FCC's effort to piggyback additional antennas on this "right-of-way" would also be contrary to law. As noted above, the scope of a right-of-way is defined by the terms of the grant.[51] Typically, contracts granting the right to place an antenna on a rooftop are limited to the right to affix specific communications equipment (often identified on one or more schedules to the contract) on the rooftop, to be used at specified frequencies and specified power levels. The grantee's rights are limited to placing *this specific equipment* on the rooftop and to operate that equipment at the specified frequencies and power levels. Thus, even assuming that a utility owned or controlled a right-of-way to place an antenna on a rooftop, the utility would not have a right to convey to third parties a right to place their antennas on the rooftop.

VI. SECTION 224 DOES NOT COVER WIRELESS EQUIPMENT

The paradigm addressed by the FCC in this rulemaking is access to an office or apartment building by wireless competitive carriers such as WinStar, Teligent, and Nextlink.[52] These wireless carriers seek to place an antenna on the roof of a building and to connect to customers in the building through use of coaxial cable and other

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[51] *Stoesser v. Shore Drive P'ship*, 494 N.W.2d 204, 208 (Wisc. 1993); *Burns v. Alderman*, 838 P.2d 878, 882 (Idaho App. 1992); *Commercial Wharf E. Condo. Ass'n v. Waterfront Parking Corp.*, 552 N.E.2d 66, 76 (Mass. 1990)(the scope of an easement "is regulated by the intent of the parties as manifested by the language of the grant"); *see generally Thompson on Real Property* § 60.04(a).

[52] *See generally White Paper.*

facilities.[53]

The Commission proposes to mandate access for these wireless carriers to multi-tenant environments through the use of Section 224. However, notwithstanding the Commission's finding in its Report and Order,[54] Section 224 does *not* apply to wireless equipment such as the antennas fixed wireless carriers seek to place on the rooftops of office and apartment buildings. The Commission's finding to the contrary currently is being challenged in the United States Court of Appeals for the Eleventh Circuit in *Gulf Power Company, et al. v. FCC*, Case No. 98-6222, *et al.* Rather than repeat the arguments here, the portions of the electric utilities' briefs that address the wireless issue are attached hereto as Exhibit B and incorporated herein by reference. From the very outset of this rulemaking proceeding, therefore, the Commission is seeking to bootstrap wireless equipment onto Section 224 in order to achieve the result of mandating access for wireless carriers to all multi-tenant environments. However desirable the FCC may

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[53] "To provide facilities-based service to a tenant in a multi-tenant environment, a fixed wireless carrier must first obtain rooftop access for the placement of its small antenna. The antenna must be located on the building being served because a coaxial cable typically runs from the rooftop antenna through a modulator (often smaller than the racks used by most ILECs) and to the building's cross-connect where connection with the customer's telephone system is accomplished. Access to riser cables or other conduit within the building is necessary to carry the signal over wires from the rooftop antenna to the modulator and through the building to the customer's connect point, often located in the basement of the building in a telephone closet or equipment room." *White Paper* at 5-6.

[54] *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, *Report and Order*, 13 FCC Rcd 6777 (1998).

believe this result to be, it is not a permissible construction of Section 224. Access for wireless equipment requires a legislative solution.

VII. THE FCC'S PROPOSAL THAT "RIGHTS-OF-WAY" SHOULD INCLUDE PROPERTY OWNED BY A UTILITY USED "IN THE MANNER OF A RIGHT-OF-WAY" FOR DISTRIBUTION FACILITIES IS CONTRARY TO LAW

The Commission does additional violence to the concept of "right-of-way" by proposing the term should encompass property owned by a utility and used "in the manner equivalent to that for which it might obtain a right-of-way from a private landowner . . ."[55] This proposal is unwarranted and contrary to law for several reasons.

First and foremost is the fact that a right-of-way and fee ownership are mutually exclusive concepts under the law of property. An owner of land in fee simple cannot have an easement in his own land, such as a right-of-way, because all possible uses of an easement are contained in his general right of ownership.[56] You can have one or the other, a right-of-way or a fee simple. You can't have both.

Second, Section 224 gives a very clear command. Utilities are required to give nondiscriminatory access to their "poles, ducts, conduits and rights-of-way." Elementary rules of statutory construction establish beyond peradventure that utilities are not also

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[55] *NPRM* ¶ 43.

[56] *Hidalgo County Water Control & Improv. Dist. v. Hippchen*, 233 F.2d 712 (5th Cir. 1956); *Rusk v. Grande*, 52 N.W.2d 548 (Mich. 1952); *Morton v. State*, 181 A.2d 831 (N.H. 1962). In other words, one cannot have a right-of-way in lands in which one holds fee simple title. *Othen v. Rosier*, 226 S.W2d 622 (Tex. 1950).

required to give access to other unlisted categories of property, whether it is land the utility owns in fee simple, buildings on that land, or otherwise. If it is not a pole, a duct, a conduit, or a right-of-way, the access requirements of the statute simply *do not apply*. Land owned by a utility in fee simple is *not* a right-of-way. If there are poles, ducts or conduits on the land, then the utility (arguably) has an obligation to provide nondiscriminatory access to the poles, ducts and/or conduits. If not, then Section 224 does not apply.[57]

Finally, there is no reason why the Commission should consider this proposal in the context of the instant rulemaking. According to the *NPRM*, the purpose of the rulemaking is to address the problem of access to multiple tenant environments. The proposal to treat all property owned by a utility "in the manner" of a right-of-way has nothing to do with access to multiple tenant environments. Moreover, the proposal is hopelessly vague. What can it possibly mean to use property "in a manner equivalent" to a right-of-way?[58] In short, the proposal – whose effect could be to sweep into Section 224 coverage virtually every piece of utility property – appears to be a flight of fancy that must be rejected forthwith.

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[57] The Commission suggests, both in the *NPRM* and in the *Local Competition Order*, that Section 224's access obligation is limited to a utility's "distribution network," and thus that other utility property such as its corporate offices is not covered by the statute. While we agree with the proposition that a utility's corporate offices are not covered, this is true because a corporate office is not a pole, duct, conduit or right-of-way, not because it falls under a non-statutory concept such as a "distribution facility."

[58] *NPRM* ¶ 43.

VIII. CONCLUSION

WHEREFORE, for the reasons set forth above and for such other reasons as may appear just to the Commission, the Electric Utilities respectfully request that the Commission resolve the access issues raised in this rulemaking in a manner consistent with the views expressed herein.

Respectfully submitted,

AMERICAN ELECTRIC SERVICE POWER CORPORATION
COMMONWEALTH EDISON COMPANY
DUKE ENERGY CORPORATION
SOUTHERN COMPANY

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August 27, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 1999, I caused true and correct copies of the Comments of American Electric Power Service Corporation, *et al.*, to be served via hand delivery on:

Magalie Salas (Original Plus 4 Copies)
Federal Communications Commission
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Washington, D.C. 20554

The Honorable William Kennard
Federal Communications Commission
445 Twelfth Street, S.W., 8B-201
Washington, D.C. 20554

The Honorable Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W., 8B-115
Washington, D.C. 20554

The Honorable Michael Powell
Federal Communications Commission
445 Twelfth Street, S.W., 8A-204
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth
Federal Communications Commission
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The Honorable Gloria Tristani
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Lucy Bowman

Exhibit A

Duke Power Company Service Regulations

South Carolina and North Carolina

Section V

Foreword

The Service Regulations of the Company are filed with the Commission having jurisdiction over public utilities. The regulations are presented here and are incorporated by reference in each contract or agreement for electric service.

Definitions

Duke Power Company is referred to herein as the "Company" and the user and prospective user is referred to as the "Customer" or "Consumer," these terms to be considered as synonymous. The North Carolina Utilities Commission is referred to as the "Commission."

I.

Agreement

Electric service will be supplied under (a) the Company's standard form of application, service agreement, or contract, (b) the applicable rate schedule or schedules, and (c) these service regulations, unless otherwise specified in any particular rate schedule or contract on file with and approved by the Commission. The Company shall not be required to supply service unless and until such agreement is executed by the Customer and the Company. It is understood and agreed that no promise, statement or representation by an agent, employee or other person shall be binding upon the Company unless it is in writing and attached to and made a part of the agreement. However, when the requested supply of electricity is for residential use, or for nonresidential use under contracts of one hundred twenty-five kilowatts (125 KW) or less, and no additional charges are involved, the Customer's application or agreement may be verbal. When the application or agreement is verbal, the Company's applicable rate schedules, riders, and these Service Regulations will be effective in the same manner as if the Company's standard form of application or agreement had been signed by the Customer and accepted by the Company. A verbal service agreement shall be presumed when there is no written application by a Customer, if electricity supplied by the Company is used by the Customer or on the Customer's premises.

Agreement Personal

The rights of the Customer under the agreement are personal and shall not be transferred or assigned by the Customer without the written consent of the Company.

Service Used In Advance

If service is used by the Customer before the application or agreement is completed, the service shall be governed by these regulations and the appropriate rate schedule. The Company may discontinue service at any time upon failure or refusal of the Customer to complete the application or agreement and pay in full the amount due for service to that date.

Vacated Premises

The Customer will notify the Company before quitting or vacating the premises served under the agreement, and will pay upon presentation, all bills due under all agreements or contracts.

II.

Deposit

Since an accumulation of unpaid bills would tend toward higher rates for all customers, the Company may require a deposit before beginning service or at any later time. The amount of the deposit and the interest paid on deposits will be in accordance with the Rules and Regulations of the Commission. The Company may require an increase or allow a decrease in the deposit if changes occur in the amount of bills rendered to the Customer. The Company may refund a deposit at any time. When service is discontinued, the Company will refund the deposit plus any accumulated interest, less any unpaid bills. Deposits shall cease to bear interest when service is discontinued and the Company has tendered or endeavored to tender to the Customer the amount due him.

III.

Customer's Wiring and Equipment

Equipment which will operate in one location may not operate in another location due to difference in voltage, phase, or frequency of electric service. The Customer shall give the Company notice and shall determine type of service available at the premises before wiring or purchasing equipment. The Company may specify the voltage and type of electric service to be furnished, and may also specify the location of the meter and the point where the service connection shall be made.

All the Customer's wiring and equipment must be installed and maintained in accordance with the requirements of the local municipal and state authorities: otherwise, the Company may refuse to connect service or may discontinue service to the Customer. The Customer shall keep in repair all such wiring and equipment to the point of connection with the facilities of the Company.

Changes in Customer's Wiring and Equipment

The Customer shall not use any equipment, appliance or device, or permit the continuation of any condition which tends to create any hazard or otherwise adversely affect the Company's service to the Customer or other customers, without written consent of the Company. When polyphase service is used by any customer, the Customer shall control the use of service so that the load will be maintained in reasonable electrical balance between the phases at the point of delivery.

The Customer shall give the Company reasonable notice in writing of any anticipated increase in demand exceeding 20 KW or ten percent (10%) of the former demand, whichever is greater. The notice shall state the approximate increase and date required. If the Company determines the unexpired term of the agreement is sufficient to justify the additional investment required, the Company will endeavor to provide additional capacity for any increase requested by the Customer within ninety (90) days of said notice.

The Company will extend its facilities and change the point of delivery only when the investment required is warranted by the anticipated revenue and when the extension is permissible and feasible.

IV.

Access to Customer's Premises

The Company shall at all reasonable times have the right of ingress to and egress from the premises of the Customer for any and all purposes connected with the delivery of service, or the exercise of any and all rights under the agreement.

V.

Right Of Way

The Customer shall at all times furnish the Company a satisfactory and lawful right of way over his premises for the Company's lines and apparatus necessary or incidental to the furnishing of service. The Customer shall also furnish satisfactory shelter for meters and other apparatus of the Company installed on the premises, except where the Company elects to install such equipment outdoors.

The Company may change the location of the right of way upon request of the Customer, and may require the Customer to pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service, either to the Customer requesting the change, or to any other customer or customers. All privileges of the Company related to the original location shall apply to the new location.

The obligation of the Company to supply service is dependent upon the Company securing and retaining all necessary rights-of-way, privileges, franchises or permits, for the delivery of such service, and the Company shall not be liable to the Customer for any failure to deliver service because of the Company's inability to secure or retain such rights-of-way, privileges, franchises, or permits.

VI.

Transmission, Distribution, and Service Facilities

The Company's transmission, distribution, and service facilities will be installed above ground on poles towers, or other fixtures; however, underground facilities will be provided when requested in accordance with the Company's Underground Distribution Installation Plan, as approved by the Commission.

The Company will require a contribution in aid of construction when it is requested to provide facilities which it deems economically infeasible.

Service connections will be made as follows:

1. Where both the Company's lines and the Customer's entrance conductors are above ground, and where the service requires a transformer of 500 KVA or less:

   The Company will extend its service conductors to the Customer's building, terminating them on the outside of the building at a location to be provided by the Customer and satisfactory to the Company for this purpose. The location must be of sufficient height to satisfy the requirements of the National Electric Safety Code and of applicable local codes, and the strength of the structure at the point of termination must be satisfactory to the Company.

   The Customer will provide, install and own meter sockets and current transformer enclosures, or the Customer may choose to provide and own a meter/switch enclosure (more commonly known as a housepower panel). The Company will utilize and provide service through the Customer's meter/switch enclosure and have exclusive control of and access to the metering installation under the following conditions:

   a. The meter/switch enclosure shall be in accordance with the Company's specifications.
   b. The wiring and connections are approved by the Company.
   c. The Customer agrees to allow the Company to open and inspect the meter/switch enclosure and the temporary service meter enclosure at any time.
   d. The Customer agrees to notify the Company and obtain permission before altering or performing maintenance inside the metering section of the meter/switch enclosure.

   For residential customers, the Company will provide, own and install all service risers and service laterals and will connect such risers and laterals to the line side terminals of the meter socket enclosure.

   The Company will make the necessary connections from its service conductors to the Customers' entrance conductors.

2. Where both the Company's lines and the Customer's entrance conductors are below ground, or when one is above ground and the other is below ground, or where the size of the Customer's demand or any unusual character of the Customer's location requires the service agreement between the Company and the Customer to be made on one of the Company's long-form Electric Power Contracts, the Company will make the necessary connections from its service conductors to the Customer's entrance conductors as in Section 1 above if applicable, or as in Section 3 below if applicable. If neither Section 1 nor Section 3 is applicable, the connection shall be at a point to be agreed upon by the Company and the Customer.

3. When, in the Company's opinion, an individual transformer installation is necessary to serve the Customer's demand and such demand exceeds the capacity of a pole-type transformer installation, the Company may require the Customer to provide suitable outdoor space on his premises to accommodate a ground-type transformer installation. If the Customer is unable to provide outdoor space for a ground-type transformer installation, then the Company may require the Customer to provide a transformer vault on his premises.

   a. When the Customer provides space for a ground-type, substation installation using overhead conductors, the Company will also erect a structure outside of, and immediately adjacent to, the fence surrounding such transformer installation for purposes of connecting to the Customer's entrance conductors. The Company may require the Customer to provide at the connection point, main disconnecting switches which shall control all of the Customer's load other than the fire pump circuit, if any. In the event the substation space agreed upon is adjacent to one or more of the Customer's building walls, the Company will connect to the Customer's entrance conductors on an outside wall of the building.

VI.

Transmission, Distribution, and Service Facilities

The Company's transmission, distribution, and service facilities will be installed above ground on poles towers, or other fixtures; however, underground facilities will be provided when requested in accordance with the Company's Underground Distribution Installation Plan, as approved by the Commission.

The Company will require a contribution in aid of construction when it is requested to provide facilities which it deems economically infeasible.

Service connections will be made as follows:

1. Where both the Company's lines and the Customer's entrance conductors are above ground, and where the service requires a transformer of 500 KVA or less:

   The Company will extend its service conductors to the Customer's building, terminating them on the outside of the building at a location to be provided by the Customer and satisfactory to the Company for this purpose. The location must be of sufficient height to satisfy the requirements of the National Electric Safety Code and of applicable local codes, and the strength of the structure at the point of termination must be satisfactory to the Company.

   The Customer will provide, install and own all self-contained meter sockets and current transformer enclosures, or the Customer may choose to provide and own a meter/switch enclosure (more commonly known as a housepower panel). The Company will utilize and provide service through the Customer's meter/switch enclosure. The Company shall have exclusive control of and access to the metering installation under the following conditions:

   a. The meter/switch enclosure shall be in accordance with the Company's specifications.
   b. The wiring and connections are approved by the Company.
   c. The Customer agrees to allow the Company to open and inspect the meter/switch enclosure meter enclosure at any time.
   d. The Customer agrees to notify the Company and obtain permission before altering or performing maintenance inside the metering section of the meter/switch enclosure.

   The Company will provide, own and install all poly-phase transformer-rated meter sockets.

   For residential customers, the Company will provide, own and install all service risers and service laterals and will connect such risers and laterals to the line side terminals of the meter socket enclosure.

   The Company will make the necessary connections from its service conductors to the Customers' entrance conductors.

2. Where both the Company's lines and the Customer's entrance conductors are below ground, or when one is above ground and the other is below ground, or where the size of the Customer's demand or any unusual character of the Customer's location requires the service agreement between the Company and the Customer to be made on one of the Company's long-form Electric Power Contracts, the Company will make the necessary connections from its service conductors to the Customer's entrance conductors as in Section 1 above if applicable, or as in Section 3 below if applicable. If neither Section 1 nor Section 3 is applicable, the connection shall be at a point to be agreed upon by the Company and the Customer.

3. When, in the Company's opinion, an individual transformer installation is necessary to serve the Customer's demand and such demand exceeds the capacity of a pole-type transformer installation, the Company may require the Customer to provide suitable outdoor space on his premises to accommodate a ground-type transformer installation. If the Customer is unable to provide outdoor space for a ground-type transformer installation, then the Company may require the Customer to provide a transformer vault on his premises.

   a. When the Customer provides space for a ground-type, substation installation using overhead conductors, the Company will also erect a structure outside of, and immediately adjacent to, the fence surrounding such transformer installation for purposes of connecting to the Customer's entrance conductors. The Company may require the Customer to provide at the connection point, main disconnecting switches which shall control all of the Customer's load other than the fire pump circuit, if any. In the event the substation space agreed upon is adjacent to one or more of the Customer's building walls, the Company will connect to the Customer's entrance conductors on an outside wall of the building.

b. When the customer provides space for a ground-type, padmounted transformer installation using underground conductors, the Company will provide and install the transformer. The Customer will provide and install, to the Company's specifications, the concrete pad for the transformer installation. The point of connection with the Customer's entrance conductors will be at the secondary voltage terminals of the Company's transformer.

c. When the Customer provides a transformer vault, the vault shall be constructed in accordance with the Company's specifications, and shall meet the requirements of the National Electrical Safety Code and other applicable safety codes and ordinances. The location of the vault shall meet the Company's requirements for accessibility and ventilation. The Company will provide and install the transformers and necessary associated equipment including circuit breakers, switches, supporting structures for equipment, primary cable and secondary cable to the point of connection with the Customer's entrance conductors. The point of connection shall be 12 inches inside one of the walls of the vault. The Company will coordinate the transformer vault installation with its Underground Distribution Installation Plan for the installation of the primary cable from the Customer's vault to the Company's existing distribution facilities.

4. With respect to any service, after a service connection has been made it may be changed by the Company upon request of the Customer, but the Customer must pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service either to the Customer desiring the change or to any other customer or customers.

Ownership of Equipment

All conductors and conduits, inside work and equipment, switches, fuses, and circuit breakers, from the point of connection with the Company's service shall be installed and maintained by and at the expense of the Customer. All equipment furnished by the Company shall be and remain the property of the Company.

VII.

Meters

The Company will furnish all necessary meters. When a delivery point is changed from one location to another, all expenses in connection with relocation of the meter shall be paid by the Customer. The Company shall have the right, at its option, and at its own expense, to place demand meters, volt meters or other instruments on the premises of the Customer for the purpose of making tests with respect to the Customer's service.

Location of Meter

Meters for all residential service, and for all other service to the extent practicable, shall be located out-of-doors on the Customer's structure at a place which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Where it is not practicable, in the Company's opinion, to locate the meter and any associated apparatus out-of-doors, the Customer shall provide a suitable indoor location which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Failure or Inaccuracy of Meter

In case of the failure or inaccuracy of a meter, the Customer's bill, for the appropriate portion of the period of such failure or inaccuracy, shall be calculated to correct for billing error as provided in the Rules and Regulations of the Commission.

Meter Tests

The Company will test the meter serving the Customer's premises under the provisions provided for in the Rules and Regulations of the Public Service Commission of South Carolina. When the Customer requests a meter test on a more frequent basis than that provided for in the Commission's rules, for each such additional test, a charge will be made to the Customer of $30 for self-contained meters, and $40 for all other meters.

VIII.

Bills Due Where No Notice Received

Meters will be read and bills rendered monthly. The Company will endeavor to deliver to the Customer, by mail or messenger, a monthly statement of the amount due the Company by the Customer.

All bills are due and payable on the date of the bill, during regular business hours, at the office of the Company. Bills for residential service are past due and delinquent on the twenty-fifth day after the date of the bill. Bills for nonresidential service are past due and delinquent on the fifteenth (15th) day after the date of the bill.

Failure to receive a statement which has been properly mailed or hand-delivered will not entitle the Customer to any delay in paying the amount due beyond the date when the bill is due and payable.

The word "month" as used herein, and as used in the rate schedules of the Company means the period of time between the regular meter readings by the Company. Readings are taken each month at intervals of approximately thirty (30) days.

Bills rendered for periods of less than 25 or more than 35 days as a result of rerouting of the Customer's account, and all initial and final bills rendered on a Customer's account will be prorated on the basis of a normal 30-day billing period; however, if an initial and final bill occur within the same billing month, no such proration will be made.

Meters with a constant of one may be read to the nearest 10 kilowatt hours except in the case of initial or final bills. For purposes of establishing billing demand and minimum bills, the nearest whole KW shall be used.

Where Meter Is Not Read

If, for any reason, a meter is not read at the regular reading time, the Company may estimate the amount of service used, and make any adjustment which may be necessary in the bill rendered when the meter is next read. Or, the Company may render the Customer a bill for a minimum charge, and credit the Customer for this charge when the meter is read and bills computed for thirty (30) day intervals.

Offsets Against Bills

No claim or demand which the Customer may have against the Company shall be set off or counterclaimed against the payment of any sum of money due the Company by the Customer for services rendered. All such sums shall be paid in accordance with the agreement regardless of any claim or demand.

Adjustment of Billing Errors

In case of a billing error, the Customer's bill, for the appropriate portion of the period of such billing error, shall be calculated to correct for billing error as provided in the Rules and Regulations of the Commission.

IX.

Responsibility Beyond Delivery Point

It is understood and agreed that the Company is merely a furnisher of electricity, deliverable at the point where it passes from the Company's wires to the service wires of the Customer, or through a divisional switch separating the Customer's wires and equipment from the Company's wires and equipment. The Company shall not be responsible for any damage or injury to the buildings, motors, apparatus, or other property of the Customer due to lightning, defects in wiring or other electrical installations, defective equipment or other cause not due to the negligence of the Company. The Company shall not be in any way responsible for the transmission, use or control of the electricity beyond the delivery point, and shall not be liable for any damage or injury to any person or property whatsoever, or death of any person or persons arising, accruing or resulting in any manner, from the receiving or use of said electricity.

Interference With Company Property

The Customer shall not interfere with, or alter the Company's meters, seals, or other property, or permit the same to be done by others than the Company's authorized agent or employee. Damage caused or permitted by the Customer to said property shall be paid for by the Customer. When unauthorized use of electric service is discovered, the Company may discontinue service and the Customer shall be required to pay for the estimated unauthorized usage, the costs of inspection, investigation, and reconnection before service is restored.

X.

Resale Service

This contract is made and electricity is sold and delivered upon the express condition that the Customer shall not directly or indirectly sell or resell, assign, or otherwise dispose of the electricity or any part thereof, to any person, firm or corporation, except where service is supplied under a contract specifically providing for resale.

Under no circumstances will the Company supply electricity for resale in competition with the Company.

Foreign Electricity

The Customer shall not use the Company's electric service in parallel with other electric service, nor shall other electric service be introduced on the premises of the Customer for use in conjunction with or as a supplement to the Company's electric service, without the written consent of the Company.

XI.

Service Interruptions

The Company does not guarantee continuous service. It shall use reasonable diligence at all times to provide uninterrupted service, and to remove the cause or causes in the event of failure, interruption, reduction or suspension of service, but the Company shall not be liable for any loss or damage to a customer or customers resulting from such failure, interruption, single-phase condition, reduction or suspension of service which is due to any accident or other cause beyond its control, or to any of the following:

1. An emergency action due to an adverse condition or disturbance on the system of the Company, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas in order to limit the extent or damage of the adverse condition or disturbance, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system.
2. An Act of God, or the public enemy, or insurrection, riot, civil disorder, fire, or earthquake, or an order from Federal, State, Municipal, County or other public authority.
3. Making necessary adjustments to, changes in, or repairs on its lines, substations, and facilities, and in cases where, in its opinion, the continuance of service to Customers' premises would endanger persons or property.
4. It is expressly understood and agreed that the Company does not contract to furnish power for pumping water for extinguishing fires. In the event that the Consumer shall use said electric power, or any part thereof, for pumping water to be used for extinguishing fires, the Consumer shall, at all times, keep on hand, or otherwise provide for, an adequate reserve supply of water so that it shall not be necessary to pump water by means of said electric power during a fire. It is expressly understood and agreed that the Company shall not, in any event, be liable to the Consumer, nor to any of the inhabitants of any municipal consumer nor to any person, firm or corporation for any loss or injury of or to property or person by fire or fires occasioned by, or resulting directly or indirectly from the failure of any pump, pumping apparatus or appliances to operate, whether said failure shall be due to the act or omission of the Company or otherwise. It is the intention of the parties hereto that the Company shall not, in any event, be liable for any loss or damage occasioned by fire or fires which may be caused by, or result from the failure of the Company to supply electric power to operate such or any pump or pumping apparatus or appliances.

XII.

Denial or Discontinuance of Service

The Company, subject to the rules of the Commission, shall have the right to suspend its service for repairs or other necessary work on its lines, or system. In addition, the Company shall have the right to deny, suspend, or discontinue its service as provided in the Rules and Regulations governing service supplied by electric systems in South Carolina.

Removal of Equipment

In the event of discontinuance of service or expiration of contract, then it shall be lawful for the Company to remove its meters, apparatus, appliances, fixtures, or other property.

Waiver of Default

Any delay or omission on the part of the Company to exercise its right to discontinue or suspend service, or the acceptance of any part of any amount due, shall not be deemed a waiver by the Company of such right so long as any default in whole or in part or breach of contract on the part of the Customer shall continue, and whenever and as often as any default or breach of contract shall occur.

Reconnect Fee

In case of discontinuance of service for any reason except repairs or other necessary work by the Company, the Customer shall pay the Company a reconnect charge of $15.00 before service will be restored.

Where the service has been discontinued for any reason except for repairs or other necessary work by the Company, the Company shall have the right to refuse service at the same premises to any other applicant who is a member of the family of the former customer or who resides with the former customer on said premises.

XIII.

Unavoidable Cessation of Consumption

In the event the Customer's premises is destroyed by fire, natural disaster; or other casualty, or the operation of its plant is shut down because of strike, fire, natural disaster or, other cause beyond the Customer's control, making a complete cessation of service, then upon written notice by the Customer to the Company within thirty (30) days thereafter, advising that the Customer intends to resume service as soon as possible, any minimum charge, or guarantee for which the Customer may be liable will be waived during the period of such cessation, and the contract shall be extended for a corresponding period. Otherwise, the agreement for service shall immediately terminate. When service has ceased under the described conditions, the Company shall have the right to (1) waive the collection of a deposit to reestablish service, (2) waive temporary service charges for temporary facilities or for reestablishment of service when such charges do not exceed a reasonable amount, (3) waive the collection of area lighting charges due to early termination of contract, and (4) waive the collection of a reconnection fee.

XIV.

Copies

Forms of application, service agreement, or contract, schedules of rates, riders, and copies of service regulations are available at the various offices of the Company and will be furnished to the Customer on request.

XV.

Changes

All agreements and contracts for service between the Company and its customers, including the rate schedules and these Service Regulations, are subject to such changes and modifications from time to time as approved by the Commission or otherwise imposed by lawful authority.

XVI.

Types of Service

The types of service supplied and the schedules applicable thereto are as follows:

1. Residential Service

   The residential rate schedules are applicable to an individual residence, condominium, mobile home, or individually-metered apartment. The residential rate schedules shall be applicable to only one meter serving an individual residence.

   The residential rate schedules are available for a single unit providing permanent and independent living facilities complete for living, sleeping, eating, cooking and sanitation. If the structure does not meet the requirements of a dwelling unit, service will be provided on one of the general service rate schedules.

   Outbuildings, garages, swimming pools, water pumps, and other uses which form a part of the general living establishment on the same property with a residence may be connected to the residential service meter, or they may be separately metered; such separately metered services shall be served on one of the general service rate schedules.

   Individual meters shall be installed by the Company for each individual residence, condominium, mobile home, housekeeping apartment, or housekeeping unit for which a permit was issued or construction started after January 23, 1981 in accordance with Commission's Rules and Regulations which prohibit master metering. Exceptions must be approved by the Commission.

   Residential service to two or more residences on the same property or to a residence or residences sub-divided into two or more individual housekeeping units may not be supplied through one meter on a residential rate schedule except as provided below:

   Block Billing Under Residential Rate Schedules

   If, for any reason, the wiring is so arranged by the Customer that rewiring for individual meters is not feasible, but a single meter must be used for two or more residences or units, then for billing purposes through this single meter, the Basic Facilities Charge and each kwh block of the rate schedule shall be multiplied by the number of residence units served.

2. Service to Mobile Home Parks, Recreational Parks, Portable Structures.
   a. Mobile Home Parks

      Each space designated for the parking of mobile homes will be served through a separate meter and billing will be in accordance with the applicable residential or general service rate schedule.

      The Company will extend its conductors to groups of two or more spaces designated for the parking of mobile homes, and will provide and install at each delivery location a service structure on which its conductors are terminated and on which may be mounted the switch panels and wiring to accommodate a separate meter for each mobile home space. Otherwise, service connections will be the same as set forth in these Service Regulations VI, 1.

      Energy used by the mobile home park in its office, service buildings, area lighting, water pumps, and other purposes connected with the operation of the park, including spaces designated for the overnight parking of mobile homes in transit or awaiting assignment to separately metered spaces available within the park, may be served through a single meter, and will be billed in accordance with the applicable general service rate schedule.

   b. Recreational Parks and Campgrounds

      Service to recreational parks and campgrounds may be supplied to each establishment at one delivery point, and energy used in its offices, service buildings, area lights, water pumps, individual service outlets at campsites, and other purposes connected with its operation, will be billed through one meter in accordance with the applicable general service rate schedule.

      Where a portable structure (travel trailer, camper, motor home, etc.) occupies and remains at an individual campsite in a recreation park or campground under a lease arrangement for twelve (12) months or longer, the Company may, at its option, provide an individual delivery and meter the service to the structure on the individual campsite as provided for under 2. a. above. Energy used will be billed on a residential or general service rate schedule, whichever is applicable.

   c. Locations other than Mobile Home Parks, Recreational Parks or Campgrounds

      Service will be provided as set forth in these Service Regulations, XVI (15) Temporary Service, except that if the Customer presents satisfactory evidence of intent to remain at said location twelve (12) months or longer, service will be provided as for any structure having a permanent foundation. Energy used will be billed on a residential or general service rate schedule, whichever is applicable.

3. Residential Service to Group Facilities

   Facilities designed to provide residential care or a group home in a residential structure for up to and including nine adults or children (excluding houseparent or caregiver) may be served on a residential rate schedule provided the facility is a single housekeeping unit and energy is used only by equipment which would normally be found in a residence. If the facility has a separate housekeeping unit for the caregiver, commercial cooking or laundry equipment, vending machines, or other equipment not normally found in a residence the facility will be served on a general service rate schedule.

4. Professional Offices or Business Activities in Residences

   For residences involving some business, professional, or other gainful activity, a residential rate schedule will be permitted only where:

   a. the electric energy used in connection with such activity is less than 15% of the total energy use: and

   b. the electric energy is used only by equipment which would normally be used in a residence.

   If both of the foregoing conditions cannot be met, the entire premises shall be classified as nonresidential and an appropriate nonresidential rate schedule shall be applied.

   The Customer may, at his option, provide separate circuits so that the residential uses can be metered separately and billed under a residential schedule and the other uses under a general service schedule.

   For residences in which a Day Nursery is operated, a residential rate schedule will be permitted provided:

   a. The operator and the operator's family, if any, live there.

   b. The nursery requires no extra electrical equipment or space in addition to that normally required for the operator's family.

   c. There are no conspicuous business soliciting devices about the premises.

If all of the foregoing conditions cannot be met, then the facility will be served on a general service rate schedule.

5. Farm and Rural Service

The residential rate schedules are available for service through one meter to the Customer's personal farm residence, and for the usual farm uses outside the dwelling unit, but not for commercial operations selling at retail, or for non-farming operations, or for the processing, preparing, or distributing of products not indigenous to that farm.

The residential farm service customer may, at his option, elect to take the entire service under one of the general service rate schedules, or he may provide separate circuits so that the residential dwelling unit, together with the usual farm uses outside the dwelling unit, can be metered and served under a residential rate schedule, and the other uses under a general service rate schedule.

6. General Service

General service rate schedules are available to the individual customer for any purpose other than those excluded by the availability paragraph of the schedules, and they shall apply to the following:

a. Customers engaging in retail trade or personal service directly with the public such as hotels, motels, boarding houses; ("Boarding House" is defined as an establishment making a business of providing rooms and/or meals to the public in much the same manner as hotels and restaurants; or which has a license for operating such an establishment. This does not include homes taking in a small number of roomers and/or boarders, where the home owner does not depend on the revenue therefrom as a principal source of income.)

b. Hospitals, nursing homes, institutional care facilities;

c. Office buildings, stores, shops, restaurants, service stations, and other commercial establishments;

d. Schools, dormitories, churches, and other nonresidential customers, and other nonindustrial customers;

e. Energy used in a multi-family residential structure (other than the individual housekeeping units), such as hall lighting, laundry facilities, recreational facilities, etc.

f. Miscellaneous services with individual meters serving well pumps, signs, customer-owned lighting, garages, etc.

General service rate schedules continue to be available for master-metered apartments constructed prior to October 31, 1980, (or after October 31, 1980 with Commission approval) where the establishment consists of:

a. one or more buildings, each three (3) or less stories in height, of three (3) or more individual apartment living units per building, located on contiguous premises and under single ownership, or

b. a single building, under single ownership, four (4) or more stories in height, containing three (3) or more individual housekeeping units,

provided there is no submetering, resale, conjunctional, or sub-billing, or separate charge to tenants for electricity by the landlord, nor any form of variable rental charge based upon the electric usage by any tenant.

Notwithstanding a. above, 10% or less of the total number of living units being served through the single meter may be of two units per building, but no single-family units which may be among the buildings in the establishment can be served through the single meter. The number of buildings and apartment units to be served through a single meter may not be greater than the number for which the developer has secured a construction loan or permanent mortgage as of the date of the contract, and proof of such commitment may be required. Additional units to be built on the original premises or on an adjoining premises, must be contracted for separately and served through a separate meter and served on the applicable general service rate schedule.

Upon mutual agreement by the Customer and the Company, service will be rendered through a single meter to multiple delivery points, with the Company owning the distribution facilities between the meter and the several delivery points as set forth under the Extra Facilities section of these Service Regulations.

Service through a single meter billed on a general service schedule is available only for general building use and residential use. Any tenant who could otherwise qualify for any of the Company's rate schedules other than residential, must be served separately by the Company.

The landlord must enter into a contract with the Company for each establishment qualifying for the single meter general service rate schedule in a. or b. above, and the contract shall specify the number of buildings and the number of stories and apartment units within each building in the establishment, the total contract demand of the establishment, and the names of streets, roads, or other boundaries of the contiguous premises within which each establishment is located.

Service will be supplied separately to each establishment. The Company shall make the final determination as to what constitutes a single establishment entitled to a service through a single meter at a single delivery point and shall notify the Customer before making a contract with the Customer.

7. Industrial Service

   The industrial service rate schedule is available to customers classified as "Manufacturing Industries" by the Standard Industrial Classification Manual published by the United States Government, and where more than 50% of the electric usage of such establishment is for its manufacturing processes.

8. Water Heating Service

   Residential water heating service is available through the same meter as other residential service on Schedule RS, RE, or RT. Residential controlled submetered water heating service is available on Schedule WC.

   Customers on Schedule G or I can obtain separately metered water heating service on Schedule W. Water heaters which do not meet the requirements of Schedule W will be served on the other schedule on which the customer is receiving service. Schedule W is not available to residential customers.

9. Outdoor Lighting Service

   Customer-owned outdoor lighting service may be connected to the residential, general service, or industrial service meter, or it may be separately metered. Such separately metered services shall be served on the general service schedule.

   Where the Company owns and operates the lighting equipment, service will be provided under Schedule OL or FL.

10. Seasonal Service

    Where the Customer's use of energy is seasonal, generally it will be to his advantage to keep his premises connected to the Company's lines throughout the year. Under certain rate schedules, the Customer may elect to contract for an annual minimum charge, rather than a monthly minimum charge, as outlined in the applicable schedules. The Company will disconnect the service for a period of inactivity upon request, but will make a disconnect charge of $15.00 if the service has been connected less than 6 months.

11. Government and Municipal Service

    The regular general service rate schedules are available for government and municipal service to facilities such as offices and schools. Schedule PL is available to governmental entities for street and public area lighting. Schedule TS is available to governmental entities for traffic and safety signals.

12. Time of Use Service

    Time of Use rates are optional and are available to residential and nonresidential customers.

13. Load Control and Interruptible Service

    Optional Riders for residential load control, interruptible service and standby generator service offer credits for contracting customers who provide a source of capacity to the Company.

14. Breakdown and Standby Service

    The Company does not supply breakdown or standby service, and service under its rate schedules may not be used for resale or exchange or in parallel with other electric power, or as a substitute for power contracted for or which may be contracted for, except at the option of the Company, under special terms and conditions expressed in writing in the contract with the Customer.

15. Temporary Service

Temporary service for construction of buildings or other establishments which will receive permanent electric service from the Company's lines when completed will be provided under Schedule BC if single-phase service is supplied, or under Schedule G if three-phase service is supplied.

Temporary service for construction projects which will not result in permanent electric service, and for rock crushers, asphalt plants, carnivals, fairs, and other nonpermanent installations will be provided on the General Service Schedule where the Customer agrees to pay the actual cost of connection and disconnection. The cost shall include payroll, transportation, and miscellaneous expense for both erection and dismantling of the temporary facilities, plus the cost of material used, less the salvage value of the material removed. A deposit may be required equal to the estimated cost of connection and disconnection plus the estimated billing on the General Service Schedule for the period involved, said deposit to be returned if the contract period is fulfilled.

16. Special Provisions

a. Service to x-ray, welding and other equipment of this type may be operated by the Customer through his regular service meter when such operation will not adversely affect the quality of service to neighboring customers. For purposes of establishing the contract demand, such equipment will be rated at one KW for each 4 KVA of rated capacity.

If, however, the use of such equipment causes voltage fluctuations detrimental to the service of the Customer or other customers, the Company may set a separate transformer for the exclusive use of the Customer, and extend a separate service to the Customer's premises. This service shall be metered, and shall be billed on the applicable rate schedule. In addition, the Customer shall be billed 30 cents per month per KVA of the separate transformer. In lieu of setting the separate transformer, the Company may require the Customer to either discontinue the operation of the equipment or install the necessary motor-generator set or other apparatus to eliminate the disturbance to other customers.

b. Fluorescent lamps. Installation of neon, fluorescent, and/or mercury vapor lamps or tubes, or other types or combinations of gaseous discharge lamps having lower power factor characteristics, made, replaced, relocated, or rearranged after December 31, 1940, should be so equipped that the power factor of each unit or group of units shall not be less than approximately 90% lagging. When an installation has a power factor less than approximately 90% lagging, there shall be added to each monthly bill covering such installation an additional fixed charge of 35 cents for each 100 volt-amperes by which the volt-ampere rating of such installation numerically exceeds the watt rating, as obtained by test or from the manufacturers' nameplates.

c. Optional Schedules. For certain classes of service, optional schedules are available which result in lower average prices to customers because of their usage characteristics. Since this use is under the control of the Customer, the amount of saving, if any, is also under his control and the choice of schedules, therefore, lies with him.

Upon request, investigation will be made and assistance will be given to the Customer in selecting the rate which is most favorable to his condition and to determine whether the rate under which he is being billed is the most advantageous. The Company does not guarantee that each customer will be served under the most favorable rate at all times, and will not be responsible for notifying the Customer of the most advantageous rate. Not more than one change from one optional rate to another will be made within any twelve (12) month period for any customer. When a change is made from an optional rate to another, no refund will be made of the difference in charges under different rates applicable to the same class of service.

d. Extra Facilities. At the request of the Customer, the Company will furnish, install, own and maintain facilities which are in addition to those necessary for delivery of service at one point, through one meter, at one voltage, in accordance with the applicable rate schedule, such additional facilities to be furnished under an "Extra Facilities Clause" added to and made a part of the Company's standard form of contract and containing the following provisions:

1) Service shall be used solely by the contracting Customer in a single enterprise located entirely on a single, contiguous premises, and there shall be no exemption from any of the other provisions of these Service Regulations.

2) "Extra Facilities" shall consist of such of the following as may be required: voltage regulators, circuit breakers, duplicate service, transformers, substations, connecting lines, or other equipment installed for the exclusive use of the contracting Customer, other than facilities which the Company would furnish to the Customer without cost under its standard form of contract.

3) The facility to be supplied shall be Company standard overhead transmission or distribution, or transmission and distribution, equipment to be installed only on the Company side of the point of delivery.

4) A monthly "Extra Facilities Charge" equal to 1.7% of the installed cost of the facilities, but not less than $25, shall be billed to the Customer in addition to the billing for energy, or for demand plus energy, in accordance with the applicable rate schedule.

5) The "installed cost of extra facilities" shall be the original cost of material used, including spare equipment, if any, plus applicable labor, transportation, stores, tax, engineering and general expenses, all estimated if not known. The original cost of materials used is the current market price of the equipment at the time the equipment is installed, whether said equipment is new or out of inventory.

6) "Extra Facilities" shall include the installed cost of extra meters and associated equipment necessary to record demand and energy at the voltage delivered to the Customer. Upon mutual agreement between the Customer and the Company, demand and energy may be metered at primary voltage, without compensation for transformer loss, and without inclusion of any part of the metering cost as an extra facility. When extra facilities furnished include a voltage regulator, metering equipment shall be installed on the Company side of the regulator, or if this is not feasible, the meter shall be compensated so as to include registration of the regulator losses.

7) When the extra facilities requested by the Customer consist of those required to furnish service at either more than one delivery point on the premises or at more than one voltage, or both, the installed cost of the extra facilities to be used in the computation of the Extra Facilities Charge shall be the difference between the installed cost of the facilities made necessary by the Customer's request, and the installed cost of the facilities which the Company would furnish without cost to the Customer under its standard form of contract.

8) The Company shall have the option of refusing requests for extra facilities if, on its own determination, the requested facilities are not feasible, or may adversely affect the Company's service to other customers.

9) Contracts containing the Extra Facilities clause shall have a minimum original term of 5 years to continue from year to year thereafter, but the Company may require the payment of removal costs in contracts with original terms of 10 years or less, and may require advance payment of the Extra Facilities Charge for a period equal to one-half the original term of the contract.

10) Customers from whom the Company may be furnishing extra facilities under contracts made prior to September 1, 1962 shall be exempted from all provisions of this Extra Facilities Clause except 1) until such time as their contracts may expire, or are terminated by the Customer, or are terminated by the Company for reasons not related to the furnishing of extra facilities.

11) In the event that an existing extra facility must be modified or replaced, whether or not such modification or replacement is requested by the affected extra facility Customer, then the installed cost of extra facilities on which the monthly Extra Facilities Charge is based shall be the installed cost of existing equipment, plus the installed cost of new additions, less the installed cost of equipment removed. The installed cost of existing equipment shall be the same installed cost used for said equipment immediately prior to the modification or replacement. The installed cost of new additions shall be the current market price of said new additions at the time the new additions are installed. The installed cost of equipment removed shall be the same installed cost used for said equipment immediately prior to removal.

Foreword

The Service Regulations of the Company are filed with the Commission having jurisdiction over public utilities. The regulations are presented here and are incorporated by reference in each contract or agreement for electric service.

Definitions

Duke Power Company is referred to herein as the "Company" and the user and prospective user is referred to as the "Customer" or "Consumer," these terms to be considered as synonymous. The North Carolina Utilities Commission is referred to as the "Commission."

I.

Agreement

Electric service will be supplied under (a) the Company's standard form of application, service agreement, or contract, (b) the applicable rate schedule or schedules, and (c) these service regulations, unless otherwise specified in any particular rate schedule or contract on file with and approved by the Commission. The Company shall not be required to supply service unless and until such agreement is executed by the Customer and the Company. It is understood and agreed that no promise, statement or representation by an agent, employee or other person shall be binding upon the Company unless it is in writing and attached to and made a part of the agreement. However, when the requested supply of electricity is for residential use, or for nonresidential use under contracts of one hundred twenty-five kilowatts (125 KW) or less, and no additional charges are involved, the Customer's application or agreement may be verbal. When the application or agreement is verbal, the Company's applicable rate schedules, riders, and these Service Regulations will be effective in the same manner as if the Company's standard form of application or agreement had been signed by the Customer and accepted by the Company. A verbal service agreement shall be presumed when there is no written application by a Customer, if electricity supplied by the Company is used by the Customer or on the Customer's premises.

Agreement Personal

The rights of the Customer under the agreement are personal and shall not be transferred or assigned by the Customer without the written consent of the Company.

Service Used In Advance

If service is used by the Customer before the application or agreement is completed, the service shall be governed by these regulations and the appropriate rate schedule. The Company may discontinue service at any time upon failure or refusal of the Customer to complete the application or agreement and pay in full the amount due for service to that date.

Vacated Premises

The Customer will notify the Company before quitting or vacating the premises served under the agreement, and will pay upon presentation, all bills due under all agreements or contracts.

II.

Deposit

Since an accumulation of unpaid bills would tend toward higher rates for all customers, the Company may require a deposit before beginning service or at any later time. The amount of the deposit and the interest paid on deposits will be in accordance with the Rules and Regulations of the Commission. The Company may require an increase or allow a decrease in the deposit if changes occur in the amount of bills rendered to the Customer. The Company may refund a deposit at any time. When service is discontinued, the Company will refund the deposit plus any accumulated interest, less any unpaid bills. Deposits shall cease to bear interest when service is discontinued and the Company has tendered or endeavored to tender to the Customer the amount due him.

III.

Customer's Wiring and Equipment

Equipment which will operate in one location may not operate in another location due to difference in voltage, phase, or frequency of electric service. The Customer shall give the Company notice and shall determine type of service available at the premises before wiring or purchasing equipment. The Company may specify the voltage and type of electric service to be furnished, and may also specify the location of the meter and the point where the service connection shall be made.

All the Customer's wiring and equipment must be installed and maintained in accordance with the requirements of the local municipal and state authorities; otherwise, the Company may refuse to connect service or may discontinue service to the Customer. The Customer shall keep in repair all such wiring and equipment to the point of connection with the facilities of the Company.

Changes in Customer's Wiring and Equipment

The Customer shall not use any equipment, appliance or device, or permit the continuation of any condition which tends to create any hazard or otherwise adversely affect the Company's service to the Customer or other customers, without written consent of the Company. When polyphase service is used by any customer, the Customer shall control the use of service so that the load will be maintained in reasonable electrical balance between the phases at the point of delivery.

The Customer shall give the Company reasonable notice in writing of any anticipated increase in demand exceeding 20 KW or ten percent (10%) of the former demand, whichever is greater. The notice shall state the approximate increase and date required. If the Company determines the unexpired term of the agreement is sufficient to justify the additional investment required, the Company will endeavor to provide additional capacity for any increase requested by the Customer within ninety (90) days of said notice.

The Company will extend its facilities and change the point of delivery only when the investment required is warranted by the anticipated revenue and when the extension is permissible and feasible.

IV.

Access to Customer's Premises

The Company shall at all reasonable times have the right of ingress to and egress from the premises of the Customer for any and all purposes connected with the delivery of service, or the exercise of any and all rights under the agreement.

V.

Right Of Way

The Customer shall at all times furnish the Company a satisfactory and lawful right of way over his premises for the Company's lines and apparatus necessary or incidental to the furnishing of service. The Customer shall also furnish satisfactory shelter for meters and other apparatus of the Company installed on the premises, except where the Company elects to install such equipment outdoors.

The Company may change the location of the right of way upon request of the Customer, and may require the Customer to pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service, either to the Customer requesting the change, or to any other customer or customers. All privileges of the Company related to the original location shall apply to the new location.

The obligation of the Company to supply service is dependent upon the Company securing and retaining all necessary rights-of-way, privileges, franchises or permits, for the delivery of such service, and the Company shall not be liable to the Customer for any failure to deliver service because of the Company's inability to secure or retain such rights-of-way, privileges, franchises, or permits.

VI.

Transmission, Distribution, and Service Facilities

The Company's transmission, distribution, and service facilities will be installed above ground on poles towers, or other fixtures; however, underground facilities will be provided when requested in accordance with the Company's Underground Distribution Installation Plan, as approved by the Commission.

The Company will require a contribution in aid of construction when it is requested to provide facilities which it deems economically infeasible.

Service connections will be made as follows:

1. Where both the Company's lines and the Customer's entrance conductors are above ground, and where the service requires a transformer of 500 KVA or less:

   The Company will extend its service conductors to the Customer's building, terminating them on the outside of the building at a location to be provided by the Customer and satisfactory to the Company for this purpose. The location must be of sufficient height to satisfy the requirements of the National Electric Safety Code and of applicable local codes, and the strength of the structure at the point of termination must be satisfactory to the Company.

   The Company will provide and own meter sockets and enclosures, or the Customer may choose to provide and own a meter/switch enclosure (more commonly known as a housepower panel). Effective January 1, 1994, the Customer will provide and own the meter enclosure for single-phase, 120/240 volts, self-contained meters for temporary service for construction. The Customer will install all meter sockets, enclosures, or meter/switch enclosures. The Company will utilize and provide service through the Customer's meter/switch enclosure and the temporary service meter enclosure under the following conditions:

   a. The meter/switch enclosure shall be in accordance with the Company's specifications.
   b. The wiring and connections are approved by the Company.
   c. The Customer agrees to allow the Company to open and inspect the meter/switch enclosure and the temporary service meter enclosure at any time.
   d. The Customer agrees to notify the Company and obtain permission before altering or performing maintenance inside the metering section of the meter/switch enclosure and the temporary service meter enclosure.

   For residential customers, the Company will provide, own and install all service risers and service laterals and will connect such risers and laterals to the line side terminals of the meter socket enclosure.

   The Company will make the necessary connections from its service conductors to the Customers' entrance conductors.

2. Where both the Company's lines and the Customer's entrance conductors are below ground, or when one is above ground and the other is below ground, or where the size of the Customer's demand or any unusual character of the Customer's location requires the service agreement between the Company and the Customer to be made on one of the Company's long-form Electric Power Contracts, the Company will make the necessary connections from its service conductors to the Customer's entrance conductors as in Section 1 above if applicable, or as in Section 3 below if applicable. If neither Section 1 nor Section 3 is applicable, the connection shall be at a point to be agreed upon by the Company and the Customer.

3. When, in the Company's opinion, an individual transformer installation is necessary to serve the Customer's demand and such demand exceeds the capacity of a pole-type transformer installation, the Company may require the Customer to provide suitable outdoor space on his premises to accommodate a ground-type transformer installation. If the Customer is unable to provide outdoor space for a ground-type transformer installation, then the Company may require the Customer to provide a transformer vault on his premises.

   a. When the Customer provides space for a ground-type, substation installation using overhead conductors, the Company will also erect a structure outside of, and immediately adjacent to, the fence surrounding such transformer installation for purposes of connecting to the Customer's entrance conductors. The Company may require the Customer to provide at the connection point, main disconnecting switches which shall control all of the Customer's load other than the fire pump circuit, if any. In the event the substation space agreed upon is adjacent to one or more of the Customer's building walls, the Company will connect to the Customer's entrance conductors on an outside wall of the building.

b. When the customer provides space for a ground-type, padmounted transformer installation using underground conductors, the Company will provide and install the transformer. The Customer will provide and install, to the Company's specifications, the concrete pad for the transformer installation. The point of connection with the Customer's entrance conductors will be at the secondary voltage terminals of the Company's transformer.

c. When the Customer provides a transformer vault, the vault shall be constructed in accordance with the Company's specifications, and shall meet the requirements of the National Electrical Safety Code and other applicable safety codes and ordinances. The location of the vault shall meet the Company's requirements for accessibility and ventilation. The Company will provide and install the transformers and necessary associated equipment including circuit breakers, switches, supporting structures for equipment, primary cable and secondary cable to the point of connection with the Customer's entrance conductors. The point of connection shall be 12 inches inside one of the walls of the vault. The Company will coordinate the transformer vault installation with its Underground Distribution Installation Plan for the installation of the primary cable from the Customer's vault to the Company's existing distribution facilities.

4. With respect to any service, after a service connection has been made it may be changed by the Company upon request of the Customer, but the Customer must pay the cost of the change. The change will not be made where it will interfere with or jeopardize the Company's service either to the Customer desiring the change or to any other customer or customers.

Ownership of Equipment

All conductors and conduits, inside work and equipment, switches, fuses, and circuit breakers, from the point of connection with the Company's service shall be installed and maintained by and at the expense of the Customer. All equipment furnished by the Company shall be and remain the property of the Company.

VII.

Meters

The Company will furnish all necessary meters. When a delivery point is changed from one location to another, all expenses in connection with relocation of the meter shall be paid by the Customer. The Company shall have the right, at its option, and at its own expense, to place demand meters, volt meters or other instruments on the premises of the Customer for the purpose of making tests with respect to the Customer's service.

Location of Meter

Meters for all residential service, and for all other service to the extent practicable, shall be located out-of-doors on the Customer's structure at a place which is suitable to the Customer, but which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Where it is not practicable, in the Company's opinion, to locate the meter and any associated apparatus out-of-doors, the Customer shall provide a suitable indoor location which meets all of the Company's requirements for reading, testing, and servicing accessibility, and for safety.

Failure or Inaccuracy of Meter

In case of the failure or inaccuracy of a meter, the Customer's bill, for the appropriate portion of the period of such failure or inaccuracy, shall be calculated to correct for billing error as provided in the Rules and Regulations of the Commission.

Meter Tests

The Company will test the meter serving the Customer's premises under the provisions provided for in the Rules and Regulations of the North Carolina Utilities Commission. When the customer requests a meter test on a more frequent basis than that provided for in the Commission's rules, a charge of $40 will be made to the Customer for self-contained meters, and $55 for all other meters.