STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. M-100, SUB 124
DOCKET NO. E-100, SUB 64A
DOCKET NO. E-100, SUB 71

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 124

In the Matter of	)	
Investigation of Incentive Programs	)	
Covered by G.S. 62-140(c)	)	
	)	
DOCKET NO. E-100, SUB 64A	)	
In the Matter of	)	
Request by Duke Power Company for	)	ORDER ON
Approval of a Food Service Program	)	RECONSIDERATION
	)	
DOCKET NO. E-100, SUB 71	)	
In the Matter of	)	
Investigation of the Effect of Electric	)	
IRP and DSM Programs on the Competition	)	
Between Electric Utilities and Natural	)	
Gas Utilities	)	

BY THE COMMISSION: On October 24, 1995, the Commission issued its Order Adopting Guidelines in Docket Nos. E-100, Sub 64A and Sub 71. The purposes of the proceedings in these dockets were to consider approval of Duke's proposed Food Service Program and to consider the effect of electric Integrated Resource Planning (IRP) and Demand Side Management (DSM) programs on the competition between electric and natural gas utilities. On that same date, in a separate but companion docket, the Commission also issued its Order Adopting Rule R1-38 in Docket No. M-100, Sub 124. The purpose of this proceeding was to determine what types of electric and natural gas incentive programs must be submitted for Commission approval under G.S. 62-140 (c).

On November 20, 1995, the Public Staff filed a Motion for Reconsideration requesting the Commission to reconsider five areas or issues in the Orders cited immediately above. On November 22, 1995, the Commission issued an Order Requesting Responses to the Public Staff's Motion.

On November 28, 1995, the Southern Environmental Law Center (SELC) filed a Motion for Additional Reconsideration of the Order Adopting Guidelines requesting the Commission to reconsider an additional issue in its Order in Docket Nos. E-100, Sub 64A and Sub 71. On December 1, 1995, the Commission issued an Order Requesting Responses to the SELC's Motion.

The following parties filed responses as requested in the Commission's Order Requesting Responses: Carolina Power & Light Company (CP&L), the Carolina Utility Customers Association (CUCA), Duke Power Company (Duke), North Carolina Natural Gas Company (NCNG), North Carolina Power Company (NC Power), Piedmont Natural Gas Company (Piedmont), the Public Staff, and the SELC.

In its Motion for Reconsideration, the Public Staff identifies five areas or issues where the Public Staff perceives the Orders either leave small gaps in the regulatory framework or appear inconsistent. For each issue, the Public Staff's Motion suggests specific language changes which it requests the Commission to adopt in order to clarify how the Orders are to be applied. SELC's Motion for Additional Reconsideration identifies one additional issue which it requests the Commission to reconsider and also suggests specific language for the Commission to adopt in order to clarify the issue it has raised.

Generally, the filed responses indicate substantial agreement by the Public Staff and SELC with respect to the changes requested by each party's Motion. CUCA generally agreed with the issues raised for reconsideration, but frequently suggested language which differed from the language offered by the Public Staff and SELC. All of the utilities which filed responses, namely CP&L, Duke, NCNG, NC Power, and Piedmont, requested the Commission to deny the Motions for Reconsideration or reject the proposed changes. Most of these parties did not specifically address each issue raised by the Public Staff and SELC, but instead, opposed reconsideration on procedural grounds, i.e., all parties had ample opportunity through numerous filings and the hearing to express their views which were considered by the Commission in reaching its decision.

In the remainder of this Order on Reconsideration, the Commission will present each issue raised for reconsideration, a summary of the responses of the parties with respect to each issue, and the Commission's decision.

Issue No. 1

The Public Staff requests the Commission to replace the word "secure" with the word "retain" in Commission Rule R1-38(c)1.

Subsection (c)1 of the Rule deals with the scope of G.S. 62-140(c) in terms of the programs that must be approved, who funds them, and who offers them. In the sentence relevant to the Public Staff's Motion, the Rule reads:

> A Public Utility shall file for approval all Programs to offer Consideration which are administered, promoted, or funded by the Public Utility's subsidiaries, affiliates and/or unregulated divisions or businesses where the Public Utility has control over the entity offering or is involved in the Program and an intent or effect of the Program is to adopt, secure, or increase the use of the Public Utility's public utility services. (underline added)

The Public Staff's Proposed Rule R1-38 (which the Commission directed the parties to comment on in the Order dated December 9, 1995) contained the word "retain." As discussed on page 7 of the Order Adopting Rule R1-38, NCNG, Piedmont and the electric utilities objected to the word "retain" as contrary to the statute. The statute says, in part, "...to secure the installation or adoption of the use of such public utility service" and they proposed to change "retain" to "secure." The Commission made this change.

In its Motion for Reconsideration, the Public Staff gave two reasons why it had requested reconsideration on this issue. First, the Public Staff opined that the Commission Rule in general was very expansive in its scope, yet use of the word "secure" in subsection (c)1 exempts a significant number of possible incentive programs from Commission jurisdiction. As an example, the Public Staff contended that if a natural gas or electric utility offered rebates or low interest loans on new heating systems in new homes, such programs clearly must be submitted for Commission approval. However, a program offering those very same incentives to existing customers to prevent existing customers from switching to a competitor's heating system is not subject to the Commission's Rule. Further, the Public Staff contended a utility could even give a new heating system to an existing customer who agreed not to switch to a rival utility's service, and the Commission's Rule would not allow the Commission to review the program. Second, while acknowledging that the word "secure" comes from G.S. 62-140(c), the Public Staff contended that this word can be ambiguous in the absence of the rest of the statute. However, because of the later requirement of the statute that an incentive be offered "to all persons within the same classification using or applying for such public utility service" (underline added), the Public Staff believes the statute clearly covers programs designed to retain customers.

The SELC and CUCA agreed with the Public Staff that Rule R1-38(c) should apply to incentive programs designed to secure the continued use of a utility service by existing customers as well as to programs to new customers. CUCA suggested that the Commission could address this issue by announcing that the use of the word "secure", rather than the word "retain", in the Rule was not intended to exempt utility programs intended to retain the patronage of existing customers and that all such programs are covered by Commission Rule R1-38(c)1.

Each of the utilities which filed responses opposed changing Rule R1-38 as requested by the Public Staff. NCNG and Piedmont again opposed the word "retain" because the word "secure" is contained in G.S. 62-140(c), which Rule R1-38 is intended to implement. NCNG also stated that "the statute does not address retention of service that does not increase load." CP&L, also noting that "secure" is the word used by the General Assembly in G.S. 62-140(c), believes that the Commission's use of the language approved by the General Assembly is appropriate and should not be altered through the adoption of the Rule. In its comments, Duke also cited the language of the statute as supportive of Rule R1-38. Duke believed no ambiguity existed in the Rule.

The Commission concludes that one definition of the word "secure" is "to free from risk of loss." Consistent with this definition, Commission Rule R1-38(c)1 applies to incentive programs designed to secure the continued usage of a utility's service by existing customers as well as the initial

use of that service by new customers. Commission Rule R1-38(c)1 was not intended to exempt utility incentive programs intended to retain the patronage of existing utility customers and all such programs are covered by the provisions of Rule R1-38(c)1. Given this interpretation of the Rule as now written, there is no need to change the word "secure" to "retain" as requested by the Public Staff.

Issue No. 2

The Public Staff requests the Commission to adopt the following three changes in the Order Adopting Guidelines and Guideline No. 1 in order to clarify that approval of a program pursuant to Rule R1-38 does not imply approval for rate recovery:

(1) Finding of Fact No. 8 - Insert the word "proposed" between the words "are" and "to" so that the underlined phrase reads "but are proposed to be paid for by ratepayers."

(2) Finding of Fact No. 13 - Strike the words "for its ratepayers" from the end of the sentence. According to the Public Staff, this change makes the Finding of Fact consistent with Guideline No. 1, and removes any implication of ratemaking treatment from the Finding of Fact.

(3) Guideline No. 1 - Add a new subsection (f) to read:

> Approval of a program pursuant to Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings in accordance with established criteria in those cases.

SELC supported these changes. CUCA also supported these changes with one important exception. CUCA did not believe that the words "for its ratepayers" should be removed from Finding of Fact No. 13. Instead, CUCA believed that the words "for its ratepayers" should be added to Guideline No. 1. CUCA stated that the entire purpose of the Rule and the Guidelines is to ensure that the proposed incentive program is cost effective from a ratepayer perspective.

No other party filing responses specifically addressed this particular issue. However, CP&L responded that a number of changes requested by the Public Staff were made on the basis that the Order as written implies that Commission approval of a utility program also includes approval for ratemaking. CP&L stated this assertion is incorrect and the Public Staff's proposed changes should be rejected.

The Commission did not intend to indicate in its Order Adopting Guidelines or in the Guidelines themselves that approval of a program pursuant to Rule R1-38 constitutes approval of program costs for ratemaking purposes. In order to clarify this intent, the Commission amends Finding of Fact No. 8 as follows:

> Electric or gas DSM programs that do not involve incentives but are proposed to be paid for by ratepayers should be evaluated in general rate cases or similar proceedings, as appropriate, in accordance with criteria typically used by the Commission in such cases.

In addition, in order to further clarify this intent, the Commission adds a new subsection (f) to Guideline No. 1 as stated below:

> Approval of a program pursuant to Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.

Finally, the Commission amends Guideline No. 1 by adding the phrase "for its ratepayers" to the end of Guideline No. 1 for the reasons stated by CUCA in its response.

Issue No. 3

The Public Staff requests that the phrase "may not be recoverable" in Guideline 2.(a) be changed to read "shall not be recoverable." In conjunction with that change, the Public Staff also requests that the first sentence of Guideline 2.(b) be replaced with the following sentence:

> If the presumption that a program is promotional is successfully rebutted, rate recovery of the cost of the incentive shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers.

The Public Staff requested these changes to Guideline No. 2 because it believes the language is unclear and unfairly leans in the direction of guaranteeing utilities the right to recover the costs of programs involving the payment of incentives to third parties. According to the Public Staff, to the extent that the guidelines address ratemaking issues at all, they should: (1) narrowly focus on the issue of whether a program is promotional, and (2) protect the ratepayer against guaranteed approval of rate recovery outside of a general rate case.

With respect to the requested language change in Guideline 2.(a), the Public Staff acknowledges that the phrase "unless the Commission finds good cause to do so" gives the Commission an appropriate amount of flexibility to deal with the rate recovery issue of program costs. However, the Public Staff contends that the phrase "may not be recoverable" weakens the sentence to the point where there would be little or no meaning to a finding by the Commission in a Rule R1-38 proceeding that a program was promotional. Therefore, the Public Staff requests that the word "may" be changed to "shall." With respect to the Public Staff's requested language change in Guideline 2.(b), the Public Staff contends that use of the phrase "shall be recoverable" effectively guarantees the utility some level of rate recovery of program costs, with no flexibility for the Commission to order

otherwise. The Public Staff advocates that its language substitution in Guideline 2.(b) would narrowly focus the ratemaking implications of the Commission's findings in a Rule R1-38 proceeding and would preserve flexibility for the Commission to disallow rate recovery of costs of non-promotional programs on other grounds, such as imprudency.

CUCA and SELC requested the Commission to modify Guidelines 2.(a) and 2.(b) as suggested by the Public Staff.

Piedmont strongly opposes the Public Staff's suggested change to Guideline 2.(a) for the reasons discussed in Piedmont's prior filings in this proceeding -- that a ban on recovery of promotional expenses is unlawful. The change proposed by the Public Staff creates a presumption that promotional expenses are not recoverable. According to Piedmont, such a presumption is unlawful, is not supported by any evidence and is merely a reflection of the unsupported and subjective desire of the Public Staff to skew future proceedings related to recovery of promotional expenses in their favor. Piedmont stated that the Commission specifically adopted the current language, in part, to address Piedmont's concerns and that the Public Staff has identified no new evidence or other considerations that would justify a different result now. For these reasons, Piedmont urges the Commission to reject the Public Staff's proposed change to paragraph 2.(a) of the Commission Guidelines.

CP&L responded that the Public Staff's proposed change to Guideline 2.(a), whereby the word "may" would change to "shall," is inconsistent with the very reason the Public Staff is seeking these changes. CP&L argues that although the Public Staff is allegedly requesting these changes to ensure no ratemaking decisions are being made in the Guidelines, changing the word "may" to "shall" will reduce the Commission's flexibility and will decide that such costs cannot be recovered in rates. CP&L believes the Commission Order is clear that the reasonableness of all costs associated with incentive programs will be determined in a proceeding in which the utility is seeking rates to recover such costs. It asserts that the language of Guideline 2.(b) which includes the phrase "to the extent found just and reasonable" obviously contemplates a Commission proceeding in which the Commission investigates the reasonableness of a program's expenses prior to a utility being allowed rate recovery of such costs.

In response to these requested changes, the Commission concludes that the proposed change to Guideline No. 2.(a) should be rejected. Guideline 2.(a) gives the Commission an appropriate amount of flexibility to deal with the ratemaking issue of program costs. However, on reconsideration the Commission finds it appropriate to revise Guideline 2.(b) as follows:

> If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed the difference between the cost of installing equipment and/or

> constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

Guideline 2.(b) as revised, and stated above, improves the consistency and balance between Guidelines 2.(a) and Guidelines 2.(b) because the word "may" appears in both Guidelines with respect to the recovery of incentives. Revised Guideline 2.(b) also narrows the grounds on which rate recovery of program costs can be challenged in future rate cases.

Issue No. 4

The Public Staff requests the Commission to state the following:

> The ratemaking treatment of promotional, but otherwise cost-effective, programs including direct payment to owners or customers shall be determined in a general rate case or similar proceeding.

Guideline No. 2 includes a description of the possible ratemaking implications for promotional programs which include incentives paid to a third party. However, the Public Staff is concerned that the Order Adopting Guidelines and the Guidelines appear to be silent on the ratemaking implications of a finding that a program that pays incentives directly to customers is promotional, although otherwise cost-effective. The Public Staff states that these types of programs were a significant part of this proceeding and cites three of Duke Power Company's programs as examples. For these reasons, the Public Staff suggests that the language cited above be included, presumably in the Guidelines.

CUCA agrees with the Public Staff that such programs involving payment of incentives directly to customers were a significant part of this proceeding and that the Public Staff's concern with respect to this issue is well-founded. CUCA, however, recommended that a better solution would be to remove all references to payments to "third parties" from Guideline No. 2. According to CUCA, this solution would effectively make Guideline No. 2 applicable to all utility programs which may "affect the decision to install or adopt natural gas service or electric service in the residential or commercial market." CUCA supported its recommendation by noting that G.S. 62- 140(c) makes no distinction between programs involving incentive payments to end-users and those involving payments to third parties. Thus, CUCA feels the policies adopted in this proceeding should apply equally to both types of programs.

With respect to this issue, the Commission agrees with CUCA that Guideline No. 2 should be revised to eliminate all references to third parties since G.S. 62-140(c) makes no distinction between programs involving incentive payments to end-users and those involving payments to third parties. Therefore, Guideline No. 2 as amended shall state:

> If a program involves an incentive per Rule R1-38 and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

Issue No. 5

The Public Staff requests the Commission to delete the underlined words in the following statement:

> The Commission finds that incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient, year round use of utility equipment.

(Emphasis added.)

The danger the Public Staff sees in the language of this Order is that if it is unconditionally accepted that promoting year-round sales advances the goals of energy efficiency, such unconditional acceptance may automatically result in determinations that sales-promoting programs are inherently not "promotional" pursuant to Rule R1-38. Those Rule R1-38 findings would then influence the ratemaking process, perhaps leading the Commission to conclude that sales-promoting expenditures found not to be "promotional" in Rule R1-38 proceedings cannot be disallowed in whole or in part for ratemaking purposes, even if, for example, they largely benefit the stockholders. The Public Staff believes that the costs and benefits of incentives that increase sales should be evaluated differently than those that increase appliance efficiency. According to the Public Staff, the Public Staff has at times recommended, and the Commission has at times ordered, denial of rate recovery of expenditures intended to increase sales. The Public Staff believes it may be appropriate for the Commission to continue to deny certain sales-promoting expenditures in the future for various reasons, including that those expenditures largely benefit the stockholders.

SELC agrees with the Public Staff that the costs and benefits of sales programs should be evaluated differently than those designed to increase efficiency. According to SELC, programs mandating exclusive use of a certain fuel source do not necessarily advance the goals of energy efficiency and, in fact, often are contrary to these goals. SELC recommended that the Public Staff's recommended deletion should be adopted to retain the Commission's flexibility to examine promotional expenditures in rate proceedings.

CUCA believes the Public Staff's concern about this language is not well-founded. CUCA favors the implementation of programs which improve load factors unless such programs would force an electric utility to add baseload generating facilities or force the LDCs to add interstate pipeline

capacity. CUCA also disagrees with the Public Staff's concern that such programs will "largely benefit the stockholders." According to CUCA, the recoverable costs of such programs should be offset by the increased revenues and this result should tend to place downward pressure on rates.

CP&L states that the Public Staff wants this language deleted because it could possibly be construed as guaranteeing utilities' recovery of all costs associated with all electric, high efficiency home programs. CP&L contends that past Commission practice, Chapter 62 of the North Carolina General Statutes, and language in the Commission Order clearly does not contemplate such a result and it would be unreasonable to delete Finding of Fact No. 11 which is absolutely true in an effort to correct a problem that does not exist.

NC Power disagrees that the subject language can be read as a predetermination of ratemaking treatment for incentives to build highly efficient all electric homes or to install high efficiency gas equipment. The Commission's February 24, 1994 Order in these dockets requested that participating utilities address how the offering of incentives to build all electric homes or to promote the use of natural gas promotes energy efficiency. NC Power asserts that within this context, Finding of Fact No. 11 is simply a statement of fact and the Public Staff's concerns with regard to the predetermination of ratemaking treatment is based on an overly expansive reading of the Order.

The Commission will not amend Finding of Fact No. 11 in the Order Adopting Guidelines by deleting the phrase "and through the more efficient, year round use of utility equipment." As explained herein, the issue of ratemaking treatment for incentives will be decided in general rate cases or similar proceedings. The Commission is of the opinion, however, that Finding of Fact No. 11 should be clarified by inserting the words "and system" between the words "energy" and "efficiency" so as to include system efficiency programs such as load factor improving programs. Therefore, Finding of Fact No. 11 as revised shall read:

> Incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy and system efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient, year-round use of utility equipment.

Issue No. 6

The SELC requests that the Commission should add a preliminary section or a concluding paragraph number 8 to the Guidelines which would state:

> These guidelines are intended to address certain competitive aspects of electric and natural gas incentive programs. They do not contain an exclusive list of the criteria the Commission will consider in deciding whether a DSM program is in the public interest.

SELC requests that this language be added to the Guidelines because in its opinion the Order is unclear as to whether the Guidelines set forth all or part of the substantive considerations the Commission will review in determining whether to approve an incentive program. SELC opines that this is a significant issue which the Commission should clarify. As an example to justify its concern in this regard, SELC cites a statement made by Duke Power in its request for approval of a research and demonstration pilot project on residential geothermal heat pump systems. In its request, Duke stated, "The Commission's Order in Docket Nos. E-100, Sub 64A and 71 decided the substantive issues regarding what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. 62-140(c)." SELC contends this statement suggests that the guidelines contain an exclusive list of what a utility must show to secure program approval, and that the Commission will approve any program which meets these guidelines. However, SELC believes that the Commission did not intend for the Guidelines to be read so broadly. As an example, SELC cites language on page 7 of the Order that states the Guidelines are "to govern certain aspects of the disputes between the electric utilities and the natural gas utilities in this proceeding." According to SELC, the Commission's statutory obligations require it to look at the impact of proposed incentive programs on targeted customers and on the environment, among other things.

The Public Staff concurs with SELC's Motion. The Public Staff does not believe the Commission meant its new rule and guidelines adopted in this docket to list the only issues it could consider. Such an interpretation could mean that the Commission had precluded itself from looking at an important and unanticipated issue in a future rate case. In order to maintain the Commission's flexibility to regulate fairly, the Public Staff requests that the Order be modified as advocated by SELC.

CUCA agrees with SELC that the Guidelines do not delineate the only issues which the Commission will consider in evaluating the appropriateness of incentive programs. However, CUCA does not believe that non-exclusivity of the Order or Guidelines permit relitigation on the basis of considerations which the SELC unsuccessfully urged upon the Commission in this proceeding. Thus, CUCA suggests that the Commission resolve the question raised in the SELC's Motion by adding a paragraph number 8 which reads:

> Nothing in these Guidelines precludes any party to a proceeding convened for the purpose of evaluating a specific incentive program from raising any issue which is not inconsistent with the Order Adopting Guidelines entered by the Commission in Docket No. E-100, Subs 64A and 71; G.S. 62-140(c); or these Guidelines.

Duke Power states in its response that SELC's suggested addendum to the Order is unnecessary and appears to be an attempt by SELC to secure an avenue in future proceedings to reargue its position on utility DSM. According to Duke, to the extent that issues are raised in the future which were not contemplated in this docket, the Commission has discretion to consider such issues as they arise.

NC Power asserted that SELC's request to modify the Guidelines based on a statement by Duke in its filing for approval of a geothermal heat pump pilot, is more appropriately the subject of Duke's application for approval of the pilot. To proceed otherwise would subject the Commission to endless proceedings to amend its Rules or previous orders following virtually any interpretation or clarification as to the scope or meaning of its Rules or orders.

CP&L responds that SELC's proposed change is unnecessary and may actually create, rather than eliminate, ambiguity in the Guidelines. CP&L believes the overriding principle of the Guidelines is contained in Guideline No. 1, which states that in order to obtain Commission approval of a proposed program the sponsoring utility must demonstrate that the program is cost-effective. The rest of the Guidelines are directed towards competition between electric utilities and gas utilities. In CP&L's opinion, SELC's proposal implies that there are additional criteria beyond those included in a demonstration that a program is cost-effective and the other elements of the Guidelines that must be addressed and this is not true. CP&L states that the concept of "cost-effectiveness" is sufficiently flexible to encompass all of the relevant factors that the Commission should consider in approving a program.

With respect to this issue, the Commission notes that the first sentence on page 25 of the Order Adopting Guidelines reads "The Commission concludes that it should adopt guidelines herein to govern certain aspects of the disputes between the electric utilities and natural gas utilities in this proceeding." Therefore, the Commission concludes it is simply unnecessary to modify the Order Adopting Guidelines as requested in the SELC Motion. Further, any party may raise an issue in the future which was not raised in this proceeding and the Commission has discretion to consider such issues as they arise.

IT IS, THEREFORE, ORDERED, as follows:

1. That upon reconsideration, the Revised Guidelines for Resolution of Issues Regarding Incentive Programs, attached hereto as Appendix A, are hereby adopted as an appropriate resolution of certain issues regarding incentive programs.

2. That any existing incentive programs which are within the scope of Commission Rule R1-38 as clarified, but have not previously been filed pursuant to Ordering Paragraph No. 2 in the Commission's Order Adopting Rule R1-38 dated October 24, 1995, shall be filed for Commission approval pursuant to the provisions of Commission Rule R1-38 and such filings shall be made within thirty (30) days from the date of this Order.

3. That this docket shall remain open for twenty-four (24) months from October 24, 1995, and that the parties to this proceeding shall file a report or comments in this docket twenty-four (24) months from October 24, 1995 that recommends eliminating, amending, or extending the Revised Guidelines adopted herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL)

Geneva S. Thigpen, Chief Clerk

Chairman Wells and Commissioner Sanford did not participate in this decision.

REVISED GUIDELINES FOR RESOLUTION OF ISSUES REGARDING INCENTIVE PROGRAMS

1. To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38, the sponsoring utility must demonstrate that the program is cost effective for its ratepayers.

(a) Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.

(b) Existing approved programs are grandfathered. However, utilities shall file a listing of existing approved programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of these guidelines.

(c) Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.

(d) The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

(e) The criteria for determining whether or not to approve an electric program pursuant to G.S. § 62-140(c) should <u>not</u> include consideration of the impact of an electric program on the sales of natural gas, or vice versa.

(f) Approval of a program pursuant Commission Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.

2. If a program involves an incentive per Rule R1-38 and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

(a) If the presumption that a program is promotional is <u>not</u> successfully rebutted, the cost of the incentive may <u>not</u> be recoverable from the ratepayers unless the Commission finds good cause to do so.

(b) If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

(c) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards, subject to Commission approval.

3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to: (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (b) the type of any given structure (gas or electric) to be built in a given subdivision development.

(a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

(b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

(c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

4. The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

5. Duke's proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 above.

(a) The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility's energy product, such as Duke's Food Service Program, shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.

(b) Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

6. Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines.

7. Pending applications involving incentive programs are subject to these guidelines.