

WEIMAR JONES

Editorial Page Editor

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## Light On Power Deal

A court decision of half a dozen years ago throws light on an issue under discussion today—the proposal of Nantahala Power and Light Company to sell its retail distribution facilities to Duke Power Company.

While the case dealt with a different matter, the facts, conclusions, and comments it brought out bear directly on questions raised about the Nantahala-Duke deal. The 1953 proceedings, in fact, read as though they had been written in answer to some of the current questions.

Here is the background of that six-year old decision:

Nantahala, at that time, filed application with the N. C. Utilities Commission for authority to increase its industrial rates. The Mead Corporation, of Sylva, protested. After a hearing, the Utilities Commission approved the increase.

Mead appealed to the courts, and Judge A. H. Gwyn, in Jackson Superior Court, reversed the Utilities Commission. Nantahala appealed from that ruling to the State Supreme Court. That tribunal, in a decision written by the then chief justice, W. A. Devin, upheld Judge Gwyn in denying the increase. An associate justice, M. V. Barnhill, though concurring in the Devin ruling, wrote his own, separate opinion, because there were "certain facts" to which he wished to "direct particular attention".

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Some of the salient facts brought out follow:

—Nantahala is wholly owned by the Aluminum Company of America (Alcoa).

—It was organized as a North Carolina public service corporation in 1929.

—Between that date and June 30, 1952, its hydro-electric plants in the six-county area it serves increased from one to eight; its capacity was multiplied by 56 — from 1400 K. W. to 79,435; and the number of its customers grew from 238 to 10,000.

—The bulk of Nantahala's power was being sent to Tennessee for use by Nantahala's owner, Alcoa. The proportion in 1952, a dry year, was 81.65 per cent; it had been higher in previous years.

—That power was classified by Nantahala as "dump"—that is, "secondary", or undependable—power. On that basis, it was sold to Alcoa for 2.3

mills per kilowatt-hour. Mead was paying 5.9 mills for power classified as "primary", or dependable.

—Western North Carolina customers, who were using less than one-fifth of Nantahala's power, were providing more than half of its revenue.

—With an investment of approximately 17 million dollars, Nantahala had never declared a dividend, and its books showed it operated at a loss of \$41,701 during the preceding year. They also indicated that, even with the requested rate increase, it would continue to lose money at an annual rate of \$26,856.

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The Utilities Commission said the issue to be decided was: Would it be discrimination to raise the rates of Mead and other industrial customers, while leaving Alcoa's already-lower rate unchanged?

Its answer was: Since Alcoa bought only "secondary" power, there would be no discrimination.

Judge Gwyn, citing Nantahala's own testimony that a hydro-electric plant can be counted on, even in dry weather, to produce 50 per cent of capacity, held it was not reasonable or proper, therefore, to label 81.65 per cent of the power produced as "secondary": "Giving it the wrong label does not conjure away the reality, and no amount of judicial legerdemain can change its true character and make undependable that which is in fact dependable. . . . Calling it secondary power does not make it so."

Accordingly, he reversed the Utilities Commission, and the State Supreme Court later upheld his ruling.

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Those 1953 proceedings seem to answer, in whole or in part, at least four of the questions raised by the proposed Nantahala-Duke deal.

First of all, an incidental question: *Is Nantahala losing money, and so will its customers' rates have to be raised, even if the sale does not go through?*

A secondary question: *Duke has promised to keep present customers on Nantahala rates, where they are lower than Duke's. Could the Utilities Commission, under state law, permit that?*

Another secondary question: *Do the people of this area receive special benefits, such as low rates, under the present arrangement?*

Finally, the primary question: *As a public service corporation, with the power of eminent domain, Nantahala took private property, through condemnation proceedings, in acquiring sites for its hydro-electric plants in this area. Now it proposes to step out of its role as a public service corporation. But it proposes to keep the plants that role enabled it to acquire, and to take ALL the power they produce out of the state, for the exclusive benefit of Nantahala's parent corporation, Alcoa. The primary question is a moral one: Is that right?*

The question of Alcoa's taking ALL the power from sites acquired through condemnation proceedings was not before the courts, in that six-year old case. But their comments, at that time, on the morality of its posing as a public service corporation to take four-fifths of the power were categorical and emphatic.

How that and the other three current questions were answered, back in 1953, is shown by the quotations at the bottom of this page. (The italic type emphasis on certain words and phrases is ours.)

# Nantahala-Duke Questions Answered By 1953 Court Ruling

(EDITOR'S NOTE: Light is cast on the current proposed Nantahala-Duke deal by the quotations below from a 1953 court decision. They tend to answer, in particular, four of the questions raised about that deal. See editorial, above, for background.)

### AN INCIDENTAL QUESTION:

*Is Nantahala losing money, and so will power rates have to go up in any case?*

On that point . . .

Judge Gwyn said:

"It has never earned a profit . . . The petitioner (Nantahala) does not ask for an increase in rates sufficient to make a profit; in fact, it asks for such an increase as will insure a calculated loss . . . The mystery deepens when it is considered that the petitioner regards 81.65% of its production (during a dry year) surplus or 'left over' power, and at the same time the parent company prepares to increase production by construction of other plants . . .

"It is embarrassingly obvious that the petitioner is operating not at a loss but at a profit it has been able to conceal . . . The prices charged the parent company have been consistently reduced from year to year, notwithstanding a consistent rise in cost of production."

Justice Barnhill said:

"In 1952 Alcoa, which received 81.65% of petitioner's (Nantahala's) total production of power, paid only 47.3% of petitioner's total revenue while those who purchased only 18.35% paid 52.7% (of the revenue)."

"Corporations must operate on a profit motive basis. Not so with petitioner. Financed as it is, it can afford—indeed it proposes—to operate at an apparent loss. By so doing, it can evade the payment of its fair portion of State and Federal taxes."

Chief Justice Devin said:

"It was also in evidence from the director of accounting of the Utilities Commission that considering only the revenue afforded by customers using 18.35% of total energy,

in relation to that proportion of capitalization and expense, it (Nantahala) would show a return of 6.52%, whereas the service to all customers, including Alcoa at the rate paid, would show receipts less than operating expense." (That is, the fractional part of Nantahala's power going to Western North Carolina customers was sold at a rate that, proportionately, would have yielded the company a profit of more than six and a half per cent.)

### A SECONDARY QUESTION:

*Would Duke be permitted to keep some customers on a lower rate than others?*

On that point . . .

The Utilities Commission said:

"A public utility is under a legal duty to serve all its customers alike without favor, preference or discrimination."

Chief Justice Devin said:

"The statute . . . prohibits discrimination by a public service corporation in the following language:

"No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or service either as between localities or as between classes of service."

"The obligation of a public service corporation to serve impartially and without unjust discrimination is fundamental . . . There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service."

### ANOTHER SECONDARY QUESTION:

*Does this area receive special benefits from the present arrangement?*

On that point . . .

The Utilities Commission said:

" . . . we find no reason to condemn the arrangement between the applicant (Nantahala) and Alcoa by which Alcoa obligates

itself to purchase . . . all power generated by the applicant in excess of the requirements of its other customers. Such an arrangement inures to the benefit of other customers for the reason that it obviates the necessity and expense of stand-by plants to meet the requirements during years or periods of water deficiency . . .

"Perhaps the purpose of requesting an increase in rates, which will still produce insufficient revenue to yield a return on the investment is to effect a savings in taxes, but whatever the purpose, the effect is lower rates to all customers and the development of that part of Western North Carolina in which said public utility (Nantahala) operates. No other section of the state is so favored with cheap dependable power available to such a large proportion of the rural population."

"The Mead Corporation is in no position to complain . . . its rates when measured by any accepted standard are low and with the proposed increase in rates will still be low . . . we find no industrial plant in North Carolina which now purchases as many kilowatt-hours of primary power for as little money as does the Mead Corporation. With the proposed increase in rates it will still be in position to purchase more power from the applicant for less money than it could under any existing schedule from any other power company operating in North Carolina."

Judge Gwyn said:

"This Court would join with the Utilities Commission and all others in their appreciation of the part the petitioner (Nantahala) has taken in the development of Western North Carolina. The fact that its rates for primary power are lower than some other companies is an advantage to the users."

Justice Barnhill said:

"Unquestionably local customers of petitioner (Nantahala) enjoy special benefits from the arrangement now in existence between it and Alcoa, and the arrangement has contributed to the development of the extreme western section of North Carolina

## LETTERS

### From Mr. Rollman

Dear Mr. Editor:

For many, many years I have been reading and enjoying your editorials. I also enjoyed reading your editorial, "No Longer David".

Obviously, I have neither right nor reason to discuss in this letter your opinion, but believe, judging you by past actions and your known fairness, that you will want to publish the following correction of facts.

It is true that I have met with "Republican leaders" and they have told me in condensed form the following: Rollman, in our primary, just like the Democratic primary, every man is on his own. They didn't say "let the best man win"; they didn't say "let the man win who is supported by a machine". They said "the winner, obviously, is the guy with the most votes."

It was made abundantly clear that in the primary I am completely 100% on my own, but that I would receive the same treatment as any other candidate on the Republican ticket who is a candidate for nomination to Congress.

I do not know whether one or a dozen persons will seek the same honor on the Republican ticket in our Congressional District. But the "Republican leaders" did say the following: "Rollman, if you win the nomination, the Party, as is the proper thing to do, will be for you." And they also stated to me that if, God forbid, again anything would happen as it did in the last campaign when Mr. Shuford had to resign due to ill health, they are convinced that they would pick me if I am second high man.

In other words, Mr. Editor, let me put it this way, I don't want any special treatment and never have received special treatment in the last 48 years. But I have been treated wonderfully all my life. Politically, all I ask for is an even break.

HEINZ "DAVID" ROLLMAN

Waynesville, N. C.

## DO YOU REMEMBER?

Looking Backward Through the Files of The Press

### 65 YEARS AGO THIS WEEK

(1894)

You can commence shooting partridges tomorrow. The sum of \$68,000 is being dispensed this week among the settlers on the Cherokee lands in Jackson and Macon Counties, this state, under provision of a recent act of Congress. The registration of voters for the Franklin township was 493. Mr. Shanks expects to get the courthouse vault completed this week. John Henson says he will go ahead of any one in making syrup. John's a case. Smith's Bridge item.

### 35 YEARS AGO

(1924)

Historic Junaluska Inn was the scene of a brilliant gathering on Thursday night, when the Franklin League of Women Voters held its monthly meeting and banquet. Mrs. Florence Porter and daughter, Mrs. Iris Miller, left last Sunday to spend the winter in Atlanta. Uncle John Berry, of Ellijay, was in town last Saturday to hear the political speeches.

### 15 YEARS AGO

(1944)

Capt. Ben P. Grant and Mrs. Grant are visitors in Franklin while Capt. Grant is home on leave. The dedication service for Sloan Union Chapel in East Franklin will be held on Sunday afternoon.

### 5 YEARS AGO

(1954)

The old Blaine property has been picked as the site for the proposed new Franklin municipal building, and the Board of Aldermen hopes to have the building under construction soon.

I think people want peace so much that someday governments will have to get out of the way and let them have it. —Dwight Eisenhower.



## STRICTLY PERSONAL

By WEIMAR JONES

Last month, it seemed to me, wasn't up to par for October in the mountains.

There were, to be sure, days when the cloudless sky was something to behold; but there were days of leaden skies, too — more like mid-winter than fall. There were, to be sure, mippy mornings, followed by warm sunshine that brought all the pleasures and none of the discomfort of spring fever; but there were days when it was uncomfortably cold all day long. There was, to be sure, the autumnal coloring; but it lacked the brilliance of some Octobers.

Even at its worst, though, October here in the mountains is a glorious time to be alive. It's a month I look forward to from one fall to the next. And this one was worth waiting for, even if it wasn't up to standard.

Maybe, though, I'm just spoiled; maybe I've come to expect nothing in the year's tenth month but "October's bright blue weather". Maybe it never is that and nothing else.

O, well, in any case, it's only 11 months until October comes again. And no matter what next October's like, it will be a time worth waiting for, something to

be looked forward to.

One of the interesting reports brought back by that Macco delegation that toured Washington, New York, and the United Nations last week is a fact hadn't heard before: North Carolina ranks first among the states in the number of persons who have visited the U. N. That despite the fact nine other states have large populations.

It's yet another indication something a lot of people see to have forgotten: The Southeast always has been preeminently international-minded; this state notably so. The U. N. visit figure seems to indicate it still

I like that Halloween story that comes out of Charlotte.

The children in a primary grade school room were discussing plans for Halloween costumes, and one youngster said he was going to dress up like the devil; and half a dozen others cried, "No, too!"

Not so one original little chap. "I'm going to get myself some vanishing cream and be God."

Sacrilegious? Coming from an adult, it would have been. But from a small boy, it's just what you'd expect. It's an idea, in fact, no adult would be capable of coming up with.

## MODERN 'IMPROVEMENTS'?

### Passing Of The Featherbed

ANDREWS JOURNAL

What? You don't know what a featherbed is?

Well, this is the time of the year when Mama used to get Papa to drag out feather mattresses for all the beds as cold weather was beginning to set in. Why, featherbeds were the thing for soft, cozy sleeping, especially in an unheated room of an old frame house.

Those bedrooms were as cold as our flannel pajamas before a fire downstairs. You'd warm a blanket by the heater and make a dash upstairs. You'd pull back five of Grandma's heavy patch quilts and put that warmed blanket on your top sheet.

Then you'd dive quickly into bed. This was a problem if you were a small chap. The bed was quite a hurdle with springs, the hard summer mattress, and the foot-high fluffed-up feather mattress on top. So you'd climb the cold metal bedboard and splash into that over-sized pillow — "splop!" The fall of your body would make its impression in the mushy pad which swallowed you.

At first you'd stick your head under the covers and curl up as a ball or as if you were trapped inside a giant egg. Your warm moist breath circulated to fill the air space around you. When you felt snug in that position, you then ventured one foot, an inch at the time, toward the end of the bed as a hatching chick break-

ing out his shell. The sheets would seem more icy at the foot of the bed. But Big Brother would come to bed and you'd sneeze your cold feet next to his when you thought he was asleep.

Soon you'd be warm and snug and cozy and sleepy. Then came morning and you'd hear Mama calling you to breakfast. Buried in that featherbed under a mound of Grandma's heavy quilts, you'd be too comfortable to slide your feet onto the cold, slick linoleum. But soon the smell of hot biscuit fried ham, and scrambled eggs would drive you downstairs to dress by the kitchen range.

But nowadays a lot of people haven't heard of featherbeds. Maybe it's because improved and more economic heating methods are being used and more compact and insulated houses are being built. In some places the electric blanket is replacing the billow feather mattress and Grandma's quilts.

Ah! But nothing modern will be as soft and cozy and snug as that old featherbed.

## YOU AND YOUR TEEN-AGERS

If you act too suspicious of your teenagers, they may start to wonder what you were doing at the age.—Northwest Colo. Press.