For most apartment owners, this is too cumbersome and expensive. As a result, water and sewer services are generally considered an overhead expense and factored into the amount charged for rent, the same as any other expense of operation. Therefore, those who use water frugally are charged on the same basis as those who use water in a wasteful manner.

The proposed legislation allows the Utilities Commission to adopt special procedures for the purpose of allowing resale of water and sewer service provided to persons who occupy contiguous premises, provided the rate or charge does not exceed the actual purchase price of the water or sewage service to the provider, plus a reasonable administrative fee. The provision allows the Commission to issue special rules to implement this type of resale, with the Commission continuing to regulate it to the extent necessary to protect the public interest. Thus, a reseller who is charging only his own cost of service, plus a reasonable administrative fee as established by the Commission, would not have to go through the expensive and somewhat cumbersome procedure of obtaining a certificate of public convenience and necessity, and having his rates set in a general rate case.

The act is effective upon ratification.

Background

The proposal to allow resale of water and sewer services was first presented to the Joint Legislative Utility Review Committee at its meeting on January 11, 1996. The Public Staff was the proponent of the proposed legislation. The proposed legislation was also supported by the Apartment Association of North Carolina, which felt that it would reduce water usage and expense. The Consumer Protection Division of the Department of Justice was concerned about possible unintended compromises of various consumer protection laws because of the way the proposed bill was drafted. The Attorney General also pointed out that the proposed bill, as then drafted, gave the Utilities Commission discretion to allow more than the actual cost of service to the landlord to be recovered, without going through a general rate case.

The Committee requested that all parties confer with Committee Counsel in an attempt to work out their differences.

The Committee resumed its discussion on April 26, 1996. A new proposal was presented to the Committee which took into account the concerns of the various interested parties. The new proposal limited the resale charge to the actual purchase price of the service to the provider plus a reasonable administrative fee, to be set by the Commission. In addition, it specifically provided that the legislation could not be construed to alter the rights, obligations, or remedies of persons providing such services, or their customers. Thus, there should be no unintended weakening of any consumer protection laws found in other parts of the General Statutes, or in the common law as set out by the courts.

The Committee voted to recommend the proposed legislation to the 1996 Regular Session of the General Assembly.

PROMOTION OF FURTHER NATURAL GAS EXPANSION BY FURTHER AMENDMENTS TO CHAPTER 62 OF THE GENERAL STATUTES

Recommendation of the Committee

The Joint Legislative Utility Review Committee does not recommend amending Chapter 62 of the General Statutes to provide that facilities selling electric power and thermal energy generated with natural gas from an interstate pipeline should be exempted from regulation as public utilities. At this time, the Committee does not recommend any other amendments to Chapter 62 to encourage construction of new interstate pipelines in North Carolina.

Background

Part XX of Chapter 542 of the 1995 Session Laws, the 1995 Studies Bill, directed the Joint Legislative Utility Review Committee to study whether or not the extension of interstate natural gas pipelines into North Carolina can and should be encouraged by amending Chapter 62 of the General Statutes to provide that facilities selling electric power and thermal energy generated with natural gas from an interstate pipeline should be exempted from regulation as public utilities. The Committee was also directed to study whether any other provisions of Chapter 62 of the General Statutes needed to be amended to encourage the construction of new interstate pipelines into North Carolina.

The Committee took this matter up at its meeting on April 26, 1996. Prior to that meeting, Committee member Representative Danny McComas requested that Committee Counsel prepare a memorandum outlining the activities of the North Carolina General Assembly in promoting the expansion of natural gas service in North Carolina. That memorandum appears as Appendix E of this Report. The memorandum details the

activities of this Committee and the General Assembly, from 1987 through the present, to promote expansion of natural gas service in the unserved areas of this State, as well as the expansion of pipelines in the State. The memorandum was distributed to the Committee members at the meeting. It was pointed out that the parties who originally requested this legislation had withdrawn their support for it, at least for the present. Based on the withdrawal of support, and particularly based on the successes of the ongoing activities of the General Assembly in promoting natural gas service in North Carolina, the Committee adopted a motion providing as follows:

1. That no further amendments to Chapter 62 of the General Statutes are necessary at this time to encourage the construction of new interstate pipelines in North Carolina.
2. That the Committee will continue to review the efforts to expand natural gas service in North Carolina on a regular basis, as the Committee has done since 1987.

OTHER ACTIVITIES OF THE COMMITTEE

Meeting of October 25, 1995

This was first meeting of the Committee after the 1995 Legislative Session, and the first meeting of the Committee since its membership had been expanded from six members of the General Assembly to ten members. The Committee reviewed its legislative mandate as well as the specific matters that were referred to it by the 1995 General Assembly. The Commission received a presentation from the North Carolina Utilities Commission outlining the functions of the Commission and summaries of various matters of import currently before the Commission. The Public Staff and the Attorney General's Office reviewed their functions regarding matters before the Utilities Commission.

At this meeting, the Committee received presentations of two statutorily mandated reports. They are:

1. Fuel Charge Adjustment Proceedings for Electric Utilities (July 1995); and
2. Long Range Needs for Expansion of Electric Generation Facilities in North Carolina (January 1995).

The Committee also received reports on local telecommunications competition, reviewing House Bill 161, passed by the 1995 General Assembly, and the Telecommunications Act of 1996, which at that time had not yet been passed by the Congress.

Meeting of January 11, 1996

The Committee received a report from the Utilities Commission on activities related to North State Utilities. This matter had been before the Committee on many

previous occasions. A copy of the Utilities Commission report may be found in Appendix F. As a result of activities of the Utilities Commission, this Committee, and the General Assembly, it appears that solutions have been found for each of the ten subdivisions adversely affected by the failure of North State Utilities.

The Committee next heard a report from Jesse Tilton, III, Chief Executive Officer, and Alice Garland, Director of Government and Corporate Services, of ElectriCities of North Carolina. This report discussed the activities of the power agencies, particularly with regard to organizational changes that had been made pursuant to the amendments to Chapter 159B passed by the General Assembly in the 1995 Session. The report also talked about the future of the power agencies and municipal electric providers in light of the possibility of competition in the sale of electricity. The power agencies have approximately six billion dollars in outstanding bonded indebtedness. It is the revenue from the sale of electricity by the power agencies that is used to pay these bonds. A competitive market for electricity could possibly result in stranded indebtedness for the power agencies. In anticipation of competition, power agencies are trying to reduce costs and increase their customer base. As a result of the statutory changes in 1995, the power agencies have been able to sell some surplus electricity on the wholesale market.

Chapter 412 of the 1995 Session Laws, which contained the amendments to Chapter 159B, also contained a provision that this Committee study the question of whether further changes are needed to Chapter 159B. Mr. Tilton, in his presentation to the Committee, requested that the Committee not pursue further changes to Chapter 159B for the 1996 Session. In view of this request, the Committee has no recommendation for

changes to Chapter 159B, at this time. The Committee will continue to follow the activities of the power agencies and the municipal electric providers.

Finally, the Committee received an update on the latest Congressional action on what became, on February 8, 1996, the Telecommunications Act of 1996.

Meeting of February 28, 1996

At the request of the Utilities Commission, the Committee took up the question of proposed legislation to require railroads to pay a fee, based upon miles of track in service, to support the rail safety program administered by the Utilities Commission.

In 1989, the Legislature passed G.S. 62-302, which provided for the activities of the Utilities Commission to be funded by fees imposed on the utilities it regulated. The fee was calculated as a percentage of each regulated utilities "North Carolina jurisdictional revenues." In 1990, most of the railroads challenged the Utilities Commission's right to collect a fee from them under G.S. 62-302, because the railroads no longer had North Carolina jurisdictional revenue. The Staggers Act, and subsequent actions by the Interstate Commerce Commission, preempted the states from regulating the rates and charges of railroads. Therefore, the railroads maintained, there was no longer any North Carolina jurisdictional revenue. From the time the railroads stopped paying the fee, the rail safety program was essentially being financed by all of the other public utilities regulated by the Commission.

The Committee heard from Robert Bennink, General Counsel for the Utilities Commission, and from Commissioner Judy Hunt, in support of the legislation imposing a fee on the railroads. Mike Calhoun of the Federal Railroad Administration, also spoke in favor of the Utilities Commission maintaining its jurisdiction over the rail safety

program. The railroads opposed this legislation and suggested that the railway safety program be transferred to the North Caroling Department of Transportation, or that it be abolished entirely, which would leave rail safety to the federal government. North Carolina administers the rail safety program through an arrangement with the federal government. However, some states do not have such an agreement, and leave rail safety to the Federal Railroad Administration.

In support of the railroads' position, the Committee heard from the President of the North Carolina Railway Association, and from the Presidents of shortline freight railroads and shortline passenger railroads. Lyman Cooper, resident Vice-President of CSX Transportation and President of the North Carolina Railway Association addressed the Committee, as did Murphy Evans, President of Laurinburg and Southern Railroad and Red Springs and Northern Railroad. The Committee also heard from Malcolm McNeil, President of the Great Smoky Mountain Railroad, a railroad operated for sightseeing purposes through the Smoky Mountains.

It should be noted that in 1992, two bills were introduced that would have removed all railroad regulation from the Utilities Commission and sent it to the Department of Transportation. These did not pass. In 1993, new bills were introduced that would have transferred only the rail safety program to the Department of Transportation. The 1993 bills came as a result of recommendations from this Committee. They were also recommended by the Legislative Research Committee on Railroads and Other Transportation, which recommended maintaining the safety inspection program, but moving it into the Department of Transportation. Those bills also failed to pass.

After discussion by the Committee, a motion was made and approved to refer this matter to the LRC State Government Reorganization and Privatization Committee.

Following the meeting of February 28, 1996, the Committee members toured the Carolina Power and Light Energy Control Center in Raleigh. The members watched first-hand the wheeling of electricity between power providers.

Meeting of April 26, 1996

The focal point of the April 26, 1996 Committee meeting was a presentation on electric utility industry restructuring and competition. The Committee heard from Matthew Brown, Senior Energy Policy Specialist at the National Conference of State Legislatures, and Larry Hill, an economist at Oak Ridge National Laboratory, who is currently a Visiting Fellow at NCSL.

The presentation lasted approximately two hours, including many questions from the Committee. It covered a broad range of topics, beginning with a discussion of what electric industry restructuring is. It went on to discuss the federal policy in promoting restructuring and some important policy issues that states will face.

One of the greatest obstacles to a smooth transition from a monopoly market to a more competitive market is the sheer number of electric utilities in the United States. While other countries have from one to seven electric utilities, the United States has more than three thousand electric utilities. However, the trend toward generating capacity being supplied by non-utility generators is growing. While the total percentage of generating capacity in the United States supplied by non-utility generators is approximately eight percent, in the years 1990-1994, non-utility generators supplied between fifty and eighty-four percent of all increases in generating capacity.

One of the most significant issues in electric utility industry restructuring is the issue of strandable costs and benefits. Over the years, the covenant between monopoly electric utilities and regulators has involved requiring the utilities to build generating capacity sufficient to meet the needs of all users of electricity within a utility's territory. This has involved investment and the incurring of debt. It is the expectation that the generating capacity will be used that has enabled the utilities to justify the investment and the incurring of debt. However, in a restructured environment, a utility have competitors who, for various reasons, can offer electricity at a cheaper price, leaving the utility with unusable capacity which it has invested in, and which it must repay the indebtedness for.

There are also strandable benefits. For example, as part of the regulatory covenant, utilities have been required to participate in energy diversity programs, energy conservation programs, programs beneficial to the environment, and low income program. The broad customer base has allowed these costs to be spread among many users of electricity. If certain users are allowed to leave the system, who picks up the cost of these programs?

Only a few days before this presentation was made to the Committee, the Federal Energy Regulatory Commission had issued its long awaited rulemaking on open access of transmission lines. The Committee intends to hear a detailed report on that rulemaking when it resumes meeting after the 1996 Regular Session. In addition, it is expected that the Utilities Commission will open a docket to consider the requirements of that rulemaking. This should provide additional information to the Committee when it takes up the matter.

APPENDIX A

APPENDIX A
EXCERPT FROM CHAPTER 542 - THE 1995 STUDIES BILL

PART XX.-----JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE
Subpart A. Natural Gas Pipeline Extension (S.B. 570 - Soles; H.B. 684 - McComas)

Sec. 20.1. The Joint Legislative Utility Review Committee is directed to study whether or not the extension of interstate natural gas pipelines into North Carolina can and should be encouraged by amending Chapter 62 of the General Statutes to provide that facilities selling electric power and thermal energy generated with natural gas from that pipeline should be exempted from regulation as public utilities. The Committee shall also study whether any other provisions of Chapter 62 of the General Statutes should be amended to encourage the construction of new interstate pipelines in North Carolina.

Sec. 20.2. The Joint Legislative Utility Review Committee shall report its findings and any recommendations under this subpart for legislation to the 1996 Regular Session of the 1995 General Assembly.

APPENDIX B

APPENDIX B

EXCERPT FROM CHAPTER 412 - THE POWER AGENCY AMENDMENTS

Sec. 29. The Joint Legislative Utility Review Committee shall study the question of whether further changes are needed to Chapter 159B of the General Statutes and shall report its findings and recommendations to the 1996 Regular Session of the General Assembly.

APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

HOUSE DRH6206*-RLZ(2.22)

Short Title: High-Voltage Line Safety Act. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 19A.

"Overhead High-Voltage Line Safety Act.

"§ 95-229.5. Purpose; scope.

The purpose of this Article is to promote the safety and protection of persons engaged in work or activity in the vicinity of high-voltage overhead lines. This Article defines the conditions under which work may be carried on safely and provides for the precautionary safety arrangements to be taken when any person engages in work or other activity in proximity to overhead high-voltage lines.

"§ 95-229.6. Definitions.

As used in this Article, unless the context requires otherwise:

(1) 'Covered equipment' or 'covered items' means any mechanical equipment, hoisting equipment, antenna, boat mast, or rigging; any part of which is capable of vertical, lateral, or swinging motion that could cause any portion of the equipment or item to come closer than 10 feet to a high-voltage line during erection, construction, operation, or maintenance; including, but not limited to, equipment such as cranes, derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay-loaders, haystackers, combines, irrigation equipment, portable grain

augers or elevators, and mechanical cotton pickers. These terms also include items such as handheld tools, ladders, scaffolds, antennas, boat masts and outriggers, houses or other structures in transport, and gutters, siding, and other construction materials, the motion or manipulation of which could cause them to come closer than 10 feet to a high-voltage line.

(2) 'High-voltage line' means all aboveground electrical conductors of voltage in excess of 600 volts measured between conductor and ground, except those conductors that are (i) de-energized and grounded or (ii) enclosed in suitable mechanical protection in accordance with the requirements of the National Electrical Safety Code.

(3) 'Person' means natural person, firm, business association, company, partnership, corporation, or other legal entity.

(4) 'Person responsible for the work to be done' means the person performing or controlling the job or activity that necessitates the precautionary safety measures required by this Article.

(5) 'Warning sign' means a weather-resistant sign of not less than five inches by seven inches with at least two panels: a signal panel and a message panel. The signal panel shall contain the signal word 'WARNING' in black lettering and a safety alert symbol consisting of a black triangle with an orange exclamation point, all on an orange background. The message panel shall contain the following words, either in black letters on a white background or white letters on a black background: 'UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH-VOLTAGE LINES -- Contact with power lines can result in death or serious burns.' A symbol or pictorial panel may also be added. Such warning sign language, lettering, style, colors, size, and format shall meet the requirements of the American National Standard ANSI Z535.4-1991, Product Safety Signs and Labels, or its successor or such equally effective standard as may be approved for use by the Commissioner of Labor. In the event of a conflict with regard to the appearance or content of the warning sign, the standard approved by the Commissioner of Labor shall take precedence over any description or standard set out in this subdivision.

"**§ 95-229.7. Duty and responsibility regarding use of equipment.**

It shall be the duty and responsibility of (i) employers of persons using any covered equipment or covered item for the benefit of the employers or others and (ii) individuals using any covered equipment or covered item for the benefit of themselves or others to acquaint themselves and their employees or agents who will be using the equipment or item or will be engaged in the work operations or other activities with the provisions of this Article.

"**§ 95-229.8. Prohibited activities.**

(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.9, 95-229.10, and 95-229.11, the following actions are prohibited:

(1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work or activity upon any land, building, highway, or other premises that will cause:

a. Such agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or

b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.

(2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:

a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,

b. Refuse collection equipment is operating, or

c. Agricultural equipment is operating.

(3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.

(4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.

(5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any

overhead utility lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.

(6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines.

(b) If the line has been insulated or de-energized and grounded, in accordance with G.S. 95-229.11, the required clearance may be reduced from 10 feet to not less than two feet. Under no circumstances shall the line or its covering be contacted. If the lines are temporarily raised or moved to accommodate the expected work or other activity, without also being insulated or de-energized and grounded, the required 10-foot clearance from the line shall not be reduced.

"**§ 95-229.9. Warning signs.**

(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

(1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

(2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

(b) If the Commissioner of Labor determines that a successor, substitute, or additional sign standard may or shall be used in place of the requirements listed in G.S. 95-229.6, a period of not less than 18 months from such determination shall be allowed for any required replacement of signs.

"**§ 95-229.10. Notification.**

(a) When any person desires to carry on any work or activity in closer proximity to any high-voltage line than permitted by this Article, the person responsible for the work or activity to be done shall notify the owner or operator of the high-voltage line prior to the time the work or activity is to be commenced. Such notification shall occur at the earliest practical time; however, such notification shall occur not less than 48 hours, excluding Saturday, Sunday, and legal State and federal holidays, prior to the intended work. In emergency situations, including police, fire, and rescue emergencies, such notification shall occur as soon as possible under the circumstances. In cases where the person or business entity responsible for doing the work is doing so under contract or agreement with a government entity, and the government entity and the owner or operator of the lines have already made satisfactory mutual arrangements, further arrangements for that particular activity are not required.

(b) Every notice served by any person on an owner or operator of a high-voltage line shall contain the following information:

(1) The name, address, and telephone number of the individual serving such notice;

(2) The location of the proposed work or activity;

(3) The name, address, and telephone number of the person responsible for the work or activity;

(4) The field telephone number of the site of such work or activity, if one is available;

(5) The type, duration, and extent of the proposed work or activity;

(6) The name of the person for whom the proposed work or activity is being performed;

(7) The time and date of the notice; and

(8) The approximate date and time when the work or activity is to begin.

(c) If the notification required by this Article is made by telephone, a record of the information in subsection (b) of this section shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this Article.

(d) Owners or operators of high-voltage lines may form and operate an association providing for mutual receipt of notification of activities close to high-voltage lines in a specified area. In areas where an association is formed, the following shall occur:

(1) Notification to the association shall be effected as set forth in this section.

(2) Owners or operators of high-voltage lines in the area:

a. May become members of the association;

b. May participate in and receive the services furnished by the association; and

c. Shall pay their proportionate share of the cost for the services furnished.

(3) The association whose members or participants have high-voltage lines within a county shall file a list containing the name, address, and telephone number of every member and participating owner or operator of high-voltage lines with the clerk of superior court.

(4) If notification is made by telephone, an adequate record of the information required by subsection (b) of this section shall be maintained by the association to document compliance with the requirements of this Article.

"**§ 95-229.11. Precautionary safety arrangements.**

(a) Installation or performance of precautionary safety arrangements shall be performed by the owner or operator of high-voltage lines only after mutually satisfactory arrangements have been negotiated between the owner or the operator of the lines, or both, and the person responsible for the work or activity to be done. The negotiations shall proceed promptly and in good faith with the goal of

accommodating the requested work or activity consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with high-voltage lines as far as is reasonable and cost-effective. The person responsible for the work or activity may perform the work only after satisfactory mutual arrangements, including coordination of work and construction schedules, have been made between the owner or operator of the high-voltage lines and the person responsible for the work or activity. The owners or operators of high-voltage lines shall make the final determination as to which arrangements are most feasible and appropriate under the circumstances; provided, however, that the utility may determine that no arrangements can be made that would allow the proposed activity to be carried out in a reasonably safe manner or at reasonable cost taking into account the cost to its customers, and the owner or operator of high-voltage lines may refuse to enter into an agreement on that basis.

(b) The precautionary safety measures shall be appropriate, reasonable, and cost-effective for the work or activity of which the owner or operator of high-voltage lines has received notification. During mutual negotiations, the person responsible for the work or activity may change the notification of intended activity to include different or limited work or activity so as to reduce the precautionary safety measures required to accommodate such work or activity. The precautionary safety measures shall not violate the requirements of the current edition of the National Electrical Safety Code.

(c) The owner or operator of the high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made; except that, if the amount of payment is in dispute, the owner or operator shall commence with providing precautionary safety measures as if agreement had then been reached and the undisputed amount shall be paid according to the agreement reached as to that amount. If agreement for payment of the disputed amount has not been reached within 14 days from completion of precautionary safety measures, the owner or operator and the person or business entity responsible for doing the work may resolve the dispute by arbitration or other legal means.

(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the date of payment, if required, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon in a timely manner, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like.

(e) Precautionary safety arrangements may include:

(1) Placement of temporary mechanical barriers separating and preventing contact between material, equipment, other objects, or persons and high-voltage lines;

(2) Temporary de-energization and grounding;
(3) Temporary relocation or raising of the high-voltage lines; or
(4) Other such measures found to be appropriate in the judgment of the owner or operator of the high-voltage lines.

(f) The actual expense incurred by any owner or operator of high-voltage lines in taking precautionary measures as set out in subsections (a) through (e) of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work or activity to be done, except if:

(1) Any owner or operator of an overhead high-voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county, or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high-voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility. However, if it is determined by the Department of Transportation or a city, county, or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor;
(2) The owner or operator of the high-voltage lines has not installed the line in conformance with an applicable edition of the National Electrical Safety Code. In that case, the liability of the person responsible for the work or activity shall be limited to the amount required to accommodate the work or activity over and above the amount required to bring the installation into compliance with the National Electrical Safety Code; or
(3) In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of one thousand dollars ($1,000).

"**§ 95-229.12. Indemnification.**

A person responsible for the work to be done shall indemnify the owner or operator of the high-voltage lines and third parties, if any, for all damages to facilities, injuries to persons, and all costs, expenses, and liabilities incurred by the owner or operator of the lines, or both, and third parties, if any, as a result of any contact with the high-voltage lines if:

(1) The person responsible for the work causes, permits, or allows any work or activity in violation of any provision of this Article or an agent or employee of a person responsible for the work performs work which furthers the work or activity of a person responsible for the work and which is in violation of any provision of this Article; and
(2) As a result, a physical or electrical contact with a high-voltage line occurs.

"**§ 95-229.13. Exemptions.**

(a) This Article shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of the following systems, provided that such work on any of the following systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the systems to perform the work, and the owner of the system has a valid joint-use contract or agreement with the owner of the high-voltage lines:

(1) Rail transportation systems;

(2) Electrical generating, transmission, or distribution systems;

(3) Communications systems, including cable television; or

(4) Any other publicly or privately owned system, including traffic signals.

(b) This Article also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801, et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration.

"**§ 95-229.14. Application.**

Nothing in this Article shall relieve any person from complying with any safety rule, regulation, or statute. The provisions of this Article shall not be construed either to abrogate or diminish any rights, duties, defenses, or remedies existing under law or to create or expand any rights, duties, defenses, or remedies existing under law. A violation of this Article shall not create a presumption of contributory negligence. An action may be brought by an owner or operator of a high-voltage line to recover the cost of precautionary safety arrangements or for damage to its facilities. Nothing contained in this Article shall be construed to alter, amend, restrict, or limit the liability of any person for violation of that person's duty under current law in the construction, maintenance, and supply of electricity; nor shall any person be relieved from liability as a result of violations of standards under existing law regarding the construction, maintenance, and supply of electricity, where such violations of existing standards of care are found to be a cause of damage to property, personal injury, or death.

"**§ 95-229.15. Severability.**

The provisions of this Article are severable. If any part of this Article is declared invalid or unconstitutional, such declaration shall not affect the remainder."

Sec. 2. This act becomes effective October 1, 1996.

APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

DR5197-RLZ(4.30)

Short Title: Resale of Water and Sewer. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT REGARDING THE JURISDICTION OF THE UTILITIES COMMISSION WITH REGARD TO THE RESALE OF WATER OR SEWER SERVICE IN APARTMENTS, CONDOMINIUMS, AND SIMILAR PLACES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110 is amended by adding a new subsection to read:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission shall be authorized, consistent with the public interest, to adopt procedures for the purpose of allowing resale of water and sewer service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission) at a rate or charge which does not exceed the actual purchase price of such service to the provider plus a reasonable administrative fee. The Commission shall issue rules to implement the services authorized by this subsection and, notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing such services and their customers under any other provision of law."

Sec. 2. This act is effective upon ratification.

APPENDIX E

North Carolina General Assembly
Joint Legislative Utility Review Committee
State Legislative Building
Raleigh 27601-2808

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April 24, 1996

MEMORANDUM

TO: Representative Danny McComas

FROM: Steven Rose, Committee Counsel

RE: Natural Gas Expansion in North Carolina

You have asked me to briefly outline the activities of the North Carolina General Assembly in promoting the expansion of natural gas service in North Carolina.

In 1987, the Joint Legislative Utility Review Committee began to look at ways in which the General Assembly could promote the expansion of natural gas service in North Carolina. From 1987, and continuing through the present, this Committee has devoted considerable attention to the problem.

In 1989, G.S. 62-36A was enacted by the General Assembly. That statute requires the systematic reporting by local distribution companies of their plans for natural gas expansion, together with regular reporting of the status of natural gas availability. These reports are updated every two years. The LDCs report to the Utilities Commission. The statute requires the Utilities Commission and the Public Staff to independently provide analyses and summaries of these reports, together with a status report of natural gas service in North Carolina, to the Joint Legislative Utility Review Committee.

G.S. 62-36A was amended during the 1995 legislative session to provide that the Utilities Commission is to oversee expansion of service by each LDC to all areas of its franchise territory by July 1, 1998, or within three years of the time the franchise territory is awarded. If the LDC fails to do this, it forfeits its exclusive franchise rights to the portion of its territory not being served. A further amendment to G.S. 62-36A provides that the Utilities Commission is to issue certificates of public convenience and necessity for natural gas service for all areas of the State for which certificates have not already been issued. This process is to be completed by January 1, 1997.

The next natural gas planning reports are due from the Commission and the Public Staff to this Committee in May, 1996.

In 1990, the General Assembly enacted G.S. 62-36B giving the Utilities Commission the power to order natural gas LDCs to negotiate service agreements with interstate or intrastate pipelines if such action will result in increased competition in the

North Carolina natural gas industry and will likely result in lower costs to consumers without substantially increasing the risks of service interruptions to customers, or will substantially reduce the risks of service interruptions without unduly increasing costs. The bill that enacted G.S. 62-36B also amended Chapter 136 to provide authority for the Department of Transportation to obtain additional rights-of-way for both present and future utility corridors at the same time it acquired rights-of-way for public roads.

Perhaps the most significant piece of legislation designed to promote natural gas expansion in North Carolina was passed in 1991. House Bill 1039 was designed to directly stimulate the introduction of natural gas service into the many unserved and underserved areas of the State, so that consumers would have an additional economical and environmentally benign fuel available to them, and as a stimulus to industrial development. House Bill 1039 authorized the Utilities Commission to create expansion funds for each of the four LDCs. Each fund is exclusively used in the territory of the LDC for which it is created, and there is no cross contribution to these funds. They may consist of refunds from pipeline companies to LDCs, a surcharge on gas sales which may not exceed 15 cents per dekatherm, and other funds which the Utilities Commission determines are appropriate. This method may be used only where expansion would otherwise not be economically feasible and may be used only to the extent needed to make a project economically feasible. The Utilities Commission has complete control over the use of the funds including the final selection of the expansion projects. When a project becomes economically viable because the number of customers on that line increases sufficiently, the Commission may require pay-back by the LDC with interest.

Projects funded from the expansion fund do not earn a rate of return for the company on the part funded by the expansion fund until the funds have been repaid, and the company may not depreciate expansion fund assets until they have paid the money back. The Utilities Commission and the Public Staff report on the use of the funds to this Committee in conjunction with the reports on gas expansion mentioned above. A review of previous biennial reports to this Committee, and the report to be made in May, 1996, will illustrate the expansions completed and those planned for future construction with the use of this mechanism.

House Bill 1039 also repealed the old gas cost adjustment law which had been passed before natural gas was deregulated at the federal level. It enacted a new gas cost adjustment law which provides for an annual review of all gas cost adjustments and gas cost expenses to determine that they were prudently incurred. There is a provision for a true-up for under-recovery or over-recovery. Finally, House Bill 1039 amended the Local Development Act to clarify that the authority of local governments to extend utilities for industrial development includes the authority to construct and own those utility facilities.

The gas expansion fund portion of House Bill 1039 was challenged in court. In 1994 the North Carolina Supreme Court upheld the act , finding that the expansion fund legislation was a proper delegation of legislative authority and was not unconstitutional.

There are presently two interstate natural gas pipelines serving North Carolina. The main pipeline is provided by Transco, with an additional pipeline provided by Columbia Gas Transmission Corporation. In addition, there are plans to expand the Cardinal Pipeline which originates near Reidsville, North Carolina and continues to Burlington, North Carolina. The expansion would be approximately 65 additional miles from Burlington to a point southeast of Raleigh. The proposed expansion would add 140,000,000 cubic feet per day of additional firm natural gas transportation capacity in North Carolina. Presently, Public Service of North Carolina and Piedmont Natural Gas own the Cardinal Pipeline. With the proposed extension, ownership will be by a limited liability company consisting of Transco, Public Service, Piedmont, and NCNG.

APPENDIX F

STATEMENT OF THE
NORTH CAROLINA UTILITIES COMMISSION
BEFORE THE
JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE
REGARDING STATUS OF NORTH STATE UTILITIES

THURSDAY, JANUARY 11, 1996

Thank you for this opportunity to appear before you today to address a matter of vital concern and importance to the North Carolina Utilities Commission and Public Staff. As you may be aware, on September 1, 1993, the Utilities Commission entered an Order in Docket No. W-848, Sub 16, appointing emergency operators for all of the low-pressure pipe (LPP) sewer systems owned by North State Utilities, Inc., in North Carolina. Harrco Utility Corporation (Harrco) was appointed the emergency operator for the nine LPP sewer systems in Wake, Durham, and Orange Counties, and Tri-County Wastewater Management (Tri-County) was appointed emergency operator for the Oakcroft Subdivision in Mecklenburg County. The Commission Order required North State to forfeit the $20,000.00 in bonds it had posted pursuant to G.S. 62-110.3. The Commission approved monthly rates of $86.50 per customer for Harrco and $85.00 per customer (now $39.64) for Tri-County. What follows is a discussion, generally set forth in chronological order, of the most significant developments affecting the North State LPP sewer systems and the current status of the North State matter.

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

The Commission initially required the emergency operators to prepare lists of the capital improvements which were needed in each system in order to bring the North State systems into compliance with the rules and regulations of the North Carolina Division of Environmental Health and the Wake, Durham, Orange, and Mecklenburg County Health Departments. The Commission held hearings to consider needed improvements and approved customer assessments to fund necessary work on an emergency basis, such as replacing a dosing pump on one system, repiping and replacing solenoid valves on two systems, and replacing access hatches on six systems. Many customers appeared and testified at the initial public hearings conducted by the Commission in

November 1993, to consider emergency assessments. They were understandably frustrated and angry. The customers generally emphasized the fact that they were victims and in no way responsible for the problems with their sewer systems which they believed to be the fault of North State Utilities, Inc. They also testified to a general feeling of disappointment and disillusionment with the agencies of the State of North Carolina responsible for supervising and regulating North State.

On November 23, 1993, the Public Staff filed a motion whereby the Commission was requested to institute an investigation into the operational and financial history of North State Utilities, Inc. In support of its motion, the Public Staff noted that inquiries from customers, the press, and others indicated great interest in such questions as how the North State systems reached their present states of disrepair, whether any financial relief was available for present customers, and what can be done to prevent such occurrences in the future. The Public Staff proposed to conduct a financial audit of North State and any affiliated companies and to investigate the planning, construction, and maintenance of the systems in North State's service areas. The Public Staff further requested the Commission to require the cooperation of all parties under its jurisdiction. On November 29, 1993, the Utilities Commission instituted an investigation into the operational and financial history of North State to address, in particular, the issues raised by the Public Staff in its motion of November 23, 1993. The Public Staff filed the results of its audit on September 30, 1994, and concluded that North State's failure was primarily the result of gross mismanagement. The Public Staff was unable to locate any reserve of funds which could be drawn on for repair or replacement of the sewer systems and stated that the dispersal fields owned by the Company constituted the only potential source of significant cash.

Because the Utilities Commission has no authority over other state and county agencies which exercise regulatory jurisdiction over North State, the Commission and the Public Staff jointly wrote to the Co-Chairmen of this Committee on December 3, 1993, and recommended that the Joint Legislative Utility Review Committee conduct public hearings to investigate the practices and procedures followed by all state agencies having regulatory oversight over North State Utilities, Inc., since its inception as a public utility in 1986, including the North Carolina Utilities Commission, the Public Staff, the Divisions of Environmental Management and Environmental Health of the North Carolina Department of Environment, Health and Natural Resources, and the Orange, Durham, Wake, and Mecklenburg County Health Departments. In our letter, we stated that the investigation should focus on the issues of how the North State sewer systems reached their present states of disrepair, whether any financial relief is available from any governmental agency for present customers, and what can and should be done to prevent such occurrences in the future. The Joint Legislative Utility Review Committee subsequently held a series of meetings to consider those matters and received formal reports from the Utilities Commission and/or the Public Staff on January 18, 1994, February 7, 1994, April 22, 1994, September 16, 1994, December 9, 1994, and December 22, 1994.

The Commission, upon motion of the Public Staff, also instituted a show cause proceeding against certain developers who retain ownership of the dispersal fields in four of the sewer systems in Wake County (Sutton Estates, Holly Brook, Manchester, and Monticello) to determine whether those entities should be declared public utilities with respect to the sewer systems in their respective

subdivisions and whether they should be required to repair or compensate the emergency operator for the repair of those sewer systems. On April 14, 1994, the Commission entered an Order in the show cause proceeding ruling that the developers of the Manchester, Monticello, Sutton Estates, and Holly Brook Subdivisions are not public utilities under state law with respect to the sewer systems in their respective subdivisions and holding that the developers are not legally obligated to repair or compensate the emergency operator for the repairs of those sewer systems. The developers were, however, required to transfer fee simple title to the dispersal fields to North State as required by existing contracts. This matter was appealed to the North Carolina Court of Appeals by the Attorney General, but the appeal was dropped when the Attorney General reached settlement agreements with the developers. Under the terms of the settlement agreements for the Monticello and Manchester Subdivisions, the affected sewer customers were given a one-year option to acquire the nitrification and reserve fields associated with the LPP sewer systems in their subdivisions. The options expire on July 19, 1996, and if they are not exercised, the developers have agreed to convey the properties to a person or entity designated by the Commission on or before August 19, 1996. The developer of the Holly Brook Subdivision has reached a separate agreement with the Holly Brook Homeowners' Association involving a transfer of all of the undeveloped land currently owned by the developer in the subdivision (more than 15 acres) plus a payment of $50,000 at closing to the Homeowners' Association.

In response to the North State problem, the General Assembly ratified House Bill 1628 effective July 6, 1994, as recommended by the Joint Legislative Utility Review Committee, to provide an expedited procedure for creation of county water and sewer districts to address the failure of LPP sewer systems and applications for grants and loans through accounts administered by the North Carolina Environmental Management Commission (EMC). Wake County has been very active and cooperative in establishing sewer districts for six of the seven North State systems located in Wake County. Those sewer districts were formally established on September 8, 1994, and six separate applications for grants and loans were submitted to the Environmental Management Commission. Orange County submitted a grant application for the Piney Mountain Subdivision.

The Environmental Management Commission adopted temporary rules pursuant to Ratified House Bill 1628 on September 8, 1994, regarding applications for High-Unit Cost Grants from the North Carolina Clean Water Revolving Loan and Grant Program for failed LPP sewer systems received by September 30, 1994. The temporary rules adopted by the EMC limited the total amount of funds to be made available for grants to the North State LPP systems to a maximum of $500,000 to be divided equally among the total number of lots of all the applicants for such grant funds subject to the following conditions:

1. No one applicant could receive more than 50% of the total project cost.

2. Funding was limited to a maximum of $1,500 per lot for each applicant.

The EMC ultimately awarded grants in the total amount of $415,500, split among seven North State systems as follows:

Banbury Woods	$ 33,000
Holly Brook	$106,500
Manchester	$ 70,500
Monticello	$ 27,000
Saddleridge	$ 37,500
Woods of Ashbury	$ 52,500
Piney Mountain	$ 88,500

On September 15, 1994, the Attorney General filed a motion requesting the Commission to issue an Order requiring North State and its principals, Dennis J. Osborne, Stanley I. Hofmeister, and B.L. Carlile, to show cause why they should not be fined pursuant to G.S. 62-310 and G.S. 62-312 for failure to maintain North State's LPP sewer systems in ten subdivisions and for effectively abandoning those systems without permission in violation of Chapter 62 of the North Carolina General Statutes and Commission regulations. On October 17, 1995, the Attorney General filed a motion whereby the Commission was requested to approve a Settlement Agreement. The Settlement Agreement, which was attached to the Attorney General's motion, was signed by and on behalf of all of the North State parties and the Attorney General. The Attorney General requested expedited consideration and determination regarding his motion and the Settlement Agreement because of developments in related legal proceedings and matters. The Settlement Agreement included provisions for the following:

* North State will be maintained as a corporation in good standing with sufficient officers to execute documents as requested by the Commission through and including December 31, 1997. Stanley I. Hofmeister agreed to pay the cost of maintaining the corporation, including fees and legal and accounting costs, and has provided a note which may be called should he fail to make appropriate payments.

* North State agreed to hold all of its assets and those of its subsidiary Ef-Tek Services, Inc. for the benefit of its customers, to be held, distributed, liquidated or other appropriate acts taken as directed by Order of the Commission.

* North State agreed to convey property or quit claim any interest it has in property in the Piney Mountain and Holly Brook Subdivisions to existing customer organizations in those respective subdivisions.

* North State agreed to convey and quit claim any interest it has in properties in the other subdivisions to persons or entities designated by the Commission as recipients for the benefit of property owners served by the low-pressure pipe systems in the respective subdivisions.

* North State agreed to convey and quit claim so much of the property in each subdivision as is needed by a Sewer District or other entity to provide long-term wastewater collection and disposal service for the benefit of customers of the respective subdivisions.

* North State agreed to take conveyance and hold or transfer properties in Sutton Estates, Manchester, and/or the Monticello Subdivisions for the benefit of customers if so ordered by the Commission.

* The North State parties agreed to pay $8,750 in cash to the Commission as trustee for the benefit of the customers.

* The North State parties agreed not to own or operate any public utility or wastewater treatment system in North Carolina for a period of ten years.

* Dennis J. Osborne agreed to surrender his North Carolina licensed wastewater systems operator certificate.

* Dennis J. Osborne also agreed not to act as a soil scientist for the State of North Carolina or any state agency or subdivision thereof for a period of five years.

* The Attorney General agreed to seek dismissal of his show cause action for penalties in exchange for the above.

* The Commission retains jurisdiction over the parties for the purpose of interpretation and enforcement of the Settlement Agreement.

By Order dated October 25, 1995, the Commission approved the Settlement Agreement and dismissed the show cause proceeding against North State and its principals.

On April 10, 1995, the General Assembly ratified Senate Bill 207, as recommended by the Joint Legislative Utility Review Committee, to modify and strengthen the bonding requirements set forth in G.S. 62-110.3 for public utilities providing water or sewer utility services.

The emergency operators are required to file monthly financial reports on a subdivision-by-subdivision basis which are audited for accuracy and reasonableness by the Public Staff. On January 5, 1996, the Public Staff filed the results of its most recent audit of the books and records of Harrco Utility Corporation covering the two-year period from September 1, 1993, through August 31, 1995. The Public Staff has proposed certain refunds and rate adjustments for the North State sewer systems operated by Harrco. Harrco is preparing a response to the Public Staff's audit and recommendations which will be filed with the Utilities Commission. Once Harrco files its response, the Commission will take the matter under advisement and issue a written Order setting forth its decision on the Public Staff's recommendations. The Public Staff is currently in the process of auditing the books and records of Tri-County Wastewater Management, the emergency operator of the Oakcroft sewage collection system.

The current status of each of the 10 North State LPP sewer systems is as follows:

1. Sutton Estates - The City of Raleigh extended sewer service to the 21 customers served by the North State LPP sewer system in October 1994. The affected customers paid the full cost of that connection ($18,000) to the City of Raleigh.

2. Manchester - A sewer district has been formed to serve this subdivision. The sewer district has petitioned the City of Raleigh to provide sewage treatment service to the Manchester Subdivision and Raleigh has agreed to provide that service. The estimated cost of this project is approximately $500,000 and the proposed completion date is July 1996.

3. Banbury Woods - A sewer district has been formed to serve this subdivision. The sewer district has petitioned the City of Raleigh to provide sewage treatment service to the Banbury Woods Subdivision and Raleigh has agreed to provide that service. The estimated cost of this project is approximately $281,000 and the proposed completion date is July 1996.

4. Holly Brook - A sewer district has been formed to serve this subdivision. The residents of the Holly Brook Subdivision have secured the approvals necessary to connect to the Town of Cary. The estimated cost of this project is approximately $528,000 and the proposed completion date is July 1996.

5. Woods of Ashbury - A sewer district has been formed to serve this subdivision. The Town of Fuquay-Varina has agreed to extend sewer service to the Woods of Ashbury Subdivision in conjunction with a project to provide sewer service to the nearby Wake Tech campus. This project is presently scheduled for completion in March 1997, after the line to Wake Tech and a new wastewater treatment plant are expected to become operational. The estimated cost of this project is approximately $263,400.

6. Monticello - A sewer district has been formed to serve this subdivision. The sewer district will receive sewage treatment service from an existing wastewater treatment plant operated by Heater Utilities, Inc. The estimated cost of this project is approximately $347,000 and the proposed completion date is July 1996.

7. Saddleridge - A sewer district has been formed to serve this subdivision. The sewer district will receive sewage treatment service from an existing wastewater treatment plant operated by Heater Utilities, Inc. The estimated cost of this project is approximately $479,000 and the proposed completion date is July 1996.

8. Piney Mountain - The residents of the Piney Mountain Subdivision in Orange County, with the support of the Orange Water and Sewer Authority (OWASA), secured the approvals necessary to connect to the sewer system operated by the City of Durham and the project was completed in June 1995. The estimated cost for this project was approximately $425,000.

9. Wexford - Durham County will construct a pump station and force main connecting the Wexford Subdivision to an existing wastewater treatment plant operated by Heater Utilities, Inc. The estimated cost of this project exceeds $200,000 and the proposed completion date is February 1996.

10. Oakcroft - The Oakcroft Subdivision in the Town of Matthews began receiving sewage treatment service through a connection to the Charlotte-Mecklenburg Utility Department (CMUD) sewer system in June 1995. The total cost of this project, approximately $40,000, was paid by the builder/developer. The monthly rate in this subdivision was reduced from $85.00 to $39.64 per connection in July 1995.

The final cost to connect all ten of the North State sewer systems to municipal or public utility sewage treatment systems will likely exceed $3 million.