NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION

November 6, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Docket No. E-7, Sub 1276 – Application of Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance Based Regulation

Dear Ms. Dunston:

Attached for filing on behalf of the Public Staff in the above-referenced docket is the public version of the Supplemental Proposed Order of the Public Staff Addressing Litigated Issues (Public Staff's Supplemental Proposed Order), submitted in compliance with the Commission's October 23, 2023 Order Denying Motion to Strike and Reconvening Hearing, as modified by Presiding Commissioner Duffley during the reconvened hearing on October 30, 2023.

Additionally, the Public Staff notes that it supports the changes to the revenue requirement contained in the Supplemental Revenue Requirement Stipulation between the Company and the Public Staff, filed on October 13, 2023.

The Public Staff's Supplemental Proposed Order includes an update to the Evidence and Conclusions for Findings of Fact Nos. 1-3 that incorporates evidence filed by the Public Staff in the October 13, 2023 Joint Supplemental and Settlement Testimony of Fenge Zhang, Michelle Boswell, and Dustin R. Metz. In addition, Findings of Fact Nos. 24 through 27, along with their associated Evidence and Conclusions, have been added based on the evidence taken during the reconvened hearing on October 30, 2023.

This filing includes both a redlined copy of the Supplemental Proposed Order, showing changes made to the October 11, 2023 Proposed Order of the Public Staff Addressing Litigated Issues, and a clean copy of the Supplemental Proposed Order.

Executive Director	Accounting	Consumer Services	Economic Research
(919) 733-2435	(919) 733-4279	(919) 733-9277	(919) 733-2267
Energy	Legal	Transportation	Water/Telephone
(919) 733-2267	(919) 733-6110	(919) 733-7766	(919) 733-5610

4326 Mail Service Center • Raleigh, North Carolina 27699-4300 • Fax (919) 733-9565
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By copy of this letter, we are forwarding a copy of the redacted version to all parties of record by electronic delivery. The confidential version will be provided to those parties that have entered into a confidentiality agreement.

Sincerely,

Electronically submitted
/s/ Lucy E. Edmondson
Chief Counsel
lucy.edmondson@psncuc.nc.gov

/s/ Robert B. Josey
Staff Attorney
robert.josey@psncuc.nc.gov

/s/ Nadia L. Luhr
Staff Attorney
nadia.luhr@psncuc.nc.gov

cc: Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation	)))))	**SUPPLEMENTAL** **PROPOSED ORDER OF** **THE PUBLIC STAFF** **ADDRESSING LITIGATED** **ISSUES**

HEARD: Wednesday, June 21, 2023, at 7:00 p.m., Burke County Courthouse, 201 South Green Street, Courtroom 1A, Morganton, North Carolina

Thursday, June 22, 2023, at 7:00 p.m., Mecklenburg County Courthouse, 832 East 4th Street, Courtroom 5350, Charlotte, North Carolina

Monday, July 24, 2023, at 7:00 p.m., Forsyth County Courthouse, 200 North Main Street, Courtroom 1A, Winston-Salem, North Carolina

Wednesday, July 26, 2023, at 6:30 p.m., via Webex

Monday, July 31, 2023, at 6:00 p.m., via Webex

Monday, August 14, 2023, at 7:00 p.m, Durham County Courthouse, 510 South Dillard Street, Courtroom 7D, Durham, North Carolina

Monday, August 28, 2023, at 2:00 p.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

Monday, October 30, 2023, at 1:00 p.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Kimberly W. Duffley, Presiding; Chair Charlotte A. Mitchell; and Commissioners ToNola D. Brown-Bland, Daniel G.

Clodfelter, Jeffrey A. Hughes, Floyd B. McKissick, Jr., Karen M. Kemerait

APPEARANCES:

For Duke Energy Carolinas, LLC:

Jack E. Jirak, Esq., Deputy General Counsel
Jason A. Higginbotham, Esq., Associate General Counsel
Duke Energy Corporation
410 South Wilmington Street, NCRH 20
Raleigh, North Carolina 27602

James H. Jeffries, IV, Esq., Partner
McGuire Woods LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202

Andrea Kells, Esq.
Kristin M. Athens, Esq.
McGuire Woods LLP
501 Fayetteville Street, Suite 500
Raleigh, North Carolina 27601

Brandon F. Marzo, Esq., Partner
Melissa Oellerich Butler, Esq., Associate
Joshua Warren Combs, Esq., Associate
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street Northeast, Suite 3000
Atlanta, Georgia 30308

Kiran H. Mehta, Esq., Partner
Molly McIntosh Jagannathan, Esq., Partner
Melinda L. McGrath, Esq., Partner
Troutman Pepper Hamilton Sanders LLP
301 South College Street, Suite 3400
Charlotte, North Carolina 28202

For the Using and Consuming Public:

Lucy E. Edmondson, Esq., Chief Counsel
Robert B. Josey., Esq., Staff Attorney
Nadia L. Luhr, Esq., Staff Attorney
Anne M. Keyworth, Esq., Staff Attorney
William S. F. Freeman, Esq., Staff Attorney
William E.H. Creech, Esq., Staff Attorney
Thomas J. Felling, Esq., Staff Attorney
Public Staff - North Carolina Utilities Commission (Public Staff)
4326 Mail Service Center
Raleigh, North Carolina 27699

For the Using and Consuming Public Pursuant to N.C.G.S. § 62-20 and on Behalf of the State and its Citizens Pursuant to N.C.G.S. § 114-2 (8):

Tirrill E. Moore, Esq., Assistant Attorney General
Derrick C. Mertz, Esq., Special Deputy Attorney General
North Carolina Department of Justice (AGO)
114 West Edenton Street
Raleigh, North Carolina 27603

For Carolina Utility Customers Association, Inc. (CUCA):

Marcus W. Trathen, Esq.
Matthew Tynan, Esq.
Christopher B. Dodd, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601

For the Carolina Industrial Group for Fair Utility Rates III (CIGFUR):

Christina D. Cress, Esq., Partner
Douglas C. Conant, Esq., Associate
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
Raleigh, North Carolina 27601

Chris S. Edwards, Esq., Partner
Ward and Smith, P.A.
127 Racine Drive
Wilmington, North Carolina 28403

For Andale, LLC (Andale):

Marcus W. Trathen, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
150 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601

For the North Carolina Sustainable Energy Association (NCSEA):

Ethan Blumenthal, Esq., Regulatory Counsel
Cassie Gavin, Esq., Director of Policy
4800 Six Forks Road, Suite 300
Raleigh, North Carolina 27609

For North Carolina League of Municipalities (NCLM):

Ben Snowden, Esq., Partner
Fox Rothschild LLP
434 Fayetteville Street, Suite 280
Raleigh, North Carolina 27601

For the North Carolina Justice Center, North Carolina Housing Coalition, Natural Resources Defense Council, Southern Alliance for Clean Energy, and Vote Solar (NCJC, et al.):

David L. Neal, Esq., Senior Attorney
Munashe Magarira, Esq., Staff Attorney
Thomas Gooding, Esq., Associate Attorney
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516

For the Commercial Group:

Alan R. Jenkins, Esq.
Jenkins at Law, LLC
2950 Yellowtail Avenue
Marathon, Florida 33050

For The Kroger Co. and Harris Teeter, LLC (Kroger/Harris Teeter):

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East 7th Street, Suite 1510
Cincinnati, Ohio 45202

Ben Royster, Esq.
Royster & Royster, PLLC
851 Marshall Street
Mount Airy, North Carolina 27030

For The Sierra Club:

Catherine Cralle Jones, Esq.
Andrea C. Bonvecchio, Esq.
Law Office of F. Bryan Brice, Jr.
130 South Salisbury Street
Raleigh, North Carolina 27601

For Haywood EMC, Blue Ridge EMC, Piedmont EMC, and Rutherford EMC:

Christina D. Cress, Esq., Partner
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
Raleigh, North Carolina 27601

For NC WARN:

Matthew D. Quinn, Esq., Partner
Lewis & Roberts, PLLC
Post Office Box 17529
Raleigh, North Carolina 27619

Based upon the foregoing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

Equal Percentage Allocation, Base Fuel and Fuel-Related Factors, and Fuel Cost Allocation

1. The equal percentage methodology does not follow cost causation principles.

2. Voltage differentiated fuel rates follow cost causation principles.

3. It is reasonable and appropriate to set the base fuel and fuel-related rates as established herein.

Capital Structure, Cost Rate of Debt, Return on Equity, Earnings Treatment, and Overall Rate of Return

4. The capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return allowed and approved in this Order are intended to provide DEC, through sound management, the opportunity to earn an overall rate of return. The overall rate of return is derived from applying an imputed cost of debt and an imputed rate of return on common equity to an imputed capital structure, proportionately.

5. The overall rate of return, including the rate of return on common equity, must be supported by competent, material, and substantial record evidence; consistent with the applicable jurisprudence, especially the requirements of N.C.G.S. §§ 62-133.16 and 62-133 (including without limitation its

considerations of changing economic conditions); and must balance DEC's need to maintain the safety, adequacy, and reliability of its service with the need of DEC's customers to receive safe, adequate, and reliable electric service.

6. Ultimately, the capital structure, earnings treatment, cost rate of debt, rate of return on common equity, and overall rate of return set by this Order must result in just and reasonable rates.

7. A capital structure consisting of 52% equity and 48% debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that capital structure to apply until altered.

8. A 4.56% cost rate of debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that cost of debt to apply until altered.

9. In setting these figures, especially the authorized rate of return on equity, the Commission has considered changes in risk to the utility and its customers that may result from adopting a multiyear rate plan. The Commission finds the adoption of the multiyear rate plan will reduce the Company's risk and increase the customers' risk, and, therefore, a decrement to the Company's return on equity is warranted. The Commission finds a 9.35% authorized rate of return on equity for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that authorized rate of return to apply until altered.

10. Throughout the term of the multiyear rate plan, it is just and reasonable for the following provisions to apply:

(a) If DEC's weather-normalized earnings fall below the 9.35% authorized rate of return on equity, DEC may file a rate case pursuant to N.C.G.S. § 62-133;

(b) If DEC's weather-normalized earnings on its rate of return on equity are less than 9.85% but equal to or greater than 9.35%, DEC may retain those excess earnings; and

(c) If the weather-normalized earnings of DEC during the rate year are equal to or exceed a 9.85% rate of return on equity, those excess earnings shall be refunded to customers. Any such refund shall be via an earnings sharing mechanism rider.

11. Proportionally applying the cost of debt and return on equity to the capital structure referenced herein results in an overall rate of return ranging from 7.0508% (at an ROE of 9.35%) to 7.3108% (at an ROE of 9.85%).

12. The provision of safe, adequate, reliable, and affordable electric utility service is essential to DEC's customers.

13. The rate increase approved in this case will be difficult for some of DEC's customers to pay.

14. The capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return set by this Order: (a) will result in just and reasonable rates; (b) are in the public interest; (c) are consistent with the applicable jurisprudence, including without limitation, N.C.G.S. §§ 62-133 and 62-133.16 and the rules adopted thereunder; (d) account for the changing economic conditions of North Carolina and are fair to DEC's customers generally and also in light of changing economic conditions; (e) appropriately balance DEC's need to maintain the safety, adequacy, and reliability of its service with the need of DEC's customers to receive safe, adequate, and reliable electric service; (f) assures that no customer or class of customers is unreasonably harmed and that the rates are fair to both the electric public utility and to the customer; (g) reasonably assures the continuation of safe and reliable electric service; (h) will not unreasonably prejudice any class of electric customers and will not result in sudden substantial rate increases or "rate shock" to customers; (i) appropriately balances the benefits received by DEC's customers from the provision of safe, adequate, and reliable utility service with the difficulties some of DEC's customers will experience in paying DEC's increased rates; (j) balances the fairness to the customers' need to pay the lowest possible rates with the need of DEC to obtain debt and equity financing; and (k) are appropriate.

COVID

15. The Commission's December 21, 2021, Order in Docket No. E-7, Sub 1241 (Deferral Order), approved DEC's request to create a regulatory asset into which to defer incremental COVID-19 pandemic-related costs.

16. In this proceeding, DEC seeks to recover the deferred balance, including accrued carrying costs, related to: (1) customer fees waived; (2) bad debt charge-offs; (3) employee stipends to cover unplanned expenses associated with the COVID pandemic; (4) costs related to employee safety; (5) costs related to remote work; and (6) miscellaneous costs, such as employee overtime.

17. Recovery in rates of DEC's deferred COVID-related costs pertaining to customer fees waived, bad debt expense, and employee safety related costs are just and reasonable and should be approved, except that it is appropriate to reduce these allowed costs by the Company's O&M expense savings during the pandemic, including those for employee travel expenses, printing and postage costs, and remote work costs; voluntarily provided employee stipends; DEC's filed ERCs and the DEC portion of DEBS' filed ERCs; and the carrying cost benefit of the delayed payment of the employer portion of Social Security tax and DEC's portion of DEBS' carrying cost benefit concerning the same.

18. It is not appropriate for DEC to recover the carrying costs accrued during the deferral period or a return on the unamortized balance during the amortization period.

19. A 12-year amortization beginning when rates become effective for this proceeding is appropriate.

20. It is appropriate to continue the COVID deferral of the incremental bad debt under the conditions that: (1) any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case;

and (2) expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by the Company for call center overtime was not above the amounts already included in the Company's cost of service.

Revenue Apportionment and Rate Design

21. DEC proposes changes to its residential rate schedules to allow detached garages, barns, and other structures on the same residential premise to be served under a residential rate schedule.

22. DEC proposes the following changes and additions to its lighting rate schedules: (1) adding new fixtures and modifying the pricing structures of Schedules OL and PL; (2) establishing a new tariff for Outdoor Lighting Service Regulations (OSLR) and increasing the contract period from three to five years; and (3) replacing its post top fixtures and many of its decorative mercury vapor (MV) fixtures with 30-Watt LEDs.

23. DEC proposes to include a minimum contract demand of 75 kW in the OPT-V rate tariff but to allow current customers on OPT-V tariffs that have contract demands below 75 kW to remain on their OPT-V rate tariff.

24. The rates ultimately approved by the Commission in this proceeding should allow for the recovery of the total revenue requirement set in this proceeding, which is then equitably apportioned to each customer class to incrementally move each class's rates closer to parity throughout the MYRP while avoiding undue rate shock.

25. DEC proposes to apportion its revenue requirement among its rate classes through the use of a fixed 10% subsidy/excess variance reduction that it believes will gradually reduce interclass subsidies to better align each rate class with the overall rate of return.

26. The Public Staff proposes a revenue apportionment methodology based on the Public Staff's four guiding principles, which seek to mitigate the potential for substantial rate shock to each class of customers, minimize interclass cross subsidization to the greatest extent possible, and ensure that each rate class makes substantial movement towards rate parity by the conclusion of the MYRP through the use of a +/- 10% band of reasonableness.

~~23.~~27. The rates approved herein are just and reasonable to DEC, DEC's customers, and all the parties to this proceeding, and serve the public interest.

Non-Residential Solar Choice Rider (Rider NSC)

~~24.~~28. It is appropriate to remove the proposed five-megawatt (MW) cap on nameplate capacity from Rider NSC.

Easements

~~25.~~29. DEC does not routinely incorporate the depiction or map of the planned facilities that DEC provides to customers in the easement documentation being executed by customers.

~~26.~~30. As a standard practice, it is reasonable and appropriate for DEC to record a depiction or map of the planned facilities as part of the easement

document to memorialize the intended location of the facilities as of the time the customer executes the easement.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

Throughout this Order, the Commission notes it is required "to find all facts essential to a determination of the question at issue." However, the Commission "is not required to comment upon every single fact or item of evidence presented by the parties." *State ex rel. Utils. Comm'n; and the N. C. Natural Gas Corp. v. the Public Staff; and the Cities of Wilson, Rocky Mount, Greenville, and Monroe, N. C.*, 323 N.C. 481, 496-97, 374 S.E.2d 361, 369 (1988) (citations and quotations omitted); *and see* N.C.G.S. § 62-79. "Instead, the Commission's summary of the appellant's argument and its rejection of the same is sufficient to enable the reviewing court to ascertain the controverted questions presented in the proceeding, which is all that is required." *Stein II* 381 N.C. at 521 (quotations, brackets, and citation omitted).

The record is voluminous. For the remainder of this Order, the Commission exercises its right to not comment on every fact or item of evidence in the record. Instead, the Commission references those facts and issues essential to the Commission's determinations. The absence of recitation of facts, items, or issues does not mean those matters were overlooked or not considered. Instead, the Commission has deliberated on the whole record before it.

Equal Percentage Allocation

The evidence supporting these findings of fact is contained in DEC's verified Application and Form E-1, the testimony and exhibits of DEC witnesses Janice Hager and Quynh Bowman, the testimony of Public Staff witnesses Jay Lucas and Fenge Zhang and Michelle Boswell (Accounting Panel), the testimony of CIGFUR witness Brian Phillips, and the entire record in this proceeding.

In its Application and Form E-1, the fuel rates presented by DEC were allocated to customer classes utilizing the equal percentage fuel adjustment.

Public Staff witness Lucas testified that DEC currently allocates fuel cost adjustments to customer classes based on an equal percentage change, meaning that fuel and fuel-related costs are recovered using a uniform percent increase or decrease per rate class such that each rate class will, on average, experience the same average monthly percent increase or decrease as the overall fuel and fuel-related costs change. Tr. vol. 13, 136. He testified that the Public Staff first supported the use of equal percentage allocation in DEP's 2008 fuel adjustment proceeding, Docket No. E-2, Sub 929. He cited several reasons for the Public Staff's agreement to the equal percentage allocation, such as the uncertain economic times and the large increase in fuel costs. *Id.* at 136-37. He noted that the equal percentage method of adjusting rates assisted industrial customers financially during the Great Recession and during a period of unprecedented increases in coal prices at the expense of other customers. *Id*.

Public Staff witness Lucas testified that since 2012, in Docket No. E-7, Sub 1002, DEC has allocated fuel cost increases on an equal percentage basis to each of its customer classes as allowed by Session Law 2007-397. *Id*. at 135-38. He indicated that DEC switched to the equal percentage method because large customers believed that moving to equal percentage fuel adjustments would aid in load retention during the economic conditions at the time. *Id.* at 137-38. Mr. Lucas testified that the distortion created by equal percentage fuel adjustments shifts fuel costs away from industrial customers and onto other customer classes. *Id*. at 174-76. He explained that, for this reason, it is the Public Staff's recommendation that the Commission should not allow DEC to make equal percentage fuel adjustments moving forward. *Id.*

Witness Lucas recommended that DEC eliminate equal percentage fuel adjustments in its next fuel proceeding to be filed in February 2024 with rates taking effect on September 1, 2024. *Id*. at 147.

Witness Lucas also testified that DEC should use voltage differentiated fuel rates to reflect the fact that less generation and fuel consumption is required for customers that receive service at higher voltages. *Id.* at 141. Witness Lucas recommended that DEC implement voltage differentiation in fuel rates in its next fuel proceeding to be filed in February 2024 with rates taking effect on September 1, 2024. *Id*. at 147. DEC and the Public Staff agreed to this recommendation in paragraph 49 in their Stipulation filed on August 28, 2023.

Witness Lucas stated that N.C.G.S. § 62-133.16(b) requires the Commission to allocate the utility's total revenue requirement among customer classes based on the cost causation principle and minimize cross subsidies "to the greatest extent practicable." *Id.* at 142-45, 181-82. He noted that the statute defines the cost causation principle to mean "establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service." *Id.* at 142.

Witness Lucas presented the current fuel rates adjusted to remove the equal percentage allocation method. *Id*. at 36. As set forth in his Table 6, the rates in cents per kWh, excluding the regulatory fee, are 2.3345 for Residential customers, 2.3387 for General customers, and 2.3326 for Industrial customers. *Id.* at 145.

In his direct testimony, CIGFUR witness Collins provided support for the equal percentage methodology. Tr. vol. 15, 972-74. He testified that the methodology has been approved without objection by any party in every annual fuel charge adjustment proceeding since 2012 and that the method has served ratepayers well and should continue to be utilized. *Id.* He further stated that the methodology levelizes over time any harsh impacts and results in equal percentage increases or decreases to all customers that are fair, just, and reasonable. *Id.*

The Commission notes that in DEC's 2023 annual fuel proceeding, DEC and the Public Staff agreed that DEC should continue to utilize the equal percentage fuel adjustment for purposes of that case. *See* Agreement and Stipulation of Partial Settlement, Docket No. E-7, Sub 1282 (filed May 31, 2023).

Based on all the evidence in this proceeding, the Commission concludes that use of the equal percentage method of allocating fuel and fuel-related costs does not follow the cost causation principle. The Commission also concludes that the use of voltage differentiated fuel rates does follow the cost causation principle. In reaching these conclusions, the Commission gave substantial weight to the testimony of the Public Staff regarding the cost causation principle set forth in N.C.G.S. § 62-133.16, as well as its demonstration of the distortion that can be created by equal percentage fuel adjustments. Further, the Commission finds that these changes shall be implemented for DEC's next fuel rider proceeding.

Base Fuel and Fuel-Related Factors

In its Application, DEC explained that the rates set forth in the exhibits to the Application included a base fuel and fuel-related rate of Residential – 2.0031¢/kWh; General Service/Lighting – 1.8243¢/kWh; and Industrial – 1.8422¢/kWh, excluding the Experience Modification Factors as approved in Docket No. E-7, Sub 1263 and excluding regulatory fees.

Company witness Q. Bowman testified that DEC made an adjustment (Adjustment No. NC2010) to test period fuel expense to match the fuel clause revenues included in pro forma Adjustment No. NC1010. Tr. vol. 12, 165. She

explained that by matching the expenses to the revenue, the adjustment ensures that no increase is requested in this proceeding related to fuel and fuel-related costs that are recoverable through the fuel clause. *Id.*

In her supplemental direct testimony, witness Q. Bowman explained that DEC had updated pro forma Adjustment No. NC2010 to include revisions due to a formal error in the original application. Tr. vol. 12, 202.

In her second supplemental direct testimony, witness Q. Bowman testified that DEC had made a new adjustment (Adjustment No. NC2020) to adjust the nonfuel component of reliability purchases to reflect the impacts of the Stipulation Regarding the Proper Methodology for Determining the Fuel Costs Associated with Power Purchases from Power Marketers and Others reached with DEP, DEC, and the Public Staff in Docket No. E-7, Sub 1282. Tr. vol. 12, 202. She further explained that based on the stipulation, 15% of energy costs from these power purchases is the appropriate percentage to be deemed as non-fuel costs and appropriate for cost recovery through base rates.

The Commission issued a final order in the Sub 1282 fuel rider proceeding on August 23, 2023. In the Sub 1282 order, the Commission concluded that, effective for service rendered on and after September 1, 2023, DEC shall adjust the base fuel and fuel-related cost factors in its North Carolina retail rates, as approved in the 2019 Rate Case, amounting to 1.6027¢/kWh for the Residential class, 1.7583¢/kWh for the General Service/Lighting class, and 1.6652¢/kWh for the Industrial class (all excluding the regulatory fee), by amounts equal to

1.0260¢/kWh, 0.5013¢/kWh, and 0.2676¢/kWh, respectively, and further, that DEC shall adjust the resulting approved prospective fuel and fuel-related cost factors by EMF increments of 1.2579¢/kWh for the Residential class, 1.2342¢/kWh for the General Service/Lighting class, and 1.3007¢/kWh for the Industrial class and the EMF interest increments of 0.0084¢/kWh for the Residential class, 0.0082¢/kWh for the General Service/Lighting class, and 0.0087¢/kWh for the Industrial Class (excluding the regulatory fee). The Commission further ordered that the EMF increments are to remain in effect for service rendered through November 31, 2024.

In their direct testimony and exhibits, the Public Staff Accounting Panel also used the fuel rates approved in Docket No. E-7, Sub 1263. Public Staff Accounting Ex. 1, Schedule 3-1(e), Tr. Ex. vol. 12. In the Joint Supplemental and Settlement Testimony of Fenge Zhang, Michelle Boswell, and Dustin R. Metz, the Public Staff included an adjustment to fuel costs to reflect the impact of witness Lucas' recommendation to eliminate the equal percentage change in fuel rates. Public Staff Supplemental and Settlement Accounting Exhibit 1, Schedule 3-1(e), Tr. Ex. vol. 17.

The only party that submitted evidence in this proceeding using fuel rates other than those approved in Docket No. E-7, Sub 1263 was the Public Staff. Public Staff witness Lucas recommended that such rates be implemented effective September 1, 2024. No party offered any evidence contesting the testimony of witness Q. Bowman that specifically supported the base fuel and fuel-related cost

factors proposed by DEC. Accordingly, the Commission concludes for purposes of this proceeding that the total of the approved base fuel and fuel-related cost factors, by customer class — the sum of the respective base fuel and fuel-related cost factors set in the 2019 Rate Case and the annual non-EMF fuel and fuel-related cost riders approved by the Commission in Docket No. E-7, Sub 1282 — is just and reasonable to all parties in light of all the evidence presented.

Fuel Cost Allocation

Company witness Hager testified that DEC is proposing that the Commission use production demand as the more appropriate factor to allocate purchased power capacity costs to North Carolina retail and across North Carolina retail customer classes. Tr. vol. 12, 369-70. She testified that allocation based on production demand is more appropriate than production plant because purchased power capacity costs that are not recovered through the fuel clause are allocated on production demand. *Id.* She testified that the change towards allocation based on production demand would align all purchased capacity costs under the same allocator. *Id.* Additionally, most production plant is allocated on production demand, except for jurisdiction-specific amounts that are not related to purchase power costs. Tr. vol. 12, 170.

No party offered testimony opposing DEC's recommendation on the allocation of purchased power capacity costs.

In DEC's previous general rate case, the parties agreed on production plant as an appropriate allocation factor for purchased power capacity costs. Tr. vol. 12,

369. Under N.C.G.S. § 62-133.2(a2)(2), the Commission shall determine how these costs shall be allocated in a general rate case for the electric public utility. Therefore, this proceeding is the appropriate forum for the Commission to reconsider the appropriate cost allocation methodology for such costs, which are to be requested for cost recovery in DEC's annual fuel proceeding. Based upon the evidence presented in this case, the Commission finds and concludes that the same production demand allocation method approved for production demand costs in this case using the 12 CP methodology at NC retail and the Modified A&E methodology for NC retail classes is the most appropriate methodology for allocating purchased power capacity costs in DEC's annual fuel proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 – 14

Capital Structure, Cost Rate of Debt, Return on Equity, Earnings Treatment, and Overall Rate of Return

The Commission here addresses the applicable law and facts related to DEC's capital structure, cost rate of debt, return on equity, treatment of excess return on equity earnings, and its overall rate of return.

A. CERTAIN CITATIONS

Within this section, the Commission makes numerous citations. The short cite for several of the more frequently referenced are set forth below:

Bluefield	*Bluefield Water Works & Improvement Co. v. Public Service Comm'n*, 262 U.S. 679, 43 S.Ct. 675 (1923).
Cooper I	*State ex rel. Utils. Comm'n; Duke Energy Carolinas, LLC; and the Public Staff v. Att'y*

	Gen. Cooper; and the City of Durham, 366 N.C. 484, 739 S.E.2d 541 (2013).
Cooper II	*State ex rel. Utils. Comm'n; Virigina Electric and Power Co.; and Public Staff v. Att'y Gen. Cooper; and Nucor Steel - Hertford*, 367 N.C. 430, 758 S.E.2d 635 (2014).
Cooper III	*State ex rel. Utils. Comm'n; Duke Energy Progress, Inc.; and Public Staff v. Att'y Gen. Cooper; and the N. C. Waste Awareness and Reduction Network*, 367 N.C. 444, 761 S.E.2d 640 (2014) *(N.B.,* appeal affirming *2013 DEP Rate Case Order*).
Cooper IV	*State ex rel. Utils. Comm'n; Duke Energy Carolinas, LLC; and Public Staff v. Att'y Gen. Cooper; N.C. Waste Awareness and Reduction Network; N.C. Justice Center; and N.C. Housing Comm'n*, 367 N.C. 644, 766 S.E.2d 827 (2014) (*N.B.,* appeal on order issuing after *Cooper I* remand).
CUCA I	*State ex rel. Utils. Comm'n; Pennsylvania & Southern Gas Co.; and Public Staff v. Carolina Util. Customers Ass'n, Inc.*, 348 N.C. 452, 500 S.E.2d 693 (1998).
CUCA II	*State ex rel. Utils. Comm'n; Public Service Company of N. C., Inc.; Public Staff; and Attorney General Easley v. Carolina Util. Customers Ass'n, Inc.*, 351 N.C. 223, 524 S.E.2d 10 (2000).
Duquesne	*Duquesne Light Co.; et al. v. Barasch; et al.*, 488 U.S. 299, 109 S.Ct. 609 (1989).
General Telephone	*State ex rel. Utils. Comm'n; and Att'y Gen. Morgan v. General Telephone Co.; and the City of Durham*, 281 N.C. 318, 189 S.E.2d 705 (1972).
Hope	*Fed. Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 64 S.Ct. 281 (1944).
Public Staff I	*State ex rel. Util. Comm'n; and Duke Power Co. v. Public Staff; Att'y Gen. Thornburg; City of*

	Durham; and Eddleman, 322 N.C. 689, 370 S.E.2d 567 (1988).
Public Staff II	*State ex rel. Utils. Comm'n; and N. C. Natural Gas Corp. v. Public Staff; and the Cities of Wilson, Rocky Mount, Greenville, and Monroe*, 323 N.C. 481, 374 S.E.2d 361 (1988).
Public Staff III	*State ex rel. Utils. Comm'n; and Duke Power Co. v. Public Staff; Att'y Gen. Thornburg; and City of Durham* 331 N.C. 215, 415 S.E.2d 354 (1992) (*N.B.,* appeal on order issuing after *Public Staff I* remand).
Stein I	*Stae ex rel. Utils. Comm'n; Duke Energy Progress, LLC; and Duke Energy Carolinas, LLC v. Att'y Gen. Stein; Public Staff; N. C. Just Center; N. C. Housing Coalition; Natural Resources Defense Council; Southern Alliance for Clean Energy; N. C. Sustainable Energy Ass'n; and the Sierra Club*, 375 N.C. 870, 851 S.E.2d 237 (2020).
Stein II	*State ex rel. Utils. Comm'n; Att'y Gen. Stein; and Public Staff v. Virginia Electric and Power Co.,* 381 N.C. 499, 873 S.E.2d 608 (2022).
2023 DEP Rate Case Order	Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Public Notice, *Application of Duke Energy Progress, LLC, For Adjustment of Rates and Charges Application to Electric Service in North Carolina and Performance Based Regulation*, Docket No. E-2, Sub 1300 (August 18, 2023).
2023 Aqua Rate Case Order	Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Approving Water and Sewer Investment Plan, Granting Partial Rate Increases, and Requiring Customer Notice, *Application by Aqua North Carolina, Inc. 202 MacKenan Court, Cary, North Carolina 27511, for Authority to Adjust and Increase Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina and for Approval of a Water and Sewer Investment Plan*, Docket No. W-218, Sub 573 (June 5, 2023).

2023 CWSNC Rate Case Order	Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Granting Partial Rate Increase, Approving Water and Sewer Investment Plan, and Requiring Customer Notice, *Application by Carolina Water Service, Inc. of North Carolina for Authority to Adjust and Increase Rates and Charges for Water and Sewer Utility Service in All Service Areas of North Carolina and Approval of a Three-Year Water and Sewer Investment Plan*, Docket No. W-354, Sub 400 (April 26, 2023).
2021 DEC Rate Case Order	Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice, *Petition of Duke Energy Carolinas, LLC, for Approval of Prepaid Advantage Program* (Docket No. E-7, Sub 1213); *Application by Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina* (Docket No. E-7, Sub 1214); *Application by Duke Energy Carolinas, LLC for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego* (Docket No. E-7, Sub 1187) (March 31, 2021).
2013 DEP Rate Case Order	Order Granting General Rate Increase, *Application of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina* (Docket No. E-2, Sub 1023) (May 30, 2013) (*N.B.,* affirmed by *Cooper III*).
2003 Bellsouth Order	Order Adopting Permanent Unbundled Network Element Rates for Bellsouth Telecommunications, Inc., *General Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, Docket No. P-100, Sub 133d (December 30, 2003).
1994 PSCNC Rate Case Order	Order Granting Partial Rate Increase, *Application of Public Service Company of North Carolina, Inc. for an Adjustment of its Rates and*

Charges, Docket No. G-5, Sub 327 (October 7, 1994).

B. HOUSE BILL 951

As an initial matter, the Commission addresses recent impactful legislation. On October 13, 2021, Governor Cooper signed into law House Bill 951 (Session Law 2021-165) (House Bill 951 or HB 951) which, among other matters, included several significant additions to the Public Utilities Act, N.C.G.S. § 62-1 *et seq.* (the Act). Part II of House Bill 951 amended Chapter 7 of the Act to add Section 62-133.16.

Section 62-133.16 represents a substantial supplement to the existing law related to electric public utilities such as the Company. Discussed below are four new concepts allowed for the first time in North Carolina under Section 62-133.16.

First, electric public utilities in North Carolina are now entitled to file a multiyear rate plan, which is "a rate-making mechanism under which the Commission sets base rates for a multiyear period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application . . ." N.C.G.S. § 62-133.16(a)(5).

Second, electric public utilities are now allowed to utilize "decoupling" of the rates for the residential class. Under the decoupling mechanism in N.C.G.S. § 62-133.16, the Company "shall defer to a regulatory asset or liability account the difference between the actual revenue and the target revenue for the residential

class," and this variance will result in an annual adjustment to the residential customer class's bills. N.C.G.S. § 62-133.16(c)(2).

Third, the new law created an earnings sharing mechanism. This mechanism allows the electric public utility to elect to file a new rate case under N.C.G.S. § 62-133 in the event its weather-normalized earnings fall below the authorized rate of return on equity; conversely, it must refund to customers all weather-normalized earnings in excess of the authorized rate of return plus 50 basis points. N.C.G.S. § 62-133(c)(1)(c)(1). Thus, electric public utilities are permitted to retain up to 50 basis points of their excess earnings.

Fourth, the new law employs performance incentive mechanisms (PIMs). A PIM is "a rate-making mechanism that links electric public utility revenue or earnings to electric public utility performance in target areas consistent with policy goals . . ." N.C.G.S. § 62-133.16(a)(6). PIMs either provide the Company with the opportunity to earn a reward to be collected from customers or expose the Company to payment of penalties that are refunded to customers (subject to a cap) related to the Company's achievement of specific criteria in certain areas. N.C.G.S. § 62-133.16(c)(4). Any penalties or rewards from these incentives "will be excluded from the determination of any refund pursuant to [the] earnings sharing mechanism." N.C.G.S. § 62-133.16(c)(1)(c)(1).

The Legislature charged the Commission with consideration of a number of factors in reviewing applications made under the new law, including:

(c) Application. – [ ]
(1) The following shall apply to a MYRP:

a. [ ] In setting the electric public utility's authorized rate of return on equity for an MYRP period, the Commission shall consider any increased or decreased risk to either the electric public utility or its ratepayers that may result from having an approved MYRP.

[ ]

(d) Commission Action on Application. –

(1) The Commission shall approve a PBR application by an electric public utility only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder. In reviewing any such PBR application under this section, the Commission shall consider whether the PBR application:

a. Assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer.

b. Reasonably assures the continuation of safe and reliable electric service.

c. Will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers.

(2) In reviewing any such PBR application under this section, the Commission may consider whether the PBR application:

a. Encourages peak load reduction or efficient use of the system.

b. Encourages utility-scale renewable energy and storage.

c. Encourages DERs.

d. Reduces low-income energy burdens.

e. Encourages energy efficiency.

f. Encourages carbon reductions.

g. Encourages beneficial electrification, including electric vehicles.

h. Supports equity in contracting.

i. Promotes resilience and security of the electric grid.

j. Maintains adequate levels of reliability and customer service.

k. Promotes rate designs that yield peak load reduction or beneficial load-shaping.

N.C.G.S. § 62-133(c), (d) (brackets denote omissions). Further, the Commission adopted Rule R1-17B in accordance with the rulemaking authority delegated to it by N.C.G.S. § 62-133.16(j).

Oversight of DEC's actions taken pursuant to the Commission's conclusions herein does not end with this Order. The Commission and the Public Staff each have the ability to seek to "examine the reasonableness of an electric public utility's rate under a plan, conduct periodic reviews … and initiate a proceeding to adjust base rates or PIMs as necessary." N.C.G.S. § 62-133.16(e).

Although House Bill 951 substantially expands the Act, the new law is not inconsistent with or in derogation of current jurisprudence. In fact, it harmonizes with existing law – for example, Section 62-133.16 itself incorporates and references "traditional" ratemaking statutes. *See* N.C.G.S. § 62-133.16(c), (c)(1)(c)(1).[1] Moreover, Section 62.133-16 explicitly preserves the Commission's existing ratemaking authority, providing: "Nothing in this section shall be construed to [ ] limit or abrogate the existing rate-making authority of the Commission …" N.C.G.S. § 62-133.16(g) (omission denoted via brackets and ellipses).

[1] Further, the concepts Section 62-133.16 employs are familiar and well-known to the Commission. For example, the responsibility "[t]o make reasonable and just rates" has been the obligation of the Commission's predecessors since the 19th century. *See, e.g.,* 1899 N.C. Session Laws, Chapter 164, § 2. The charge that rates be fair to both the customer and utility mirrors the requirements of N.C.G.S. § 62-133(a). The Commission's requiring the provision of safe and reliable utility services is not new. *See, e.g., 2013 DEC Rate Case Order* at 15 (*affirmed by Cooper IV*). The Commission has long been obligated to design a just and reasonable rate structure that does not subject customers to "rate shock" such as would be occasioned by substantial rate increases. *CUCA II*, 351 N.C. 223, 243. Additionally, the Commission has long been required to consider the risk falling on the electric utility provider and ratepayers under traditional ratemaking procedures. Finally, the obligation to avoid prejudice is well-established State policy. N.C.G.S. § 62-2(a)(4).

Accordingly, the Commission finds applicable to this proceeding the well-established methodologies and jurisprudence surrounding the Public Utilities Act.

C. COMMISSION REVIEW

Regulation is a substitute for the marketplace and a proxy for competition. Tr. vol. 7, 430. The Commission has substantial expertise in supervising the public utilities of this State. *State ex rel. Utils. Comm'n; and Attorney General Edmisten v. Mebane Home Telephone Co.*, 298 N.C. 162, 173, 257 S.E.2d 623, 632 (1979). The Commission's decisions are "entitled to great deference given that its members possess an expertise in utility ratemaking that makes them uniquely qualified to decide the issues that are presented for their consideration." *Stein I* 375 N.C. at 900 (citation omitted).

The Commission is "responsible for determining the weight and credibility to be afforded to the testimony of any witness, including any expert opinion testimony." *Stein II,* 381 N.C. at 515 (citation and quotation omitted). "The Commission has been given the authority and responsibility for setting rates for public utilities. In doing so, it must have room to exercise its discretion and judgment." *State ex rel. Utils. Comm'n; and Duke Power Co. v. Eddleman; the Public Staff; Attorney General Thornburg; City of Durham; and Conservation Council of North Carolina*, 320 N.C. 344, 379, 358 S.E.2d 339, 361 (1987) (underlining added).

This Order cites the decisions of prior Commissions, but this Commission understands that "well-established principles of North Carolina law establish that

prior Commission decisions … are not entitled to either *res judicia* or *stare decisis* effect." *Stein II,* 381 N.C. at 524 (citations omitted). *Stein II* made clear that the applicability of the concept of *stare decisis* to the Commission has "no support of any nature in this Court's precedent" and further is "inconsistent with the basic principle of North Carolina ratemaking law." *Id*. at n.4 (citations omitted). This is due, in part, to the fact that "ratemaking activities of the Commission are a legislative function." *Id*. (citation omitted).

In reviewing the topics at issue, the Commission is mindful that the burden of proof for requests for rate changes rests on the Company. *See, e.g., CUCA I*, 348 N.C. at 464; N.C.G.S. §62-75; and N.C.G.S. §62-134(c) ("At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable.")

D. SOURCE OF ALL FACTS ESSENTIAL TO THE COMMISSION'S DETERMINATIONS

The evidence and facts essential to the Commission's determinations and that support these findings of fact and conclusions are taken from public witnesses, expert witnesses (including, without limitation, Company witness Morin, Company witness Coyne, Company witness Newlin, Company witnesses Bateman and Stillman, Public Staff witness Walters, CUCA witness LaConte, NCJC *et al.* witness Ellis, Commercial Group witness Chriss, and CIGFUR III witness Collins), testimony and responses to questions, the application, prefiled testimony, exhibits, documents, filings made in this matter (including its sub-dockets), and the entire

record. The Commission has also had the opportunity to observe, firsthand, the demeanor of those witnesses who provided live testimony and question them in person.

E. CERTAIN FINANCIAL MATTERS

Below are discussed the Company's creditworthiness and finances, capital structure, cost rate of long-term debt, and return on common equity.

1. Creditworthiness and Finances

The Commission is aware that DEC will be expending substantial sums, and its creditworthiness and financial strength are therefore important. However, DEC has sought recovery for these significant costs through its requested revenue requirement, and debt incurred prudently and appropriately for projects not identified in the Company's application can be submitted to the Commission in a subsequent rate case proceeding for evaluation and recovery. Therefore, the fact that large sums of money will be spent by DEC should not be the sole factor reviewed by the Commission.

Independent analysts also agree Duke has a strong, investment grade credit rating. On May 11, 2023, Moody's issued an annual report on DEC's creditworthiness. Public Staff, Newlin – Direct, Cross Ex. 2. Tr. Ex. vol. 9 (Part II). The report is positive for DEC. First, notwithstanding the substantial capital spend forecast by DEC, Moody's "outlook" for DEC is "stable." *Id*. pg. 1. This is important because one signal Moody's can give of an impending credit downgrade is to lower a company's outlook from "stable" to "negative." As the Company explained, a

stable rating means those credit ratings are not likely to change at this time. Tr. vol. 9, 65. Additionally, the Moody's report identifies decoupling as "credit positive" and Section 62-133.16's multiyear performance based ratemaking framework as a "credit strength" that "could reduce regulatory lag." Public Staff, Newlin – Direct, Cross Ex. 2. Tr. Ex. vol. 9 (Part II). Finally, Moody's notes: "We expect Duke Carolinas to maintain adequate liquidity profile." *Id*. pg. 6.

Although the Company generally expressed concern about its creditworthiness, only one party – the Public Staff – performed a mathematical evaluation of the Company's credit strength. Using a 9.35% ROE and a 52% equity ratio, the Public Staff evaluated the funds from operation to debt ratio of the Company and compared those to credit bureau benchmarks. The Public Staff demonstrated that its "ROE and capital structure would support [DEC's] investment grade rating." Tr. vol. 14, 100.

The Company objected to the Public Staff's calculations by arguing they would only barely enable the Company to meet the credit agency metrics – not exceed them. The Company seeks a "cushion" – that is, additional funds above and beyond the debt ratio threshold set by the credit rating agencies. Note that presently, the Company agrees it has a 30-basis point cushion per Moody's. Tr. vol. 16, 79. Thus, the Company concedes that it is forecast to have more than enough funds to maintain its strong credit rating, barring some unforeseen occurrences. It is that last concern – unforeseen circumstances – on which the Company places great importance. However, the Company's stated desire to

guard against the unknown is prohibitively expensive. And the Commission places great weight on the fact that operating under an allowed 9.6% ROE and 52% equity structure, the Company has weathered both COVID and the enormous fuel cost spikes that have buffeted the industry and yet still maintained both its strong credit rating and stable outlook.

The Commission is persuaded that the actions taken in this order will not lower DEC's credit rating. However, concern over the slight costs associated with a one-notch downgrade does not dissuade the Commission from honoring its constitutional obligation to set rates as low as possible.

Even assuming for argument's sake that a one-notch downgrade in DEC's credit occurred on January 1, 2024, DEC itself forecasts the incremental increase in borrowing over three years to be only $5,800,000. Public Staff, Morin – Direct, Cross Ex. 8. Tr. Ex. vol. 9 (Part II). Put another way, the cost of a one-notch downgrade over three years is approximately the same value as one or two basis points over that same three-year horizon. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I).

As noted above, DEC's credit rating remains strong despite forecasted substantial outlays, COVID, and spikes in fuel prices. However, assuming for the sake of argument that a one-notch credit downgrade occurred, Company witness Newlin conceded DEC would still have an "A" credit rating. Tr. vol. 16, 71. Per Company witness Morin, an "A" credit rating is the optimal bond rating. Tr. vol. 7, 441-442. Thus, even the occurrence of a downgrade would still leave the Company

with an optimal credit rating. Therefore, the Commission is not persuaded that a one-notch downgrade would be harmful to DEC.

Fear of impairing the Company's credit metrics is speculative and unwarranted. However, the Company's proposals designed to dispel, in part, that fear are concrete and extravagantly expensive. DEC's proposal to seek an ROE 80 basis points higher than its current rate would cause customers to pay the Company an additional *c.*$350 million over three years. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I). DEC's proposal to increase its equity to 53% would cause customers to pay the Company an additional *c.*$57 million over three years. Public Staff, Newlin – Direct, Cross Ex. 10. Tr. Ex. vol. 9 (Part II).

The Commission finds that the Company's economic vitality should not be impaired by this Order.

2. CAPITAL STRUCTURE

i. Capital Structure, Generally

The Commission now turns to the appropriate capital structure to be used for DEC for ratemaking purposes. Capital structure refers to the Company's percentages of debt and equity relative to its total capital. *CUCA II,* 351 N.C. at 236. The ratios of capital components used for ratemaking purposes are important because of the relative expense to the utility of each form of capital accumulation. "A capital structure containing a higher ratio of a more expensive form of capital will result in higher rates to provide the higher return demanded by investors."

CUCA II, 351 N.C. at 236 (citations omitted). The Commission frequently utilizes an imputed capital structure because a utility's actual debt/equity capital structure ratio fluctuates above and below the target ratio over time. This can be caused by a variety of factors, including, among other things, the timing and size of capital investments and payments of large invoices, debt issuances, seasonality of earnings, and dividend payments to the parent company. Tr. vol. 16, 25. Nevertheless, DEC endeavors to maintain the Commission-approved capital structure. Tr. vol. 9, 82-83.

Presently the Company is utilizing a capital structure consisting of 48% long-term debt and 52% common equity for ratemaking purposes. *2021 DEC Rate Case Order*, *see* pgs. 99-100. This was also the capital structure approved in the prior rate case order (Docket No. E-7, Sub 1146). This is the starting point of the Commission's consideration. In the case currently before the Commission, DEC must demonstrate the evidence supports its proposal to change the Company's capital structure for ratemaking purposes to 47% long-term debt and 53% common equity. Tr. vol. 9, 68.[2]

Under the Application, equity capital is nearly twice as expensive as debt capital. This difference is further exacerbated since for tax purposes corporations can deduct payments associated with debt financing but not common stock

[2] In the past, utilities have sought capital structures with three (or more) capital components. *See, e.g., State ex rel. Utils. Comm'n v. Eddleman*, 320 N.C. 344, 358 S.E.2d 339 (1987) (referencing the utility's capital structure as consisting of common equity, preferred equity, and long-term debt). In the present case, the Company only proposes two capital components – common equity and long-term debt. No party has suggested using preferred equity, short term debt, or anything other than the two components proposed by the Company.

dividend payments. As described in *CUCA II*, holding all else constant but increasing the equity portion of DEC's capital structure will result in higher customer bills. The Court has explained that "the rate of return on common equity … is the most expensive form of capital accumulation, which expense is ultimately borne by the rate payer." *Public Staff III*, 331 N.C. 215, 222-23 (quotation and citations omitted, deletions denoted by ellipses).

ii. Capital Structure, Analysis of DEC's Request

Given that debt is far "cheaper" than equity, altering DEC's capital structure by even the Company's seemingly small 1% requested increase in the equity percentage results in customers paying the Company substantially more than would otherwise be the case, *ceteris paribus*. In fact, over the next three years, changing the capital structure used for ratemaking purposes from the current 52%/48% equity-to-debt ratio approved in the *2021 DEC Rate Case Order* to the Company's requested increase of 53%/47% equity-to-debt ratio would result in increased payments by ratepayers to the Company of more than $57,000,000. Public Staff, Newlin – Direct, Cross Ex. 10. Tr. Ex. vol. 9 (Part II).

According to Company witness Morin, setting an equity ratio far too high would result in "an adverse consequence for the ratepayers." Tr. vol. 7, 453, lines 10-11. Company witness Morin described the appropriate percentage ratios between debt and equity as falling "somewhere in the . . . 48 to 53, 54 . . . range." Tr. vol. 7, 454, line 15. Thus by the Company's own testimony, the requested 53%

equity ratio is on the high end. In fact, the Company's request is either at or approaching the limit set by its own witness.

To the extent the Company relies on arguments that its equity ratio needs to be increased to protect the Company's creditworthiness or finances, those arguments do not persuade the Commission for the reasons set forth in the subsection above.

Nor is the Commission persuaded by the Company's arguments regarding the capital structures approved for its peers. While the Commission looks to capital structures in other jurisdictions to test the reasonableness of its decision, the Commission's decisions are based on the merits of this case and this Company. The Commission is not persuaded by this argument for the following separate and independent reasons.

First, the record shows that for the past seven years, the average authorized common equity ratios for utilities per S&P Global Market Intelligence (data through June 2023) were as set forth below[3]:

Year:	Common Equity Ratio:
2016	49.70%
2017	50.02%
2018	50.60%
2019	51.55%
2020	50.94%
2021	51.01%
2022	51.66%
2023	51.27%
Average	50.84%

[3] Arkansas, Florida, Indiana, and Michigan are excluded from the chart below because those states include non-investor capital (such as deferred taxes) in their capital structures.

Tr. vol. 16, 22-23. DEC's current allowed common equity ratio already exceeds the nationwide average. In fact, to allow DEC's request would take it further out of the mainstream. Therefore, the Commission rejects DEC's argument that a peer comparison supports its requested capital structure change. Related to this point, the equity percentage of the proxy group utilized by CUCA witness LaConte was 51.55%. Tr. vol. 15, 658.

Second, DEC's request would increase customer bills (over the multiyear period) by tens of millions of dollars. Even assuming *arguendo* an increase was appropriate to bring DEC into closer alignment with its peers, the Commission believes the slight advantage that *may* result in DEC's ability to attract capital is outweighed by the definitive costs that *would* be borne by ratepayers. Having weighed the two, the Commission believes the definitive costs outweigh the speculative advantages and therefore rejects this argument. This is especially true in light of the Commission's evaluation of the creditworthiness and finances of the Company above.

Third, Company witness Coyne's testimony regarding the *actual* (as opposed to allowed) capital structures of the subsidiaries of regulated utilities does not persuade this Commission for two reasons. First, it includes some companies with extraordinarily high equity components – Evergy Kansas South is identified as consisting of 83.38% common equity. Public Staff, Coyne – Rebuttal, Cross Ex. 1. Tr. Ex. vol. 16. Company witness Morin testified an 80% equity allocation "would be an adverse consequence for the ratepayers. They'd be paying way, way too

much." Tr. vol. 7, 453. Altering the actual capital component to the allowed capital component for just the four highest companies (of the 60 identified) in witness Coyne's chart yields an equity capital structure of 51.84%. Public Staff, Coyne – Rebuttal, Cross Ex. 1. Tr. Ex. vol. 16. This argues against the increase sought by DEC. Second, if actual structures are used, DEC's parent company, Duke Energy Corporation (Duke Energy), operated with only 41% equity at the end of 2022 (tr. vol. 9, 92) – a far cry from DEC's requested 53%.

Fourth, and related to the third point, the Commission notes that Duke Energy Corporation, which is publicly traded. Duke Energy's equity to debt capital structure ratio is far different from that sought by DEC. For 2022, Duke Energy's actual debt ratio was 59% (*cf.* 47% sought by DEC) and actual equity ratio was 41% (*cf*. 53% sought by DEC). Tr. vol. 9, 92. It is telling that publicly traded entities that are subject to market pressures rely on "cheaper" capital that has favorable tax advantages: long-term debt. This militates against decreasing debt and also militates against increasing equity. Accordingly, the Commission is not persuaded by DEC's argument.

For these reasons, the Commission finds unpersuasive DEC's arguments in favor of a capital structure consisting of 53% common equity and 47% long-term debt.

iii. Capital Structure, Analysis of the Appropriate Capital Structure

The Commission continues its evaluation of an appropriate capital structure. DEC does not have unfettered discretion in this matter. The Company's selection of its capital structure "may not thereby tie the hands of the Commission and compel it [the Commission] to approve rates for service higher than would be appropriate for a reasonably balanced capital structure." *State ex rel. Utils. Comm'n v. Southern Bell*, 22 N.C. App. 714, 721, 207 S.E.2d 771, 776 (1974).

The Commission has considered and weighed the evidence in this matter. In accordance with the Commission's obligation to ensure there is a "reasonably balanced capital structure" (*id.*), the Commission finds and determines that a capital structure consisting of 52% common equity and 48% long-term debt is appropriate for DEC for ratemaking purposes. The Commission's decision is supported by the following separate and independent grounds: (a) debt is less costly to consumers; (b) debt has favorable tax advantages which benefit both customers and the Company; (c) a 52/48 capital structure will not unreasonably harm the creditworthiness of DEC; (d) DEC's parent has 41% equity in its capital structure (*cf.* DEC's request for 53% equity); (e) the average equity component of regulated electric utilities is less than 52% and allowing DEC to move to 53% would take it further out of the mainstream; (f) increasing the equity portion of DEC's capital structure would increase customer bills; (g) increasing the equity component is definitely more expensive for ratepayers while the illusory benefits that may accrue to DEC are uncertain; (h) the Commission's experience in this field leads it to find the capital structure proposed by DEC would be unjust, unfair,

and unreasonable. Conversely, the current capital structure is just, fair, and reasonable.

As separate and independent grounds supporting its decision, the Commission finds that DEC has not met its burden of proof that a higher equity ratio is warranted. There is no evidence in the record that DEC has experienced challenges accessing capital on reasonable terms with its existing equity ratio of 52%. There also is no evidence that DEC will experience challenges with accessing capital on reasonable terms with a 52% equity ratio going forward. There is also no evidence in the record demonstrating that customers will benefit by paying rates based on a higher equity ratio.

iv. Capital Structure, Summary

The Commission rejects DEC's request to alter its capital structure for ratemaking purposes. Instead, in the exercise of its discretion and judgment, after weighing the evidence in the record and arguments of parties, the Commission finds a capital structure consisting of 52% equity and 48% debt for DEC is just, reasonable, and appropriate for this case. On balance, any purported benefits to DEC resulting from a higher equity ratio are more than outweighed by the significantly higher cost that would be borne by customers. It is further just, reasonable, and appropriate for that capital structure to apply to each year of the multiyear rate plan.

3. COST RATE OF LONG-TERM DEBT

The Commission now turns to the cost rate to be used for long-term debt.

The evidence supporting this finding of fact is in DEC's verified Application and Form E-1, the testimony and exhibits of DEC witnesses Newlin and Q. Bowman, the Revenue Requirement Stipulation, and the entire record in this proceeding.

DEC witness Newlin testified that DEC's long-term debt cost as of September 30, 2022, was 4.31%, which was the value DEC used to determine the revenue requirement in DEC's Application. Tr. vol. 9, 72. Section III, Paragraph 1 of the Revenue Requirement Stipulation establishes that the embedded cost of debt as of June 30, 2023, shall be used to calculate DEC's revenue requirement. Tr. Ex. vol. 7. DEC witness Q. Bowman presented in her supplemental testimony that the embedded cost of debt as of June 30, 2023, is 4.56%. Tr. vol. 12, 131.

No intervenor offered any evidence opposing this provision of the stipulation. The Commission therefore concludes that the use of a debt cost of 4.56% per the terms of Section III, Paragraph 1 of the Revenue Requirement Stipulation is just and reasonable to all parties considering all the evidence presented.

The Commission finds a 4.56% cost rate of debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that cost of debt to appertain to DEC going forward, including (without limitation) by applying to each year of the multiyear rate plan.

4. RETURN ON COMMON EQUITY

i. Return on Common Equity, Generally

The Commission now turns to the appropriate return on common equity, often abbreviated ROE. The North Carolina Supreme Court has explained ROE as follows:

> ROE is the return that a utility is allowed to earn on its capital investment, which is realized through rates collected from its customers. The ROE affects profits to the utility's shareholders and has a significant impact on what customers ultimately pay the utility. The higher the ROE, the higher the resulting rates that customers will pay to the utility.

Cooper I 366 N.C. 444, 485 fn.1 (citation omitted).

The parties to this proceeding have been unable to reach agreement regarding the appropriate rate of return on common equity. This is understandable as this is often one of the most contentious issues to be addressed in a rate case. *See, e.g., 2021 DEP Rate Case Order*, 154; *2023 CWSNC Rate Case Order,* 30; *2023 Aqua Rate Case Order*, 46. Where, as here, there is an issue unresolved by the parties, the Commission must exercise its independent judgment and arrive at its own independent conclusion as to all matters at issue, including the ROE. *See, e.g., CUCA I* 348 N.C. 452, 466. In order to reach an appropriate independent conclusion regarding the rate of return on common equity, the Commission should evaluate the admitted evidence, particularly that presented by conflicting expert witnesses. *Cooper I*, 366 N.C. 484, 492-93.

The baseline for establishment of an appropriate rate of return on common equity is the constitutional constraints established by the decisions of the United

States Supreme Court in *Bluefield* and *Hope* which, as the Commission has previously noted, establish that:

> To fix rates that do not allow a utility to recover its costs, including the cost of equity capital, would be an unconstitutional taking. In assessing the impact of changing economic conditions on customers in setting an ROE, the Commission must still provide the public utility with the opportunity, by sound management, to (1) produce a fair profit for its shareholders, in view of current economic conditions, (2) maintain its facilities and service, and (3) compete in the marketplace for capital.

See, e.g., 2021 DEP Rate Case Order, 154; *2023 CWSNC Rate Case Order,* 31; *2023 Aqua Rate Case Order,* 47; *and General Telephone*. The North Carolina Supreme Court observed these factors constitute "the test of a fair rate of return declared in" *Bluefield* and *Hope*. *General Telephone,* 281 N.C. 318, 370.

The rate of return on common equity is, in fact, a cost. The return that equity investors require represents the cost to the utility of equity capital. *See, e.g., DEP 2023 Rate Case Order*, 154. As the Commission has previously explained:

> [T]he cost of capital to the utility is synonymous with the investor's return, and the cost of capital is the earnings which must be generated by the investment of that capital in order to pay its price, that is, in order to meet the investor's required rate of return.

2023 CWSNC Rate Case Order, 31; *2023 Aqua Rate Case Order*, 47. "The term 'cost of capital' may also be defined as the annual percentage that a utility must receive to maintain its credit, to pay a return to the owners of the enterprise, and to ensure the attraction of capital in amounts adequate to meet future needs." *2023 CWNC Rate Case Order*, 31; *2023 Aqua Rate Case Order*, 47 (brackets omitted).

Long-standing decisions of the North Carolina Supreme Court have recognized that the Commission's subjective judgment is an inherently necessary

part of determining the authorized rate of return on common equity. *Public Staff II,* 323 N.C. 481, 498. The Commission has described that "of all the components of a utility's cost of service that must be determined in the ratemaking process the appropriate ROE is the one requiring the greatest degree of subjective judgment by the Commission." *2013 DEP Rate Case Order*, 35, *affirmed in Cooper III*.

Determination of a ROE is not made by application of any one simple mathematical formula. *2023 DEP Rate Case Order*, 155; *2023 CWNC Rate Case Order*, 32; *2023 Aqua Rate Case Order,* 47. "Setting an ROE for regulatory purposes is not simply a mathematical exercise, despite the quantitative models used by expert witnesses." *2013 DEP Rate Case Order,* 35. The Court in *Hope* held that "the Commission was not bound to the use of any single formula or combination of formulae in determining rates." 320 U.S. 591, 602. As this Commission has stated previously on numerous occasions:

> Throughout all of its decisions, the [United States] Supreme Court has formulated no specific rules for determining a fair rate of return, but it has enumerated a number of guidelines. The Court has made it clear that confiscation of property must be avoided, that no one rate can be considered fair at all times and that regulation does not guarantee a fair return. The Court also has consistently stated that a necessary prerequisite for profitable operations is efficient and economical management. Beyond this is a list of several factors the commissions are supposed to consider in making their Decisions, but no weights have been assigned.
>
> The relevant economic criteria enunciated by the Court are three: financial integrity, capital attraction and comparable earnings. Stated another way, the rate of return allowed a public utility should be high enough: (1) to maintain the financial integrity of the enterprise, (2) to enable the utility to attract the new capital it needs to serve the public, and (3) to provide a return on common equity that is commensurate with returns on investments in other enterprises of corresponding risk. These three economic criteria are interrelated and have been

> used widely for many years by regulatory commissions throughout the country in determining the rate of return allowed public utilities. In reality, the concept of a fair rate of return represents a "zone of reasonableness." As explained by the Pennsylvania commission:
>
> > There is a range of reasonableness within which earnings may properly fluctuate and still be deemed just and reasonable and not excessive or extortionate. It is bounded at one level by investor interest against confiscation and the need for averting any threat to the security for the capital embarked upon the enterprise. At the other level it is bounded by consumer interest against excessive and unreasonable charges for service.
>
> As long as the allowed return falls within this zone, therefore, it is just and reasonable. … It is the task of the commissions to translate these generalizations into quantitative terms.

2023 DEP Rate Case Order, 155; *2023 CWNC Rate Case Order,* 32-33; *2023 Aqua Rate Case Order,* 47-48 (citing Charles F. Phillips, Jr., *The Regulation of Public Utilities* (Public Utilities Reports, Inc., 3rd ed. 1993), at 381-82 (notes omitted)) (ellipses and brackets in original).

The United State Supreme Court has observed that "[t]he economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result." *Duquesne*, 488 U.S. 299, 314. That Court further held:

> To declare that a particular method of rate regulation is so sanctified as to make it highly unlikely that any other method could be sustained would be wholly out of keeping with this Court's consistent and clearly articulated approach to the question of the Commission's power to regulate rates. It has repeatedly been stated that no single method need be followed by the Commission in considering the justness and reasonableness of rates.

Duquesne 488 U.S. 299, 316 (citations, quotations, and brackets omitted). Commissions may find that "circumstances may favor the use of one ratemaking procedure over another." *Id.*

This Commission is mindful of the impact of its decisions and the law, especially the Public Utilities Act. The Supreme Court explained that "[t]he risks a utility faces are in large part defined by the rate methodology because utilities are virtually always public monopolies dealing with an essential service, and so relatively immune to the usual market risks." *Duquesne,* 488 U.S. 299, 315.

In conformity with the requirements of *Cooper I*, recent Commission decisions have explicitly addressed the impact of changing economic conditions on customers when determining the proper ROE for a utility. *See, e.g., 2023 DEP Rate Case Order; 2023 Aqua Rate Case Order; and 2023 CWSNC Rate Case Order*; and N.C.G.S. § 62-133(b)(4). As well, Section 62-133.16 takes into consideration the impact of a multiyear rate plan on risk when setting the authorized return on equity. N.C.G.S. § 62-133.16(c)(1)(a).

The *Cooper I* Court used broad language in its holding:

> Given the legislature's goal of balancing customer and investor interests, the customer-focused purpose of Chapter 62, and this Court's recognition that the Commission must consider *all* evidence presented by interested parties, which necessarily includes customers, it is apparent that customer interests cannot be measured only indirectly or treated as mere afterthoughts and that Chapter 62's ROE provisions cannot be read in isolation as only protecting public utilities and their shareholders. Instead, it is clear that the Commission must take customer interests into account when making an ROE determination. Therefore, we hold that in retail electric service rate cases the Commission must make findings of

> fact regarding the impact of changing economic conditions on customers when determining the proper ROE for a public utility.

Cooper I, 366 N.C. 484, 495 (italics in original).

The Commission must not only adhere to the dictates of both the United States and North Carolina Constitutions, but, as has been held by the North Carolina Supreme Court, it is "the duty of the Commission to set rates as low as constitutionally possible." *Public Staff II,* 323 N.C. 481, 507 (citation omitted). The Court has reminded the Commission that "the primary purpose of Chapter 62 of the General Statutes is not to guarantee the stockholders of a public utility constant growth in the value of, and in the dividend yield from, their investment, but is to assure the public of adequate service at a reasonable charge." *Cooper I,* 366 N.C. 484, 494-95 (citation, brackets, and quotation marks omitted).

The criteria of House Bill 951 require considerations of elements beyond the ROE element, and they inherently necessitate that the Commission make many subjective determinations, in addition to the subjectivity required to determine the ROE. The subjective decisions the Commission must make as to each of the elements of the criteria can, and often do, have multiple and varied impacts on all of the other criteria and elements. In other words, the criteria are intertwined and often interdependent in their impact on the setting of just and reasonable rates. *See generally 2023 DEP Rate Case Order,* 156; *2023 CWNC Rate Case Order,* 33; *2023 Aqua Rate Case Order,* 49.

The Commission must exercise its subjective judgment to balance multiple competing ROE-related factors, including the economic conditions facing the

Company's customers and the Company's need to attract equity financing on reasonable terms in order to continue providing safe and reliable service. The impact of changing economic conditions on customers is embedded in the testimony of expert witnesses regarding their analyses of the rate of return on common equity using various economic models widely used and accepted in utility regulatory rate-setting proceedings. Further,

> [t]he Commission always places primary emphasis on consumers' ability to pay where economic conditions are difficult. By the same token, it places the same emphasis on consumers' ability to pay when economic conditions are favorable as when the unemployment rate is low. Always there are customers facing difficulty in paying utility bills. The Commission does not grant higher rates of return on equity when the general body of ratepayers is in a better position to pay than at other times …

2023 DEP Rate Case Order, 157; *2023 CWNC Rate Case Order,* 34; *2023 Aqua Rate Case Order,* 49-50 (citations omitted).

Economic conditions existing throughout the relevant time periods will affect not only the ability of the utility's customers to pay rates, but also the ability of the utility to earn the authorized rate of return during the period the new rates will be in effect. Economic conditions existing during all relevant times (from the test or base year, at the time of the public hearings, and at the date of this Commission Order) affect not only the ability of the Company's consumers to pay electric utility rates, but also the ability of DEC to earn the authorized rate of return during the period rates will be in effect.

The Commission's duty is to set rates as low as reasonably possible without impairing the Company's ability to raise the capital needed to provide reliable

electric service and recover its costs of providing service. The Commission is especially mindful of this duty in light of the evidence in this case concerning the impact of current economic conditions on customers and the significant upward pressure on rates expected in the coming years. Chapter 62 of the North Carolina General Statutes sets forth a detailed formula the Commission must employ in establishing rates. The rate of return on equity is a significant but not independent element. Each element of the formula must be analyzed to determine the utility's cost of service and revenue requirement. The Commission must make many subjective decisions with respect to each element in the formula in establishing the rates it approves. The decisions the Commission makes in each of the many subjective areas under its purview have multiple and varied impacts on the decisions it makes elsewhere in establishing rates, such as its decision on rate of return on equity.

ii. Return on Equity, Flotation Costs

Flotation costs are the costs associated with the issuance of new equity securities (such as common stock), including printing fees, attorneys' fees, underwriter fees, and the potential dilutive impact of the issuance of such new stock. Tr. vol. 7, 249, vol. 15, 647. DEC, itself, does not issue equity securities; instead, equity security issuances are made by its publicly traded parent, Duke Energy. Tr. vol. 15, 647. DEC is a wholly-owned subsidiary of Duke Energy. Tr. vol. 9, 91.

No new common equity was publicly issued within the historical time period relevant to this matter. Nor is new common equity forecast to be publicly issued in the next several years. DEC written responses to data requests stated "[t]here were no common equity issuance in the test year, 2022, and none are anticipated for 2023 [ ]" and that "[n]o common equity issuances are forecasted for 2023 to 2027." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 7, pg. 2. Tr. Ex. Vol. 8 (Part I). Further, Company witness Newlin echoed this, testifying: "The Company's public comments have been no common equity issuance through '27." Tr. vol. 9, 104. Thus, there was and is no plan to issue equity in the present case.

Notwithstanding the lack of issuance of new equity securities nor even plans for same in the near future, the Company seeks recovery of flotation costs in this rate case. Tr. vol. 7, 329. More specifically, Company witness Morin increased his recommended ROE by 20 basis points to compensate the Company for flotation costs. Tr. vol. 7, 463. Company witness Morin agreed that over the three-year period, increasing the ROE by 20 basis points would cost ratepayers in the ballpark of $80 to $90 million. Tr. vol. 7, 449. Company witness Morin's "ballpark" estimate is consistent with DEC's written response to a data request that values a single basis point at between $1.4 (in year 1) and $1.6 million (in year 3) per year. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I).

Flotation costs may not be recovered under these circumstances for the following four separate and independent reasons.

First, as a matter of law, flotation costs are not recoverable under North Carolina law where, as here, there is no evidentiary support. The North Carolina Supreme Court in *Public Staff I* reversed and remanded the ROE portion of the Commission's Order dated October 31, 1986, Docket No. E-7, Sub 408, for Duke Power Company. The Supreme Court directed the Commission on remand to reconsider the proper rate of return on Duke Power's common equity and to also support its conclusion on flotation costs with specific findings. There was no evidence in that case that Duke Power intended to issue new stock for the next three or four years. On remand, the Commission issued its second E-7, Sub 408 Order, reassessed the evidence, and issued new findings of fact and conclusions. The Commission concluded that 13.2% was a fair rate of return on Duke Power's equity and there was a 0.1% increment in the approved 13.2% ROE to cover future stock issuance costs. On the second appeal, the Supreme Court held that the Commission's inclusion of the "stock" issuance increment is not supported by substantial evidence in view of the whole record. *Public Staff III,* 331 N.C. 215, 218. The Supreme Court concluded the Commission's inclusion of a 0.1% ROE increment for purported future financing costs in the approved ROE was not based upon substantial evidence in view of the whole record. The Supreme Court stated at 221-22:

> As we noted on the first appeal, an 0.1% upward increment in Duke's rate of return on common equity costs ratepayers $ 4.2 million annually in additional rates. Historically, Duke's average costs per issuance of stack was $ 3.2 million. In light of the whole record on this issue, particularly in the absence of any evidence that Duke intended to issue stock in the immediate future, there is simply no substantial evidentiary support for the Commission's addition of a

> 0.1% increment to Duke's rate of return on common equity to cover future stock issuance costs.

The Supreme Court further stated and ruled:

> On the first appeal of this case, we questioned whether the record supported *any* adjustment whatever in the rate of return for purported future stock issuance, or financing, costs. We said:
>
> > Since *no* evidence was introduced that Duke intends to issue new stock for the next three or four years, and because there was no evidence regarding the probable cost of a prospective issuance, we question whether the record supports *any* financing cost adjustment. *State ex. rel. Utilities Commission v. Public Staff*, 322 N.C. at 700, 370 S.E.2d at 574 (emphasis added). We are not satisfied, for the reasons alluded to in our first opinion, that the record supports no such adjustment in the common equity rate of return.

As in *Public Staff III,* there was and is no plan to issue equity in the present case. Accordingly, there is no evidence to support DEC's request to increase its ROE by 20 basis points for flotation costs. Therefore, the Commission rejects the Company's inclusion of 20 basis points in its ROE request to cover flotation costs. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

As a second and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the merits of the case. Although the Company concedes no equity security was or is forecast to be issued from 2021 through 2027, the Company nevertheless seeks recovery of $80 to $90 million dollars from ratepayers in compensation for flotation costs. It would be "grossly extravagant and not justified" (*Public Staff I*, 322 N.C. 689, 701) to cause customers to pay for expenses related to the issuance of stock when none has or

is forecast to be issued. *Accord*, *2023 Aqua Rate Case Order*, 62 (flotation cost over-recovery would be "grossly extravagant and is unjustified."). Ratepayers should not pay for expenses related to events that have not occurred nor are forecast to occur in the next several years. Nor should today's ratepayers be saddled with the obligation for paying for previously issued equity for any of the following reasons: (i) such a request is akin to retroactive ratemaking and therefore inappropriate; (ii) current ratepayers should not pay for expenses incurred on behalf of historical ratepayers since the link between users and payers is diminished with the passage of time (which results in unjust allocation of benefits and costs); and (iii) no specific evidence regarding the purported historical flotation costs was introduced into evidence. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points. This approach has long been employed by the Commission. *See 2023 DEP Rate Case Order*, 164; *2023 Aqua Rate Case Order,* 61-62; and *2003 Bellsouth Order,* 71.

As a third and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the equities of the situation. Both DEP and DEC are ultimately owned by the same parent corporation – Duke Energy. In the *2023 DEP Rate Case Order*, the Commission disallowed recovery of flotation costs for reasons similar to the two set forth above. It would be inequitable for some persons in North Carolina served by DEC to pay flotation costs while their neighbors served by DEP pay none. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

As a fourth and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the merits. Neither the Company nor the Company witness supporting recovery for flotation costs (Dr. Morin) provided specific numbers incurred by the Company as flotation costs. The lack of hard data is understandable given that no common equity was generally issued nor is forecast to be issued. This means, though, that the record is devoid of evidence of expenses – there are no invoices from printers, statements of underwriter fees, dollar estimates of the purported impact of dilution, itemized attorneys' fees, or any other identified or incurred costs. Instead of actual and verifiable expenses, there is only reference to generic categories. Tr. vol. 14, 102. One of the benefits of actual and verifiable numbers is that they can be reviewed, evaluated for reasonableness, and assessed by the Commission. Given the lack of actual data, there is insufficient evidence to support the allowance of flotation costs. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

For any of these above reasons, the Commission rejects the Company's increasing its ROE request by 20 basis points as compensation for flotation costs. The Commission denies the Company's attempt to recover flotation costs in this case.

In light of the foregoing, there is no need for the Commission to determine whether it is appropriate for flotation costs to reach as far as suggested by the Company so as to include compensation for the purportedly dilutive impact of

issuing equity. Nor should this Order be taken to mean that recovery of flotation costs via an increased ROE is necessarily appropriate. In fact, the Commission notes that it has in the past allowed recovery as a cost (not an increase to ROE). *See*, *1994 PSCNC Rate Case Order,* 60. The North Carolina Supreme Court has discussed, but did not decide, "the interesting question whether the costs of issuing stock should be included as an operating expense rather than as an adjustment to the annual rate of return on common equity." *Public Staff III,* 331 N.C. at 222, n.4. Like the Supreme Court, this Commission sees no cause to answer these interesting questions in this case.

iii. Return on Equity, Data Points

The starting point in the Commission's evaluation is the currently allowed ROE for the Company. DEC was allowed a 9.6% ROE in the *2021 DEC Rate Case Order.* It is the Company's burden to demonstrate a different ROE award is now warranted.

In setting the appropriate return on equity, the Commission is not required to simply rely on mathematical models. The Commission can, and does, rely on this and other information in forming its opinion. Below the Commission discusses the data points that support its ROE award.

First, the impact of an increase is an important data point for the Commission. The Commission is aware that under the Application as filed by the Company there are anticipated to be substantial increases in customer bills. For example, typical DEC residential customers (using 1,000 kWh) are forecast to

experience a 29.25% increase in their bills from February of this year to February of next year. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 6. Tr. Ex. vol. 8 (Part I). In fact, Company witness Morin was concerned about rate shock and affordability. Tr. vol. 7, 462.

The Commission is also aware of the substantial impact ROE has on customers. Even something as small as increasing the ROE by 20 basis points results in customers paying the Company in the range of $80 to $90 million dollars over a three-year period. *See,* Tr. vol. 7, 449; Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I). With regards to typical residential customers (using 1,000 kWh but excluding riders), approximately 15% to 20% of their bill (or roughly $24) goes towards payment of the Company's ROE. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 3. Tr. Ex. vol. 8 (Part I).

The Company agrees that if its ROE is set too high (that is, above the cost of capital), there would be an improper transfer of wealth from ratepayers to shareholders. Conversely, if the ROE is set too low, that would result in an improper transfer of wealth from shareholders to ratepayers. Tr. vol. 7, 429. The Commission finds that either scenario is unjust.

Second, the Company's own opinion of what constitutes a reasonable ROE is an important data point for the Commission's consideration. In response to a question from Commissioner Hughes, Company witness Morin explained that a reasonable ROE for the Company would fall somewhere between 9.6% and 10.7% once the Company's proposed flotation adjustment is removed. Tr. vol. 8, 80-81.

Third, one strongly persuasive data point is the *2023 DEP Rate Case Order.* Only a few months ago, this Commission found an ROE of 9.8% was appropriate for DEP customers. Although Company witness Morin's recommended ROE has recently fluctuated up and down by 20 basis points with the vagaries of the markets on which he bases his analyses (*see* Tr. vol. 7, 433 ("returns have sort of ping-ponged back and forth between 10.2 and 10.4"); Tr. vol. 8, 25; *2023 DEP Rate Case Order*; and Public Staff, Morin – Direct and Rebuttal, Cross Ex. 18. Tr. Ex. vol. 8 (Part I)), this Commission takes a longer view. In fact, per Company witness Morin, the capital markets that form the basis for many of the mathematical models used by the witnesses in this case are highly volatile and uncertain. Therefore, "the determination of the cost of capital should thus take a more accommodative and flexible longer-term view and should resist the temptation of simply inserting today's numbers into an algebraic equation without regard to the purpose of the exercise." Moreover, the allowed rate of return "should not reflect day-to-day fluctuations in interest rates and current spot circumstances." Tr. vol. 8, 25-26.

As the disparity grows between DEP and DEC customers in North Carolina, so too grows the unjustness of the difference. Given that rates will most likely remain in effect for years, any differences in treatment by this Commission will also last for years. This is especially true where, as here, just a handful of months separate the filings of DEP and DEC. Although there have been minor fluctuations, there is no substantial economic sea change warranting a multi-million-dollar divergence from DEP's ROE.

Fourth, the impact of the *2023 DEP Rate Case Order* itself offers a data point for this Commission. When Company witness Morin was asked about reactions to the *2023 DEP Rate Case Order* (a substantial portion of which dealt with ROE). Company witness Morin testified there was a favorable reaction: "I think the bond rating agencies have -- will and have reacted favorably -- " Tr. vol. 7, 436.

Fifth, as another data point, the Commission finds strongly persuasive the fact that the Company's affiliate entered into a settlement earlier this year in South Carolina in which DEP averred a return on equity of 9.60% was reasonable and in the public interest. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 17. Tr. Ex. vol. 8 (Part I). In reviewing and approving the settlement, the Public Service Commission of South Carolina found in March of this year that a 9.6% return on equity "will result in just and reasonable rates." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 18, pgs. 20 ¶17, 44. Tr. Ex. vol. 8 (Part I). Further, on behalf of the affiliated utility in the South Carolina proceeding, Mr. Newlin testified that it would voluntarily choose to forgo a request to increase the ROE by 20 basis points (to 10.4%) to mitigate any further rate impacts. Public Staff, Newlin – Direct, Cross Ex. 9, p.21. Tr. Ex. vol. 9 (Part II). When asked if DEC would make the same offer in this case, Company witness Newlin stated "[n]o" (tr. vol. 9, 96), notwithstanding the nearly 30% increase faced by typical residential customers (Public Staff, Morin – Direct and Rebuttal, Cross Ex. 6. Tr. Ex. vol. 8 (Part I)).

Unlike North Carolina, South Carolina does not have multiyear rate plans, decoupling, or PIMs. The Commission finds it unjust to require DEC's North

Carolina customers to shoulder a higher ROE expense than DEP's South Carolina customers, especially when North Carolina has, in the parlance of DEC, more constructive and modern regulation. It is unjust to charge North Carolina customers a higher ROE simply because there are more customers in North Carolina.

Sixth, the Commission considers the testimony offered by experts regarding ROE. This is an important data point because the determination of ROE is not merely a mathematical exercise – experts must use their judgment in determining what inputs to use in their various ROE models, which Company witness Morin explained can make the subject contentious: "And it's contentious because the inputs to the various models that require some judgment. So it is a more difficult and more fragile area." Tr. vol. 7, 431.

The Company's sole witness who provided testimony regarding the appropriate ROE was Dr. Morin. The Commission finds it difficult to square Company witness Morin's testimony in various jurisdictions. The Commission finds that consideration of Dr. Morin's testimony in other jurisdictions suggests that it is appropriate to apply downward pressure on the ROE that should be awarded to the Company. Expanding on this point, Company witness Morin agreed North Carolina had a more favorable regulatory climate than Arizona, testifying: "Definitely. Most people do." Tr. vol. 7, 458. In fact, per RRA, Arizona has the lowest ranking of all the states. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 1, p.9. Moreover, Company witness Morin explained Arizona law and that it is "last in the country" for utilities:

> Number one, [Arizona is] still on historical test year. Okay?
>
> Number two, [Arizona has] hardly any risk mitigators, unlike DEC and DEP.
>
> And the third one is lots of disallowances in the past that were unjustified.
>
> [Arizona is] number -- the last in the country.

Tr. vol. 7, 459 (brackets added). This is consistent with the Company's own exhibit which identifies Arizona as having less favorable alternative ratemaking mechanisms than North Carolina. PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16. Notwithstanding this, in the month prior to his oral testimony in this case, Dr. Morin filed testimony on behalf of a utility in Arizona and recommended an ROE of 10.4% (Public Staff, Morin – Direct and Rebuttal, Cross Ex. 15. Tr. Ex. vol. 8 (Part I), which was the same as his recommendation in North Carolina.

When asked to explain how a jurisdiction with less favorable laws and a less favorable regulatory climate towards utilities had the same recommended ROE as North Carolina (with its admittedly better laws and regulatory climate), Company witness Morin stated it was because he was a "[n]ice guy." Tr. vol. 7, 459. When pressed further as to why Arizona's ROE was not higher, Company witness Morin testified "I just didn't want to." Tr. vol. 7, 460. When asked if his ROE should be reduced by 20 basis points given North Carolina's better laws and regulatory climate, Dr. Morin conceded "I would not violently object to that." Tr. vol. 7, 463.

Similarly, RRA identifies South Carolina as having a less favorable regulatory climate than North Carolina towards utilities (Public Staff, Morin – Direct

and Rebuttal, Cross Ex. 1. Tr. Ex. vol. 8 (Part I). In addition, South Carolina laws are less favorable to utilities. South Carolina is one of only five states that the Company's own exhibit identifies as having *no* alternative ratemaking mechanisms. PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16. Nevertheless, Dr. Morin also recommended an ROE of 10.4% for DEP in South Carolina less than a year ago. Public Staff Morin – Direct and Rebuttal, Cross Ex. 16. Tr. Ex. vol. 8 (Part I). These findings in other jurisdictions with less favorable treatment of utilities places downward pressure on the ROE recommendation of Company witness Morin in this case.

Seventh, the Commission determines the appropriate rate of return on common equity based on the evidence and particular circumstances of each case before it and the application of North Carolina law. However, the Commission is not unmindful of awards by other commissions in other jurisdictions. These other awards provide a check or additional perspective, on a case-by-case basis, on potentially appropriate returns on equity. Further, regulated utilities must operate within the same field and therefore "compete" with other regulated utilities for capital and investment. As such, a rate of return substantially lower than other utilities could harm a company's ability to attract capital or investment while a rate of return substantially higher could result in customers paying more than necessary.

At the hearing, evidence was placed into the record showing average and median awarded returns on equity for vertically integrated electric utilities (such as

DEC). Public Staff, Morin – Direct and Rebuttal, Cross Exs. 4, 5. Tr. Ex. vol. 8 (Part I). Below is a summary showing the average ROEs for vertically integrated electric utilities for the past decade through June 30, 2023:

Year	Average ROE
2013	9.95%
2014	9.75%
2015	9.75%
2016	9.77%
2017	9.80%
2018	9.68%
2019	9.74%
2020	9.55%
2021	9.53%
2022	9.69%
2023	9.73%

Public Staff, Morin – Direct and Rebuttal, Cross Ex. 5, p.5. Tr. Ex. vol. 8 (Part I).

This further demonstrates that the 10.40% ROE sought by DEC is far above the nationwide average ROE. In fact, DEC has presented no evidence showing it faces more or different risks that would justify a substantially higher ROE than other similarly situated utilities. If anything, the evidence shows DEC should enjoy a lower ROE in light the favorable laws and North Carolina regulatory climate that benefit it. DEC has presented no evidence as to why it should be a significant outlier.

Eighth, it appears that analysts in the financial community, to whom DEC frequently points in justification of their capital requests, have not contemplated a 10.4% ROE for DEC. For example, one independent evaluation from a non-party

was modeling a 9.0% ROE for Duke Energy. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 20. Tr. Ex. vol. 8 (Part I). When asked, Company witness Morin testified:

> Q. [ ] Does Morningstar -- is Morningstar here telling us that a 9.0 ROE is appropriate?
>
> A. That's one opinion from one analyst.
>
> Q. I understand Dr. Morin --
>
> A. But it's not the consensus.

Tr. vol. 8, 23 (brackets denote omission).

The Commission also considers the mathematical models (discussed below) offered by the parties regarding an appropriate ROE with these data points in mind. As well, the Commission considers the applicable law and its impact on ROE below.

iv. Return on Equity, Multiyear Rate Plan and Section 62-133.16 Analysis

The Commission has evaluated Section 62.133. The Commission believes the multiyear provision in Section 62-133.13 increases the risks borne by ratepayers and decreases the risks borne by the electric public utility. In light of the change in risk occasioned by Section 62-133.16, the Commission finds a 20-basis point decrement to DEC's ROE is just, reasonable, and appropriate.

As discussed above, Section 62-133.16 requires: "In setting the electric public utility's authorized rate of return on equity for an MYRP period, the Commission shall consider any increased or decreased risk to either the electric

public utility or its ratepayers that may result from having an approved MYRP." N.C.G.S. § 62-133.16(c)(1)(a). DEC conceded risk-mitigating mechanisms reduce risk on an absolute (but not relative) basis. Tr. vol. 7, 298.

The multiyear rate plan is new to North Carolina and works a sea-change in North Carolina law. Now, instead of recovering expenses only once capital projects are put into service, DEC can collect funds prior to completion. Further, DEC is allowed to increase its rate base (and therefore revenues) without the time and expenses associated with a rate case. RRA stated, of adjustment clauses generally, that they "effectively shift [ ] the risk associated with a recovery from shareholders to customers." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 10. Tr. Ex. vol. 8 (Part I).

As required by 62-133.16, the Commission finds that multiyear rate plan decreases risk to DEC and increases risk to customers.

The Commission now considers the impact this determination should have on the Company's authorized ROE. In so doing, the Commission also considers all of the changes wrought by Section 62-133.16, including PIMs, decoupling of the residential class (which is the most volatile of the classes), allowing 50 basis points of excess earnings to be retained by DEC, and also the multiyear rate plan.

Public Staff witness Walters and CUCA witness LaConte testified regarding a 20 basis point downward adjustment. The Commission finds a 20-basis point decrement to DEC's ROE is just, reasonable, and appropriate.

The Commission agrees with the Company and Public Staff that the multiyear rate plan decreases risk on an absolute basis for DEC. The multi-year rate plan allows DEC to contemporaneously recover its capital costs, thus removing a natural check on utility capital spending. This new mechanism shifts a significant amount of risk from DEC to customers in that customers will bear the costs of capital projects before they are placed into service. DEC can include future capital investments in rate base and begin earning a return thereon before the capital projects are used and useful and without filing a rate case application. Depending on the timing of a project's completion, DEC may begin earning a return on capital investment a full year earlier, or more, than it would be able to using traditional ratemaking. It also puts customers at risk for bearing costs for projects that are never completed with the hope such costs would be removed from rate base in some future rate case.

The Commission also believes that the Company's risk is decreased both relative to customers and regulated utilities in other states. DEC has access to a number of the risk mitigator mechanisms that Dr. Morin identified, including riders, deferrals, and now residential decoupling. The Commission is aware that many jurisdictions possess the same or similar risk mitigators, thus putting DEC on par, or better, with utilities in other jurisdictions – and that is before the introduction of a multi-year rate plan. Both the Public Staff and DEC agree multiyear rate plans are only available to electric utilities in a minority of states. *See*, Public Staff, Morin – Direct and Rebuttal, Cross Exs. 20-23. Tr. Ex. vol. 8 (Part I). PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16 (18 states, per DEC). Both the Public Staff and DEP

agree decoupling is only available in a minority of states. *Id.* (24 states per DEC). In light of that fact, DEC's decision to utilize the multi-year rate plan, and all of the advantages available under 62-133.16, in this case gives it a competitive advantage compared to many other utilities when seeking to access capital on reasonable terms. One utility's credit outlook in another state was upgraded solely on the basis of it allowing multi-year rate plans. Public Staff, Morin- Direct and Rebuttal, Cross Ex. 14. Tr. Ex. vol. 8 (Part I). Independent analysts view the new multi-year statute as favorable. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 19. Tr. Ex. vol. 8 (Part I).

The benefits to DEC from using a multi-year rate plan are clear. Section 62-133.16(d)(1) conditions the Commission's approval of a PBR application on a finding that it "would result in just and reasonable rates" and "is in the public interest." Approving a PBR application and multi-year rate plan without proactively accounting for the shift in risk from DEC to customers would not produce just and reasonable rates and would not be in the public interest. The Commission determines that the reduced risk to DEC should be recognized and flowed through to DEC customers and thus a 20-basis point decrement to DEC's ROE is warranted. There is no evidence in the record indicating DEC's ability to access the capital markets on reasonable terms would be hindered by such an adjustment, but the financial benefits of an annual revenue requirement reduction of $80 to $90 million dollars over the next 3 years are clear.

Independent analysts agree the mechanisms available under Section 62-133.16 are favorable to DEC. Moody's May 11, 2023, credit report identifies decoupling as "credit positive" and Section 62-133.16's multiyear performance based ratemaking framework as a "credit strength" that "could reduce regulatory lag." Public Staff, Newlin – Direct, Cross Ex. 1. Tr. Ex. vol. 9 (Part II). Morningstar Equity Analysts form a similar opinion, as follows:

> In North Carolina, Duke's largest service territory, the outlook has improved significantly. Recent legislation allows for multiyear rate plans, including rate increases for projected capital investments. Duke has filed rate cases at both state subsidiaries. The legislation also allows for performance incentive mechanisms and usage-decoupled rates for residential customers, protecting utilities from underlying usage trends. The legislation also supports utilities playing a critical role in the state's clean energy transition. We view the legislation as a significant improvement in the regulatory constrictiveness in the state.

Public Staff, Morin – Direct and Rebuttal, Cross Ex. 20, p.2. Tr. Ex. vol. 8 (Part I). In addition, intervenors also found a lower ROE was appropriate. *See, e.g.,* tr. vol. 15, 630. The Commission is persuaded that a reduction in ROE is appropriate and just.

v. Return on Equity, Proxy Group and ROE Modelling

Although the ultimate parent of DEC is publicly traded, DEC itself is not. The Commission finds that because DEC is not publicly traded, it is appropriate to look to a proxy group to use in modeling appropriate rates of return. The Commission finds substantial overlap in the parties' choice of companies to place into the proxy group. In fact, the Public Staff and Company used the same proxy group. Tr. vol. 8, 53. Use of a proxy group for modeling purposes is in keeping with the principles

of a fair rate of return established in the *Hope* and *Bluefield* cases, which are recognized as the primary standards for establishment of a fair rate of return for a public utility.

Public Staff witness Walters provided testimony regarding the appropriate return on equity. He testified a reasonable ROE should fall in the range of 9.20% to 9.90%. Tr. vol. 14, 90. Note that Public Staff witness Walters' range of reasonable ROEs does not include an adjustment for flotation costs since he was opposed to recovery of same. Tr. vol. 14, 102-103. Company witness Morin testified that that a reasonable ROE for the Company would fall somewhere between 9.6% and 10.7% once the Company's proposed flotation adjustment is removed. Tr. vol. 8, 80-81. CUCA witness LaConte didn't testify to a specific range but the results of her computations ranged from 8.37% to 10.58%. Tr. vol. 15, 634. Finally NCJC *et al*. witness Ellis's similarly computed a range from 6.06% to 6.63% (which does not include a flotation cost adjustment). Tr. vol. 15, 693. Commercial Group witness Chriss and CIGFUR III witness Collins did not engage in mathematical modeling to determine ROEs.

The recommended ROE of the witnesses was as follows: (1) NCJC *et al.* witness Ellis, 6.15% (Tr. vol. 15, 687); (2) CUCA witness LaConte: 9.20% (or 9.40% in the event the PBR Application/MYRP are denied) (Tr. vol. 15, 634); (3) Public Staff witness Walters: 9.35% (or 9.55% in the event the PBR Application/MYRP are denied) (Tr. vol. 14, 18-19); and (4) Company witness

Morin: 10.40% (Tr. vol. 8, 80-81). Commercial Group witness Chriss and CIGFUR III witness Collins did not engage in mathematical modeling to determine ROEs.

Company witness Morin testified regarding Public Staff witness Walters' work, stating: "We both have the same peer group, and like I said in my rebuttal, there's a lot of common ground between Mr. Walters and my own work." Tr. vol. 8, 53. As well, Company witness Morin "agree[d] with several of Mr. Walters' procedures and methodologies." Tr. vol. 8, 378. Similarly, Company witness Morin noted his shared "common ground" and agreement "with several of the view and procedures" of CUCA witness LaConte. Tr. vol. 8, 377.

On the merits of DEC's proffered ROE testimony, the Commission gives it some weight but finds it overstated and therefore unpersuasive. Dr. Morin was the sole ROE expert for DEC. His testimony regarding ROE is not only the highest among the parties to this case but also far exceeds recent national averages. Public Staff, Morin – Direct and Rebuttal, Cross Exs. 4, 5. Tr. Ex. vol. 8 (Part I). In fact, on average Dr. Morin's testimony typically exceeds the ROE ultimately awarded by commissions (or their equivalent) in other jurisdictions. NCJC *et al*., Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part II). The Commission further notes (as discussed above) Dr. Morin's testimony in other jurisdictions.

Additionally, the Commission is unpersuaded by Company witness Morin since many of the "inputs" he used in his ROE modeling were overstated and placed upward pressure on the ROE results. As Company witness Morin himself noted, the selection of inputs is not a mechanical process but involves an expert's

judgment. Tr. vol. 7, 431. More specifically, the Commission finds Company witness Morin's models on the whole overstate ROE. For example, his DCF results are heavily impacted by growth rates that cannot be sustained in the long run. Regarding CAPM, the projected risk-free rate is increased by 50 basis points and is overstated. Beta is similarly overstated since they are too high relative to historical standards. Similarly, the ECAPM beta adjustment is unwarranted. With respect to the risk premium models, the equity risk premium is far overstated while his Treasury bond yields should instead rely on near-term projected Treasury bond yields. This overstated Treasury bond yield also increases the ROE obtained under the allowed risk premium methodology. For these and the reasons set forth herein, the Commission discounts the testimony offered by the Company and finds Company witness Morin's ROE results should receive a decrement.

The Commission gives great weight and is persuaded by the testimony of Public Staff witness Walters regarding an appropriate ROE. The Commission finds his analyses to be just, appropriate, reasonable, and fair to both the Company and ratepayers.

vi. Return on Equity, Changing Economic Conditions and Section 62-133.16 Review

Next the Commission evaluates the *Cooper I* and House Bill 951 factors. In this case, all parties had the opportunity to present the Commission with evidence concerning the changing economic conditions as they affect customers.

Witnesses Morin and Walters both testified regarding the economic conditions in North Carolina. Without limiting their evaluations, they testified that

unemployment has fallen in North Carolina in the last two years; that North Carolina's unemployment remains low; that North Carolina's economy is highly correlated with the national economy, including North Carolina's per capita personal income; that North Carolina's retail price of electricity has historically been below the national average; and evaluated the counties for which DEC provides service.

The Commission's review also includes consideration of the evidence presented by the testimony of witnesses at the public hearings held in this matter. The testimony presented at these hearings illustrated a number of relevant facts, including the economic conditions facing North Carolinians. The Commission accepts as credible, probative, and entitled to substantial weight the testimony of the public witnesses.

The Commission keeps all factors affected by current economic conditions in mind in the many subjective decisions it makes in establishing rates, including return on equity. In doing so in the case at hand, the Commission approves the 9.35% rate of return on equity in the context of weighing and balancing numerous factors and making many subjective decisions. When these decisions are viewed as a whole, including the decisions to establish the rate of return on equity at 9.35%, the Commission's overall decision results in lower rates to customers in the existing economic environment.

All of the downward adjustments the Commission approves reduce the revenues to be recovered from ratepayers and the return on equity to be paid to

investors. Some adjustments reduce the authorized rate of return on investment financed by equity investors. The adjustments reduce rates and provide rate stability to consumers (and return to equity investors) to recognize the difficulty for consumers to pay in the current economic environment. Use of a rate of return on equity of 9.35% is only one approved adjustment that reduces ratepayer responsibility and equity investor reward. Many other adjustments reduce the dollars the investors actually have the opportunity to receive. Therefore, nearly all of these other adjustments reduce ratepayer responsibility and equity investor returns in compliance with the Commission's responsibility to establish rates as low as reasonably permissible without transgressing constitutional or statutory constraints.

For example, to the extent the Commission makes downward adjustments to rate base, disallows expenses, increases test year revenues, or disallows/reduces the equity capital structure component, the Commission reduces the rates consumers pay during the future period when rates will be in effect. Because the utility investors' compensation for the provision of service to consumers takes the form of return on investment, downward adjustments to rate base, disallowances of test year expenses or increases to test year revenues, or a reduction in the equity capital structure component reduce investors' return on investment irrespective of its determination of rate of return on equity.

The rate base, expenses, revenue adjustments, and capital structure evaluations are instances where the Commission makes decisions in each general

rate case, including the present case, that influence the Commission's determination on rate of return on equity and cost of service and the revenue requirement. The Commission always endeavors to comply with the North Carolina Supreme Court's requirements that it "fix rates as low as may be reasonably consistent" with constitutional requirements irrespective of economic conditions in which ratepayers find themselves. The Commission reaffirms its explicit compliance with the requirements of *Cooper I*.

Based on the changing economic conditions and their effects on DEC's customers, the Commission recognizes the financial difficulty that the increase in the Company's rates will create for some of DEC's customers, especially low-income customers. As shown by the evidence, relatively small changes in the rate of return on equity have a substantial impact on a utility's base rates. The Commission also recognizes that the Company is investing significant sums in system improvements to serve its customers, thus requiring the Company to maintain its creditworthiness in order to compete for large sums of capital on reasonable terms. The Commission must weigh the impact of changing economic conditions on DEC's customers against the benefits that those customers derive from the Company's ability to provide safe, adequate, and reliable electric service. Safe, adequate, and reliable electric service is essential to the well-being of DEC's customers.

vii. Return on Equity - Conclusions

The Commission in every case seeks to comply with the North Carolina Supreme Court mandate that the Commission establish rates as low as possible within constitutional limits. The adjustments the Commission approves in this case comply with that mandate. Nearly all the adjustments reduce the requested return on equity and benefit consumers' ability to pay their bills in this economic environment.

The Commission first notes that DEC's ROE request of 10.4 is significantly inflated and an unreasonable starting point for analysis. Although North Carolina has laws and a regulatory climate favorable to utilities, the Company's expert recommended the same ROE in other states that are less favorable to utilities. Further, there is no evidence to support awarding an ROE so substantially higher than recent average ROEs. Although an affiliate of DEC agreed to reduce its ROE request in South Carolina in consideration of the impact on customers, no such consideration was offered in North Carolina. Further, there is no justification for recovery of flotation costs in the Company's ROE.

Based on the general state of the economy and the continuing affordability of electric utility service, and after weighing and balancing factors affected by the changing economic conditions in making the subject decisions required, the Commission approves a rate of return on common equity of 9.35%. The Commission is persuaded by Public Staff witness Walters' analysis that an ROE of 9.35 and capital structure consisting of 52% equity will still allow the Company

to maintain its investment grade credit rating. The Commission concludes that the return on equity approved by the Commission in this proceeding appropriately balances the benefits received by DEC's customers from DEC's provision of safe, adequate, and reliable electric service with the difficulties that some of DEC's customers will experience in paying DEC's increased rates. The 9.35% ROE will not cause undue hardship to customers, even though some will struggle to pay the increased rates resulting from this decision.

The Commission must ensure the establishment of rates that are fair to both the customer and DEC and our decision in this case is fair to both. It affords DEC a reasonable rate of return that will allow it to continue to attract capital on terms well within the zone of reasonableness. Public Staff witness Walters testified his recommendations would allow DEC to maintain its credit while remaining fair to the customer. The ROE is consistent with ROEs established for regulated utilities in other jurisdictions, thus not putting DEC at a disadvantage when accessing the capital markets. The ROE, debt rate, and capital structure accounts for the economic environment, balances the need for services with the Company's need for capital, and complies with the mandate that rates be as low as reasonably possible within constitutional limits.

The Commission's determinations in this section reasonably ensure the continuation of safe and reliable utility services. The Commission recognizes that the Company has committed to spend and invest significant sums on system improvements to serve its customers and comply with House Bill 951, thus

requiring the Company to maintain its creditworthiness in order to compete for large sums of capital on reasonable terms. Investments and operations by DEC provide significant benefits to DEC's customers and ensure the continuation of safe and reliable utility services. As discussed above, the ROE, debt cost, and capital structure allows the Company to maintain its creditworthiness and also the opportunity to earn billions.

The Commission's determinations in this section will not, themselves, unreasonably prejudice any class of electric customers. Nor will they unreasonably harm any customer or class of customers. The Commission's determinations herein equally impact all customers because they apply to DEC as a whole. For example, *all* customers will be equally impacted by a capital structure, ROE, cost of debt, 50 basis point excess ROE sharing mechanism, the obligations surrounding DEC's abiding by the PBR application, and the overall rate of return.

Additionally, the Commission's determinations in this section will not, themselves, result in a sudden or substantial "rate shock" increases to customers annually or over the term of the plan. This is bolstered by several grounds. First, the Commission leaves unchanged the Company's capital structure which has existed at 52% equity throughout DEC's last several rate cases. Second, the Commission reduces the Company's ROE from its prior rate case which results in a benefit to customers. Third, the Company's cost of debt remains relatively low and does not represent a substantial increase. Additionally, the Commission is aware that the dollar impact of a 9.35% ROE necessarily increases as the base

against which it is computed also increases. However, any increase would be steady *because* the return on equity is simply a percentage. Put another way, an ROE requirement will not cause “spikes” or substantial rate increases in and of itself.

The Commission finds its determinations in this section of its order are in the public interest. The public desires safe, adequate, and reliable investments and services from DEC at the lowest reasonable cost. As discussed above, the Commission finds and concludes that the return on equity, cost rate of debt, and capital structure approved by the Commission in this proceeding meets this requirement. It balances the cost of attracting capital to ensure investment and services with the need for the lowest reasonable rates. When the Commission’s decisions are viewed as a whole, including the decision to establish the return of return on common equity at 9.35%, the Commission’s overall decision fixing rates strikes the correct balance.

The Commission notes further that its approval of a rate of return on equity at the level of 9.35% (or for that matter, at any level) is not a guarantee the Company will earn a rate of return at that level. Rather, as North Carolina law requires, setting the rate of return on equity at this level merely affords DEC the opportunity to achieve such a return. The Commission finds and concludes, based on all evidence presented and in light of the applicable jurisprudence, that the rate of return on common equity provided herein will indeed afford the Company the

opportunity to earn a reasonable and sufficient return for its shareholders while at the same time producing rates that are just and reasonable to its customers.

F. EARNINGS TREATMENT

As discussed above, Section 62-133.16 provides as follows:

> …If the weather-normalized earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points shall be refunded to customers in the rider established by the Commission. If the weather-normalized earnings fall below the authorized rate of return on equity, the electric public utility may file a rate case pursuant to G.S. 62-133. Any penalties or rewards from PIM incentives and any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) will be excluded from the determination of any refund pursuant to earnings sharing mechanism.

N.C. Gen. Stat. § 62-133.16(c)(1)(c)(1); *and see*, Commission Rule R1-17B (d)(m).

In accordance with said statute and rule, throughout the term of the multiyear rate plan, the following shall apply:

> (a) If DEC's weather-normalized earnings fall below the 9.35% authorized rate of return on equity, DEC may file a rate case pursuant to N.C.G.S. § 62-133.
> (b) If DEC's weather-normalized earnings on its rate of return on equity are less than 9.85% but equal to or greater than 9.35%, DEC may retain those excess earnings.
> (c) If the weather-normalized earnings of DEC during the rate year are equal to or exceed a 9.85% rate of return on equity, those excess earnings shall be refunded to customers. Any such refund shall be via an earnings sharing mechanism rider.

Nothing in this section is intended to impose greater or different restrictions on DEC than found in the applicable jurisprudence.

G. OVERALL RATE OF RETURN

The overall rate of return is a mathematical computation. The "inputs" to that formula are discussed above. Without limiting same, the Commission finds a capital structure consisting of 52% common equity and 48% long-term debt is appropriate. The Commission finds an appropriate cost rate of long-term debt is 4.56%. Further, the Commission finds an appropriate return on equity is 9.35%. Given Section 62-133.16's earnings treatment, DEC would be allowed to retain up to 50 basis points in excess of the approved return on equity, resulting in an upward allowable return on equity of 9.85%.

Proportionately applying the cost of debt and return on equity to the capital structure referenced herein results in an overall rate of return ranging from 7.0508% (at an ROE of 9.35%) to 7.3108% (at an ROE of 9.85%).

For the reasons set forth herein, the Commission finds that the capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return set by this Order: (a) will result in just and reasonable rates, (b) are in the public interest, (c) are consistent with the applicable jurisprudence, especially including without limitation N.C.G.S. §§ 62-133 and 62-133.16 and the rules adopted thereunder, (d) account for the changing economic conditions of North Carolina and are fair to DEC's customers generally and also in light of changing economic conditions; (e) appropriately balance DEC's need to maintain the safety, adequacy, and reliability of its service with the benefits received by DEC's customers from safe, adequate, and reliability electric service; (f) assures that no

customer or class of customers is unreasonably harmed and that the rates are fair to both the electric public utility and to the customer; (g) reasonably assures the continuation of safe and reliable electric service; (h) will not unreasonably prejudice any class of electric customers and will not result in sudden substantial rate increases or "rate shock" to customers; (i) appropriately balance the benefits received by DEC's customers from the provision of safe, adequate, and reliable utility service with the difficulties some of DEC's customers will experience in paying DEC's increased rates; (j) balance the fairness to the customers' need to pay the lowest possible rates with the need of DEC to obtain debt and equity financing; and (k) are appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-20

COVID

The evidence supporting these findings of fact is found in the Application and in the testimony of Company witnesses Kendal Bowman, Leslie Quick, Melissa Abernathy, and Nicholas Speros (together, the COVID Panel), Quynh Bowman, and Public Staff witnesses Zhang and Boswell.

Deferral Docket

In August of 2020, DEP and DEC (together, Duke) jointly petitioned the Commission for approval of orders for regulatory accounting purposes authorizing both Companies to establish a regulatory asset to account for incremental costs resulting from the unprecedented COVID-19 pandemic and declared a State of Emergency so that such costs could be deferred pending further action by the

Commission in the next general rate case filed by DEP and DEC. Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of Accounting Orders to Defer Incremental COVID-19 Expenses, Docket Nos. E-2, Sub 1258 and E-7, Sub 1241 (August 7, 2020) (Covid Deferral Docket). DEC and DEP each requested permission to create a regulatory asset to defer costs associated with customer fees waived, bad debt expenses, employee stipends and safety-related costs, remote work costs, and other costs, including overtime and related call center costs.

The Public Staff filed comments in the Covid Deferral Docket opposing Duke's request, arguing among other things that Duke had not substantiated a need for a deferral of the costs enumerated and recommending the Commission deny the request. Further, the Public Staff stated that if the Commission allowed Duke to defer costs, Duke should offset such costs with COVID-related savings such as federal tax credits and reductions in operating expenses.

Concerning the applicability of the Commission's two-prong test for deferral requests (Deferral Test) – with the first prong assessing whether the reason for which the costs were incurred is an unusual and extraordinary event (First Prong) and the second prong assessing whether the impacts of the event on the utility are material (Second Prong) – the parties did not contest that the First Prong was met by the unusual and extraordinary nature of COVID. *Id*. at 3-4. The companies contended that the Second Prong was inapplicable in this instance on the basis that the costs at issue were not reviewed in isolation where there was an ongoing

general rate case in which the Commission could review the overall cost of service such that the Deferral Test is not applicable. *Id*. at 7. After stating its "agree[ment] with the AGO that the fact that the deferral request was filed during the pendency of the rate cases does not moot the relevance of the second prong of the test," the Commission endeavored to apply the Second Prong. *Id*. at 9. However, while recognizing that "it [was] possible that the impacts in this case would be material for the purpose of considering the second prong of the Commission's deferral test," the Commission determined that it "[could] not reach a conclusion on that point because the actual amounts sought to be deferred ha[d] not been determined." *Id*. at 10. Nonetheless, "because of the extraordinary and unprecedented nature of the pandemic and the continuation of the Governor-declared State of Emergency," the Commission allowed the requested deferral "in order to provide the Companies an opportunity to capture the estimated incremental pandemic-related costs and to seek recovery of such costs in the Companies' future rate cases." *Id*. at 10-11. The Commission went on to state that "[t]he parties will have a full opportunity to raise [ ] issues when any such costs are included for cost recovery in a future rate case" and that "the burden of proof will be on the Companies to justify recovery of such costs." *Id*. at 11. The burden of proof is on the Company to justify recovery of its deferred COVID expenses. *Id*.

Summary of the Evidence

DEC Direct and Supplemental Testimony

In the present proceeding, DEC now seeks recovery of its deferred incremental COVID-related costs. In her direct testimony, DEC witness Q.

Bowman presented DEC's request. Witness Q. Bowman explained that DEC deferred and requests to recover: (1) customer fees waived; (2) bad debt charge-offs; (3) employee stipends to cover unplanned expenses associated with the COVID pandemic; (4) costs related to employee safety; (5) costs related to remote work; and (6) miscellaneous costs, such as employee overtime. Tr. vol. 12, 180-82. Witness Q. Bowman maintained that the costs included in the deferral are reasonable and prudent costs that were incurred as DEC provided its essential public service during the pandemic. *Id*.

In her direct testimony, DEC witness Quick explained the efforts DEC undertook to support its customers throughout the pandemic and the return to normal billing practices. Tr. vol. 7, 139-40. Witness Quick explained that DEC suspended service disconnections and waived fees for card payments, walk-in pay location payments, late payment charges, and insufficient funds. *Id*. at 137. Witness Quick also detailed how DEC worked with assistance agencies and customers on an individual basis to connect qualifying customers with assistance funding where possible. *Id*. at 139-40. Witness Quick described DEC's expanded outreach campaign efforts and, in particular, detailed the ways in which DEC adapted its customer operations resources to provide a more tailored experience for customers and utility assistance agencies. *Id*. at 137-38.

DEC witness Speros testified in support of DEC's bad debt calculation. Witness Speros explained that the moratorium on disconnections and late payment fees led to an increase in the number and amounts of past due accounts

outstanding, which in turn led to increased bad debt expense. *Id*. at 540. Witness Speros testified that the deferred bad debt expense was calculated as the total amount of incremental bad debt expense exceeding the amount already being recovered in base rates from the period starting in March 2020 through the July 31, 2023, capital cut-off date in this case. *Id*. Witness Speros also explained that DEC is continuing to incur impacts to business operations from the pandemic, namely that charge-offs related to COVID delinquencies are ongoing and will continue to be. *Id*. at 541.

Witness Q. Bowman explained that DEC's additional deferred expenses include employee safety-related costs, costs for remote work, employee stipends, and other miscellaneous costs. *Id*. at 180-81. She explained that DEC provided, and will continue to provide, employees with the appropriate personal protective equipment, and incurred additional incremental costs for increased cleaning and sanitation supplies, health care, as well as for testing and temperature checks. *Id*. at 181-82. For those employees who could work from home, witness Q. Bowman testified that DEC incurred additional costs for remote work, including costs for expanded conference line capacity, increased network bandwidth, other required information technology improvements, expanded video conferencing licenses, and increased company cellular telephone and data usage. *Id*. at 182. Lastly, for certain eligible employees, witness Q. Bowman stated that DEC provided a one-time cash payment of $1,500 to help with unplanned expenses associated with COVID-19. *Id*. Witness Q. Bowman also clarified that DEC seeks to recover other expenses related to overtime costs needed to implement COVID-19 guidelines to

ensure employee safety and increased costs due to expected increased call volume at call centers when normal billing practices resume. *Id*.

Witness Q. Bowman testified that the proposed new rates requested in this proceeding include recovery of costs deferred from March 2020 through July 2023, and that the adjustment normalizes revenues for waived late fees that will be collected going forward, amortizes the deferred costs over a three-year period, adjusts test year expenses to include certain incremental employee costs that were previously deferred, and includes the deferral balance, net of one year of amortization and deferred taxes, in rate base. *Id*. at 182-83. In her third supplemental direct testimony, witness Q. Bowman updated DEC's amortization amount for the COVID deferral to include actual amounts realized through July 31, 2023.

Public Staff Direct and Supplemental Testimony

In their direct testimony, Public Staff witnesses Zhang and Boswell stated that they continue to have the concerns set forth in their comments in the COVID Deferral Docket. Tr. vol. 12, 1032-33. Witnesses Zhang and Boswell explained their adjustment to the Company's inclusion of the one-time $1,500 stipends provided to some employees, which the Public Staff describes as goodwill by the Company that ratepayers should not be responsible for, particularly given that the expenses paid with the monies do not appear to have been verified by the Company and that the Company has been unable to show that the decrease in absences is in direct correlation to the payment of the stipend. *Id*. at 1033. The

Public Staff also removed approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in NC Retail O&M reductions that the Company stated it experienced through COVID on the basis that DEC did not offset the reductions against the COVID deferral. *Id*. at 1033-34 (confidential). Instead, witnesses Zhang and Boswell noted that the Company stated it was offsetting these savings against reduction in customer load, unfavorable weather, and excess storm costs, none of which were the causation of the savings. *Id*. The Public Staff noted that approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of the O&M reductions were decreases in printing costs and that employee expenses were reduced by at least **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** as compared to the Company's employee expenses in 2019. *Id*. (confidential).

Moreover, witness Zhang and Boswell explained that the Company received certain tax benefits in the form of credits and delayed payments as a result of the COVID pandemic, including an Employee Retention Credit totaling **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**; and delayed payment of Social Security Tax, resulting in an interest-free amount of additional working capital totaling **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for DEC available to the Company (with half of that paid in December 2021 and the remainder in December 2022) and a carrying cost benefit to the Company of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**. *Id*. at 1034-35 (confidential). For each of these tax adjustments related to COVID, the Public Staff included in its adjustments DEC's portion of the

DEBS tax benefits on the basis that, because DEBS provides services to DEC for which DEC is allocated the relevant labor and related costs, DEBS should also allocate the benefits to DEC. *Id*.

Finally, the Public Staff removed the Company's calculated return on the COVID deferral, which represents approximately 12% of the overall COVID deferral cost recovery sought by the Company, on the basis that it would be inappropriate to allow DEC to earn a return on costs for which all other utilities regulated by the Commission did not seek a deferral while under the same government-mandated restraints as the Company. *Id*. at 1035-36. In addition, the Public Staff testified that allowing DEC a return on the COVID deferral would unduly put the entire risk of what the Company has described as a "once in a century" event squarely on ratepayers. *Id*. With regard to the late payment fees, witnesses Zhang and Boswell explained that interest has already been accounted for, such that allowing a return on these expenses would unfairly allow the Company to collect interest upon interest. *Id*.

Other concerns raised by witnesses Zhang and Boswell include the reserve percentage of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** that the Company is applying for all customers on DEC's installment plan and the reserve percentages of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for receivables due from customers with past due accounts of 60-90 days and over 90 days, respectively, which totals an estimated reserve of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** (up from an opening balance

in 2020 of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** – a staggering **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** increase). *Id*. at 1036-37 (confidential).

In addition, the Public Staff expressed concerns with the Company's inclusion of an estimated incremental bad debt amount of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** from May of 2020 to June of 2023, which is over and above the **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per year already being recovered in the base rate case. *Id*. at 1037 (confidential). The Public Staff was not able to determine and compute a reasonable amount for the reserve and incremental bad debt expense that the Company sought for four reasons. First, in the Company's Application, E-1, Item Uncollectible Accounts for NC Retail, the Company filed the numbers at Total System level, which includes all of North Carolina and South Carolina. The Public Staff contended that this presentation is incorrect and misleading on the basis that it inflates the bad debt and provision for reserves amounts since North Carolina and South Carolina had different governmental directives during COVID. Next, the Public Staff disagreed with the Company's approach to the estimation and calculation of bad debt expense that appears to utilize a higher risk of customers being past due in calculating the estimation of bad debt expense. Additionally, the Public Staff testified that the new SAP billing system implemented in April 2021 appears to have skewed the Company's charge-off analysis compared to the legacy system due to changes in write-off percentage as well as the now-expanded reporting of accounts past due and changing from bill date to due date. Finally,

witnesses Boswell and Zhang averred that the lifting of the COVID-19 State of Emergency, effective August 15, 2022, which allowed for customer accounts that were past due but not subject to late payment, contributed to higher bad debt and reserves in the second half of 2022. The higher bad debt and reserves in the second half of 2022 coincided with the Company's development and calculation of a reserve estimate using aging data from November 2022 for the rate case application, resulting in a higher bad debt expense and provision for reserves. *Id*. at 1037-38.

To the extent that the Commission should allow recovery of COVID deferral expenses, the Public Staff recommended an amortization period of 12 years on the basis that this period of time aligns with the MYRP's three-year increment and with historical amortization periods approved for large deferrals, such as major storms. *Id*. at 1036.

With regard to the Company's proposed ongoing COVID deferral, witnesses Zhang and Boswell explained that they removed costs associated with the call center as their review of the data provided by DEC of the last five years indicated that the call center volume and costs decreased in 2021 and 2022 when compared to 2019. *Id*. at 1038.

Finally, the Public Staff adjusted revenue related to customer fees waived for the 2021 test period to reflect a normalized annual level of customer fees waived utilizing a two-year average based upon actual revenues collected in years 2018 and 2019. Witnesses Zhang and Boswell explained that, unlike the pandemic

year of 2021 where the waived fees were much higher, utilizing the average of 2018 and 2019 better represents the customer fees likely to be collected by DEC in the future. *Id*. at 1039.

DEC Rebuttal Testimony

On rebuttal, Company witnesses K. Bowman, Quick, Abernathy, and Speros (collectively, the COVID Panel) stated that this issue is important not only because of the magnitude of the costs at issue, but also because it goes to the core of the relationship between a regulated utility and its regulator. According to the COVID Panel, disallowing cost recovery of the COVID costs at issue would mean that prudently incurred costs resulting from governmental mandates imposed upon the Company to deal with an unprecedented emergency situation would go unrecovered. *Id*. at 210. In addition, the COVID Panel stated that the Public Staff's recommendation to deny COVID cost recovery ignored revenue loss entirely and other challenges faced by the Company such as mild weather that also resulted in substantially lower than projected revenues. *Id*. at 216. In the COVID Panel's view, the Public Staff's approach would penalize the Company for acting appropriately in the face of compounding challenges to the benefit of customers and should be rejected. Tr. vol. 13, 209-17.

Addressing customer engagement, the COVID Panel explained that the Company waived approximately $46 million in customer fees, expanded the pool of customers protected by the Winter Moratorium, extended the length of the Winter Moratorium from February 2021 until the end of March 2022, offered more

flexible payment terms and multiday payment extensions, and gave additional discretion to call center managers to work with customers. The COVID Panel acknowledged that overall call volume declined in 2021 and 2022 but stated that the complexity of calls increased beginning in September 2020, with post-COVID (Q4 2020 through Q4 2022) workload hours totaling an average of 145,700 hours per quarter and pre-COVID (Q1 2019 through Q1 2020) workload hours totaling an average of 134,400 hours per quarter. The COVID Panel went on to explain that, although average workload hours decreased during the Commission-ordered disconnection (Q2 and Q3 2020), the Company could not capture the potential savings associated with reduced workload during this timeframe in light of the uncertainty of when the Company would return to normal, making it such that reducing staffing would not have been prudent; and its view that reducing staffing in the short term, only to have to restaff a few months later, would not have been cost-effective. *Id*. at 219-25.

Concerning the Public Staff's specific adjustments to the COVID deferral balance, the COVID Panel asserted that the Public Staff largely made the same arguments as it made in the COVID Deferral Docket concerning COVID costs being offset by what it considers to be COVID savings, while ignoring the fact that the Company initiated O&M savings to offset net lost revenues (NLRs) attributable to COVID, mild weather, and other factors. The COVID Panel asserted that, for the most part, the Public Staff did not dispute the amount of costs deferred and sought for recovery. The COVID Panel explained that continuation of the deferral should resolve any disputes about the correct reserve percentages to use in calculating

bad debt expense, and that, if the Commission did not approve continuation of the bad debt expense deferral, then test year bad debt expense should be increased by approximately $61 million to reflect a current level of bad debt expense using 2022 actual expense. The COVID Panel contended that the Company did not require expense verification associated with the employee stipends, explaining that the stipends were appropriate to support employees in providing service to customers and to avoid turnover and should be allowed as reasonable and prudent costs. *Id*. at 222-30.

The COVID Panel further explained that, as required by the COVID Deferral Order, the Company tracked specific incremental costs for deferral, and that it is for those costs and only those costs that it seeks recovery in this proceeding. As such, in the COVID Panel's view, the Public Staff's position ignored NLRs against which COVID savings must be netted in order to present a balanced picture in light of the unforeseeable reductions in customer demand, thereby reducing revenue for the Company. While the Company used COVID savings to partially offset the impacts of the NLRs for which it did not seek deferral, the COVID Panel asserted that using the COVID savings to offset both the NLRs and the incremental COVID costs would double count the savings. Moreover, the COVID Panel contended that the COVID Deferral Order required only that the Company track the costs being deferred, but that nonetheless the Company was required to track and report COVID savings (specifically, reduced employee expenses such as reductions or elimination of travel and expenses associated with normal operations while employees of the Company were required to work remotely and adhere to travel

restrictions, and reduced printing and postage costs) and NLRs on a South Carolina retail basis for 2020 and therefore did, and provided to the Public Staff, the incremental COVID savings and NLRs at a system level to which it applied allocation factors to derive the South Carolina retail amounts. According to the COVID Panel, the Company's COVID savings were largely realized in 2020 in the amount of approximately $6.2 million on a North Carolina retail basis, while the Company estimated the NLRs due to COVID in 2020 to have been approximately $47 million on a North Carolina retail basis compared to budget, thereby more than offsetting the savings reductions that the Public Staff suggests were experienced. *Id*. at 232-40.

With regard to the tax benefits that the Public Staff suggested should be used by the Company to offset its COVID expenses, the COVID Panel estimated that the carrying cost benefit of the delayed payment of the employer portion of Social Security tax was approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis. The COVID Panel disagreed with the Public Staff's suggested adjustment in this amount, as well as its recommended adjustment of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** associated with the DEBS payroll, on the basis that DEC received no carrying cost benefit from the Social Security delayed payment associated with DEBS payroll as it was recognized on the DEBS balance sheet as a long-term liability account and was ultimately paid by DEBS. *Id*. at 236-37 (confidential). Concerning ERC, the COVID Panel explained that it filed approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a

North Carolina retail basis attributable to operations from March 13, 2020, through September 30, 2021, and that all claims for DEBS have now been filed in the amount of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis. Accordingly, the COVID Panel asserted that, even if these benefits to DEC are netted against costs, they fall short of offsetting the total impacts from NLRs. *Id*. at 235-37 (confidential).

The COVID Panel contended that the approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis of savings from March 2020 through August 2021 cited by the Public Staff as COVID savings were, instead, attributable to Company-instituted cost efficiency measures in response to reduced revenue due to both COVID and mild weather and increased expense related to higher-than-normal storm restoration costs. These cost efficiency measures included revising the scope and timing of generation outages due to lower load requirements, managing headcount, lowering employee and executive short-term incentive expenses for 2020, and experiencing lower than planned interest expense due to favorable timing of capital market transactions in 2020. The COVID Panel stated that these efforts are examples of measures the Company normally considers when impacted by weather, storms, or other factors affecting revenues. Moreover, the COVID Panel explained its view that, even if one were to accept the Public Staff's premise that all cost savings in 2020 were due to COVID, then at minimum the Company should still be allowed to recover its incremental COVID costs, since the NLRs more than offset the total cost savings. *Id*. at 238-40 (confidential).

With regard to the Public Staff's proposed removal of carrying charges, the COVID Panel explained that the Company had to utilize its own investor-provided funds to pay for the costs at issue and that, where utility investors supply the funding for expenditures prior to recovery from customers, a return is generally permitted on such a regulatory asset until recovery has occurred to account for the time value of money, thereby making the investor whole. In essence, the COVID Panel explained that the customers who benefitted from the investors' funding are essentially receiving a loan from the utility since, by definition, these costs are not being recovered in current rates, and the customers will instead pay for the utility's expenditure over a period of time rather than at the point the utility incurs the expenses. The COVID Panel also asserted that additional financing costs are incurred by the Company when fees are due but not paid, and thus it is reasonable and prudent to allow for recovery of such additional financing costs. *Id*. at 241-45.

Concerning bad debt, the COVID Panel explained that the moratorium on disconnections and the suspension of late fees enacted through Governor Cooper's Executive Orders and Commission Orders had an adverse impact on the level of the Company's bad debt expense insofar as the Company realized an increase in the number of past due accounts. In the COVID Panel's view, DEC's bad debt expense was appropriately deferred and included in its COVID regulatory asset as ordered by the Commission. The COVID Panel stated that, in this proceeding, the Company sought only to recover the difference between the level of bad debt expense currently in rates and the amount of bad debt above that level resulting from COVID. In developing the reserve percentages, which represent the

estimated amounts of past due arrears expected to be charged off at various points in time, the COVID Panel explained that the Company analyzed charge-offs and aging data from 2018 and 2019 rather than from 2020 or later due to the erratic and unreliable charge-off data resulting from the disconnection moratorium and the more lenient disconnection policies in effect during the pandemic. The Company divided net charge-off amounts by the aged receivable balance utilizing the historical data from 2018 and 2019 to determine the reserve in addition to assessing numerous qualitative factors such as large customers for whom the Company has a high level of confidence of payment, upcoming government assistance programs, and unusual changes or fluctuations in collections and write-offs, and ultimately considering whether the balance in the loss reserve is reasonable as stated or if an adjustment is required. Given that customers on payment plans have consistent data available and are actively working with the Company, such customers are viewed as having less risk of being charged off than the typical delinquent customer, and therefore their receivables are treated differently than regular aged receivables. *Id*. at 246-50.

Testimony Presented at the Expert Witness Hearing

Public Staff witnesses Zhang and Boswell testified at the expert witness hearing that, with regard to the Company's request to continue deferral of its COVID-related bad debt expense until the next general rate case, the Public Staff does not recommend that the Commission allow the continued deferral on the basis that the Company's calculation of projected bad debt is subjective and is based on a system level (including both North Carolina and South Carolina). Given

that there are substantial differences in how the two states' utilities commissions handled COVID with regard to increased customer flexibility, the Public Staff asserted that it was inappropriate to include South Carolina within the confines of the uncollectibles calculation; however, due to the Public Staff's workload and the complicated nature of untangling the South Carolina component of the uncollectibles calculation, the Public Staff chose not to make an adjustment on this item. Moreover, witness Boswell noted her concern that DEC changed the number of days used for calculation of uncollectibles, further reducing her confidence that the continuation of a COVID deferral was appropriate. Tr. vol. 12, 1058-62.

Concerning the Public Staff's O&M adjustment to the Company's COVID recovery request, witness Boswell testified that remote work and overtime call center costs were included in this adjustment, and that 90 percent of DEC's staff continues to work remotely on either a part- or full-time basis since remote work was initially instituted during COVID. Witness Boswell also explained that all call center overtime costs were already included in the prior rate case's cost of service. *Id*. at 1063-64.

During the COVID Panel's live testimony, with regard to the Public Staff's concern that the Company's overall calculation of uncollectibles included South Carolina expenses, DEC witness Speros testified the Company's bad debt expense drastically increased as a direct result of orders from Governor Cooper and this Commission, such that the inclusion of South Carolina expenses was not a factor in his opinion, although the Company uses a system level of bad debt

expense and a North Carolina allocator. Witness Speros indicated that, earlier that day, he had performed calculations of North Carolina's specific bad debt expense and that, although the Company would actually need to increase the deferral based upon the results of these calculations, the difference was not material. Tr. vol. 13, 267-70.

Company witness Quick detailed the decrease in calls during the disconnection moratorium imposed by executive and Commission orders, followed by an increase in calls upon resumption of disconnections and an increase in the handling time of calls given the number of customers in arrears. In addition, witness Quick explained the 12-month repayment plans offered to customers with arrearages and the Company's observation that customers with lengthier payment plans were more likely to default. *Id*. at 270-76.

DISCUSSION AND CONCLUSIONS

In the proceeding now before us, the Company has sought to recover its deferred COVID expenses. No party has challenged that the expenses for which the Company now seeks recovery pursuant to the COVID Deferral Order were COVID-related expenses. The questions this Commission is tasked with answering are threefold: (1) whether the Company's deferred COVID expenses should be recovered by ratepayers and, if so, to what extent; (2) whether a return on any allowed deferred COVID expenses is appropriate; and (3) whether the Company should be permitted to continue to defer its future COVID expenses.

Cost Recovery

In this proceeding, the Public Staff noted general concerns with regard to the Company's practices surrounding bad debt expense but did not otherwise take issue or make adjustments to the COVID-related expenses pertaining to customer fees waived, bad debt expense, or employee safety related costs. The Commission is persuaded that, other than the adjustments proposed by the Public Staff, these costs are just and reasonable and should be approved. However, based upon the Public Staff's recommendations, the Commission further determines that it is appropriate to reduce these allowed costs by the O&M savings experienced by the Company through COVID, including savings for employee travel expenses, printing and postage costs, and remote work costs; by employee stipends voluntarily provided to certain employees by the Company; and by certain tax-related benefits inured to DEC as a result of COVID.

The Company admits that it experienced COVID savings due to decreased employee travel, printing, and postage. Given DEC's concession that these savings are directly attributable to the pandemic, the benefit of these savings should be netted against the Company's approved deferral.

Regarding the costs of remote work, in order to facilitate employees working remotely to protect their health and safety during the pandemic, DEC incurred incremental costs associated with expanded conference line capacity, increased network bandwidth, other required information technology improvements, expanded video conferencing licenses, and increased company cellular telephone

and data usage. The Commission recognizes that many other businesses and state agencies in North Carolina were able to shift to full or nearly full remote work to respond to the Governor's State of Emergency and also incurred similar incremental costs to accommodate employees working remotely. The Commission notes that in the post-State of Emergency work environment, remote work offerings continue either fully or on a hybrid basis for many businesses, state agencies, and utilities, including DEC. The Commission determines that although the pandemic may have initiated this category of costs, these costs are now largely ongoing in nature and not specific to the pandemic. Moreover, DEC has not indicated that it offset the deferred costs of remote work with the associated decreases in office expenses such as utilities, office supplies, and other miscellaneous expenses related to employees working from the office. Thus, the Commission concludes that it would not be appropriate to recover the deferred costs of remote work from customers.

DEC provided certain eligible employees with a one-time cash payment of $1,500 to help with unplanned expenses associated with COVID. DEC testified that the stipends were appropriate to support employees in providing service to customers and to avoid turnover and should be allowed as reasonable and prudent costs. The COVID Panel contended that DEC did not require expense verification associated with the employee stipends. The Commission concludes that the one-time $1,500 stipends provided voluntarily by DEC to certain hourly employees should be considered voluntary goodwill and should not be recovered from customers. Usage of the stipends was not verified by DEC and employees were

free to spend the funds as they pleased, without oversight, and thus the Commission determines they should be excluded from cost recovery of deferred COVID expenses.

DEC witness Q. Bowman testified that the other category of deferred costs includes overtime to implement COVID-19 guidelines to ensure employee safety and increased costs due to expected increased call volume at call centers when normal billing practices resume. Public Staff witnesses Boswell and Zhang testified that expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by DEC for call center overtime was not above the amounts already included in DEC's cost of service. The Commission is persuaded that, because the amount sought by DEC for call center overtime was not above the amount already included in DEC's cost of service, these costs should not be recovered from customers.

In addition, to balance the fairness and equity between customers and shareholders related to the COVID pandemic, the Commission determines that measures taken by the federal government to assist companies and employers in weathering the impacts of the pandemic should inure to the benefit of customers, as these measures directly relate to COVID. As such, these savings, such as the carrying cost benefit to the Company of delayed Social Security tax payments (and the DEC-portion of the carrying cost benefit to DEBS of the same) and ERCs filed by the Company (and the DEC-portion of the ERCs filed by DEBS) should be netted against the Company's deferred COVID expenses.

With regard to the Company's remaining O&M savings throughout the pandemic, although the Company averred that it instituted mitigation efforts to address mild weather, higher-than-normal storm costs, and lost revenues related to COVID, the Commission gives weight to the Public Staff's position that mild weather and higher-than-normal storm costs were not the true cause of these O&M savings. Instead, the Commission is persuaded that the Company's O&M savings during the pandemic were a result of the Company's mitigation efforts in light of the pandemic. Accordingly, the Commission finds it reasonable to disallow the Company's remaining O&M savings experiences during the pandemic from its allowed deferral.

Despite DEC's assertion that, to the extent that the Company experienced any savings due to COVID, such savings should be offset against estimated NLRs for which the Company did not seek a deferral, the Commission is sensitive to the fact that COVID did not spare any part of society, whether businesses, individuals, or families. All individuals and businesses, regardless of size, felt some impact due to COVID and made necessary adjustments. The Commission is also keenly aware that DEP and DEC were the only Commission-regulated utilities that sought a deferral of COVID costs, even though all Commission-regulated utilities continued to provide service and abide by the State of Emergency Orders without knowing whether they would receive full, or any, payment for the services rendered, and put employees on the front lines to provide those services. In addition to considering these impacts, the Commission is also aware that many businesses experienced certain savings related to COVID (in addition to expenses

related to COVID) as workforces changed and certain O&M expenses were temporarily or permanently reduced.

The Commission notes that, in reaching this determination, it is not appropriate to consider the Company's COVID-related estimated NLRs that were not sought at any point in the COVID Deferral Docket or in any other deferral request. If the Company wished to have its COVID-related NLRs considered, it was free to file such a request at any time. Witness K. Bowman testified that the Company consciously chose not to do so. In any given year, the Company will experience NLRs for which, without a specific Commission order, the Company cannot recover. The Commission therefore declines to take COVID-related NLRs into account.

What is left in reasonably and prudently incurred deferred COVID expenses is approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, based on the Company's third supplemental filing and the adjustments as discussed herein. While the Commission's Deferral Test is typically applied in the context of a deferral request docket such that the nature of the costs and magnitude thereof need not be litigated in the subsequent cost recovery docket, the COVID deferral was unique in the sense that the costs were unusually speculative, the length of time completely unknown, and the magnitude indefinite, leaving the Commission unable to evaluate the Second Prong in a meaningful manner in the COVID Deferral Docket. *See* COVID Deferral Order at 10. That is not to say, however, that the Commission waived its analysis of the Second Prong

with regard to the Company's deferred COVID expenses by not having undertaken this analysis in the COVID Deferral Order. Nothing prevents the Commission from now undertaking an analysis of the magnitude of the deferred COVID expenses now that they are known and measurable, and the Commission chooses to do so in its discretion. There are three main factors that the Commission finds to be relevant in its analysis of the Second Prong in this proceeding: (1) the amount of the Company's deferred COVID expenses; (2) the Company's earnings during the analogous timeframe; and (3) fairness and equity.

The Commission is satisfied that the remaining amount of the Company's deferred COVID expenses are of a magnitude appropriate for deferral treatment. Although the Company has consistently achieved earnings in excess of its authorized ROE since before the COVID pandemic such that its shareholders enjoyed high earnings throughout the pandemic while many of DEC's ratepayers faced significant financial hardship, the Commission is mindful of the unique circumstances of this case and the fact that the Company, as a provider of an essential service, was required to fulfill its obligations to customers to continue operations 24 hours a day, seven days a week despite the pandemic. Government officials, including this Commission, sought to aid North Carolina citizens amidst a turbulent and challenging economic environment by issuing a State of Emergency and various mandates and moratoriums. During the height of the turmoil caused by the pandemic, customers benefitted from the governmental mandates to waive customer fees and discontinue disconnections for non-payment. The pandemic lasted much longer than anyone anticipated. Businesses, families, and individuals

benefitted from these mandates, particularly households that were struggling with financial issues resulting from the pandemic. Further, DEC, at this Commission's direction, provided customers with new, more favorable payment options and worked to connect eligible customers with available financial assistance from new and existing federal and state programs. As such, the Commission is satisfied that, having considered all of the pertinent factors involved and the unique circumstances of the pandemic, the second prong of the Deferral Test has been met such that it is appropriate for the Company to recover the remaining balance of the COVID deferral, after incorporating the adjustments as described above.

The Commission concludes that it is appropriate that cost recovery for the remaining approved deferred COVID-related costs occur over a 12-year amortization period. Due to the material amount of COVID-related costs approved for recovery, the Commission finds that the three-year amortization period requested by DEC would be burdensome for customers. A 12-year amortization period is in line with the amortization period approved for requests of similar size, such as storm deferrals, and takes into consideration the Company's request for a three-year increment to keep in sync with the MYRP, while balancing the needs of the ratepayers and the Company. The Commission determines that amortization of the deferred COVID-related costs should begin upon the effective date of new rates in this proceeding.

Return

The Commission declines to approve DEC's request to recover accrued carrying costs on the deferred costs or to authorize a return on the unamortized balance of the COVID costs during the amortization period. In reaching this decision, the Commission is conscious of the fairness and equity factors inherently at play in considering how to appropriately balance the difficulties experienced by both the utility and ratepayers throughout the pandemic. Taking into consideration the hardships caused by the pandemic on the residents and businesses in North Carolina and DEC's earnings as reported in its E.S.-1 Report during the deferral period, which were at or above the utility's authorized rate of return, the Commission concludes that the amount included in DEC's request related to accrued carrying costs on the deferred costs or a return on the unamortized balance during the amortization period should not be recovered from customers through rates.

Continued COVID Deferral

The Commission again chooses to apply the Deferral Test in determining whether it is appropriate to allow the Company to continue deferring COVID expenses. The Commission continues to be satisfied that, although we are now further removed from the pandemic of COVID, the nature of the costs at issue on a going-forward basis is still extraordinary enough to satisfy the First Prong. Concerning the Second Prong, the Company contends that the impact to the revenue requirement of inclusion of the bad debt expenses in test year O&M

expenses would be approximately $61 million, which the Commission is satisfied is an amount of sufficient magnitude to warrant deferral treatment.

As such, the Commission will allow the Company to continue deferring its COVID expenses under the following conditions:

1. Any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case;

2. DEC should report on a semiannual basis the actual amounts recorded to the deferral and the payments received; and

3. Expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by the Company for call center overtime was not above the amounts already included in the Company's cost of service.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 210-273

The evidence supporting these findings of fact is contained in the direct testimony of DEC witness Morgan D. Beveridge, the direct and supplemental testimony of Public Staff witness David M. Williamson, the rebuttal and supplemental rebuttal testimony of the Rate Design Panel, and the entire record in this proceeding.

Residential Rate Schedules

DEC proposes to allow detached garages, barns, and other structures on the same residential premises to be served under a residential rate schedule. DEC

witness Beveridge stated that this proposal is based on customer feedback. The current policy is to serve detached garages, barns, or other structures on a SGS schedule if the structure is not used for cooking and sanitation. Availability of a residential schedule is dependent on the structure being used for residential purposes only. Tr. vol. 10, 141-42.

DEC is proposing to update the language in the residential rate tariffs to include detached garages, barns, and other structures as eligible for the residential rate tariffs. DEC would allow customers to migrate from a general service rate schedule to a residential rate schedule for detached structures at the same premise as the residential account. Customers who wish to make the change would be required to initiate the process to migrate their commercial account to their residential service account. Tr. vol. 10, 141-43.

Public Staff witness D. Williamson testified that the Public Staff supports this change in the residential rate schedules regarding detached structures but recommends that the Company be required to notify all SGS customers of the change through bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 205. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to the residential rate

schedules regarding detached structures and the Public Staff's related recommendation regarding notice are just and reasonable.

Lighting Rate Schedules

DEC proposes to increase all Existing Pole rates (excluding light emitting diode (LED) fixtures on Schedule OL) by a consistent percentage to achieve the proposed revenue increase, by rate schedule. The stated purpose of this change is to better align LED fixture rates on Schedule OL to Schedule PL. DEC also proposes to increase the new pole adder fee that applies to both the New Pole and New Pole Served Underground rates on Schedules OL and PL. Tr. vol. 10, 156-57. DEC also proposes to add two new low-wattage LED fixtures to Schedules OL and PL, stating that these low-wattage LED fixtures are ideal for areas that require less lumen output than the standard LED 50-watt fixture. Tr. vol. 10, 158.

DEC also proposes to establish a new tariff for Outdoor Lighting Service Regulations (OLSR), and to increase the contract period from three to five years to address attrition of lighting assets and reduce the potential for stranded costs. The template for the proposed OLSR was based on the corresponding tariff in DEP. The primary intent of the OLSR is to consolidate and clarify the Company's common policies related to outdoor lighting. Tr. vol. 10, 157-58.

Company witness Beveridge testified that DEC's mercury vapor ("MV") conversion project is ongoing and nearing completion. The Company has made substantial progress on conversion of standard fixtures on Schedule PL and expects to complete conversions by the end of 2023. However, the Company now

expects conversion of post top and decorative MV fixtures to be completed by the end of 2024. To avoid issues of nuisance or distraction to pedestrians and motorists, DEC is proposing to replace its post top fixtures and many of its decorative MV fixtures with the 30-watt LEDs proposed in this proceeding. Tr. vol. 10, 159-60.

Public Staff witness D. Williamson testified that the Public Staff supports these proposed changes in the lighting rate schedules but recommends that the Company be required to notify all lighting customers of the change to lighting services, rate schedules, and service regulations by bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 214. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to the lighting rate schedules and the Public Staff's related recommendation regarding customer notice are just and reasonable.

Schedule OPT-V

DEC is proposing a minimum contract demand of 75 kW for new customers served under Schedule OPT-V to better delineate between rate classes and rate designs for small (below 75 kW) versus large (75 kW and above) business customers. Company witness Beveridge testified that the rate design and cost of

service rate class of Schedule SGSTC is more appropriate for small business customers than Schedule OPT-V and that the minimum demand requirement will help maintain an attractive and appropriate cost of service rate class for larger business customers under Schedule OPT-V. Existing customers with a contract demand under 75 kW may continue to receive service under Schedule OPT-V. Tr. vol. 10, 149-50.

Public Staff witness D. Williamson testified that the Public Staff supports this proposed change to Schedule OPT-V but recommends that the Company be required to notify all current OPT-V customers of the proposed 75 kW minimum contract demand threshold and the alternative rate schedules available to them through bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 205. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to Schedule OPT-V and the Public Staff's related recommendation regarding customer notice are just and reasonable.

Revenue Apportionment

An objective of the Company's proposed rate design is to achieve the necessary increase in rates to collect the total revenue requirement. Tr. vol. 10,

130. DEC recommends a variance reduction of 10% to gradually reduce interclass subsidies to better align each rate class to the overall rate of return. Tr. vol. 10, 133. DEC disagrees with the Public Staff's proposed methodology to apportion revenues in this case because it differs from the methodology Duke Energy Progress, LLC (DEP) proposed in the Docket No. E-2, Sub 1300 (Sub 1300) rate case and ultimately approved by the Commission, and it believes there is no basis to support deviating from the method used in the Sub 1300 rate case. Tr. vol. 17, 146-47. DEC further argues that the Public Staff approach is not replicable using other revenue requirement figures and uses a level of subjective determination that is not reasonable. Tr. vol. 17, 147-48. Contrary to Duke's assertion that the Public Staff methodology was irreplicable, DEC witnesses Byrd and Beveridge on cross examination conceded that they simply had "no idea" how to replicate the Public Staff revenue apportionment methodology using another revenue requirement, nor had they attempted to do so. Tr. vol. 17, 169. Witnesses Byrd and Beveridge acknowledge that Chapter 62 of the North Carolina general statutes does not prescribe any revenue apportionment method to be used by the Commission and that the Commission has discretion to determine how revenues should be apportioned in each rate case. Tr. vol. 17, 171.

Similar to the Company's objective, the Public Staff's apportionment of revenues to the various customers classes would allow the Company the opportunity to recover the overall revenue requirement from the customer classes. Tr. vol. 17, 71. The Public Staff testified that it developed a revenue apportionment framework by using the Company's per books (Item 45a) MAE-COSS; adjusting

for present and proposed revenues, expenses, and rate base as provided by Public Staff witnesses Zhang, Boswell, and Metz; and applying the Public Staff's four basic revenue assignment principles in a balanced manner. Tr. vol. 17, 42-43. Those four basic revenue assignment principles are: (1) the revenue increase assigned to any customer class is limited to no more than two percentage points greater than the overall jurisdictional revenue percentage increase, thus avoiding undue rate shock; (2) class rates of returns (RORs) are maintained within a +/- 10% band of reasonableness relative to the overall North Carolina (NC) retail ROR; (3) all class RORs are moved closer to parity with the overall NC retail ROR; and (4) subsidization among the customer classes is minimized. Tr. vol. 17, 43. Witness Williamson acknowledged in his direct testimony that DEC's use of the 10% cross subsidy reduction methodology was appropriate. However, once the Public Staff developed its proposed revenue requirement following its audit of DEC's May and June supplements, the Public Staff determined that an alternate methodology for allocating the revenue requirement, which independently moves each rate class closer to RPR parity, would be more appropriate than the Company's proposed methodology. Tr. vol. 17, 48. The Public Staff looked at each individual class rate of return after adjustment to the per books cost-of-service study and apportioned revenues that moved each class's overall return closer to parity, while limiting rate increase impacts to the greatest extent possible in order to minimize rate shock. Tr. Vol. 17, 42-48. As such, not all class rates of return were within the +/- 10% band of reasonableness by the conclusion of the MYRP, but those classes that were far outside of the band under existing rates moved

incrementally closer to the band. *Id.* The Public Staff has historically relied upon the band of reasonableness as a primary guiding principle in apportioning revenues in general rate cases and recommends that the Commission continue to support this principle. Tr. vol. 17, 62, 69-71, 77, 115-16. In addition, witness Williamson explained that the Public Staff's methodology is replicable using any revenue requirement, not only the Public Staff's proposed revenue requirement in this case. Tr. vol. 17, 111-13.

Having considered the record evidence on the issue of rate design, the Commission concludes that the objectives of DEC's rate design – which are to: (1) achieve the necessary increase in rates to collect the total revenue requirement; (2) further align the cost to serve customers within DEC's residential, general service, lighting, industrial, and OPT rate schedules; and (3) develop rates that reflect the costs a customer causes DEC to incur – are reasonable. Further, the Commission concludes that the Public Staff's proposed ROR indices are appropriate for determining the allocation of the approved revenue increase to the customer classes, are reasonable to all parties, and are approved for the purposes of setting rates in this proceeding. Finally, for the foregoing reasons, the revisions to the rate schedules and to the service riders proposed by DEC in this proceeding are reasonable and are approved as proposed, unless otherwise specifically addressed hereinafter in this Order.

Based on the evidence in the record, the Commission is persuaded that the application of a variable cross subsidization reduction is reasonable for application

in this proceeding. In reaching this conclusion, the Commission gives significant weight to the testimony of witness Williamson that allowing for a more targeted approach to address cross subsidization helps move each class toward rate parity and minimizes interclass subsidization, while considering and incorporating other important factors. Additionally, the Commission recognizes that the Company's proposal of a flat variance reduction can be an appropriate way to address cross subsidization as found in the recent DEP case but concludes that a flat variance reduction is not the most appropriate method under the facts and circumstances in this case. While the Commission has approved a flat variance reduction in the past, it is persuaded by the evidence provided by witness Williamson that a departure from this prior practice is warranted in this proceeding, particularly given the passage of HB 951 and the facts and circumstances of this case. In this case, the Public Staff proposed a more tailored reduction in class cross subsidies, and the Commission finds this approach to be appropriate and more in keeping with the plain language and intent of HB 951. Accordingly, the Commission finds that a more targeted subsidy reduction is just and reasonable and consistent with the PBR Statute, and that using the class ROR indices proposed by the Public Staff to allocate costs among classes equitably moves rates closer to cost for all customer classes and will not lead to rate shock.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 284

Rider-NSC

The evidence supporting this finding of fact is contained in the direct testimony of DEC witness Jonathan L. Byrd, the rebuttal testimony of DEC witnesses Byrd and Morgan Beveridge (Rate Design Panel), and the testimony of Public Staff witness Jordan A. Nader.

In his direct testimony, witness Byrd discussed the Company's proposal for a new Non-Residential Solar Choice Rider (Rider NSC) to replace the existing Rider NM – Net Metering for Renewable Energy Facilities. He explained that the Company is proposing Rider NSC because of the new time-of-use (TOU) periods and three-part demand charge structure also being proposed in this proceeding. Tr. vol. 10, 102-04.

As proposed, Rider NSC requires all future non-residential net metering customers to be served under a general service rate schedule that includes TOU periods. In addition, the proposed rider would limit the size of customer-owned generation installations to the lesser of 100% of the customer's contract demand or 5 MW. This is an increase from the current limit for Rider NM, which is the lesser of the customer's contract demand or 1 MW. Pursuant to N.C.G.S. § 62-126.3(14), the system size limitation for customers with leased generation facilities would remain as the lesser of the customer's contract demand or 1 MW. Witness Byrd testified that the changes to non-residential net metering were discussed during

the Comprehensive Rate Design Study (CRDS) process. Tr. vol. 10, 102-03; Tr. vol. 11, Official Exhibits, 67-69.

Public Staff witness Nader recommended in his testimony that the Commission approve Rider NSC as proposed by DEP, but that the 5 MW cap on nameplate capacity should be removed. He argued that by requiring all non-residential net metering customers to subscribe to a TOU schedule, and under the proposed three-part demand structure, the full fixed cost of service should be recovered regardless of system size, mitigating the risk for material cross-subsidization. Witness Nader further stated that large non-residential customers that seek to install on-site generation will be subject to the capital funding limitations of their own businesses, serving as another limitation to prevent generation in excess of site load from being installed. Tr. vol. 12, 770-72.

In their rebuttal testimony, the Rate Design Panel responded to the Public Staff's recommendation to remove the 5 MW cap, stating that the cap strikes a reasonable balance between stakeholder requests for larger system sizes and considerations for grid operations and reliability. They further testified that during the CRDS, customers and stakeholders requested larger system sizes under net metering, and that the increase from 1 MW to 5 MW is an appropriate response to those requests. They added that large net metered systems require interconnection studies and present additional complexity because of the unpredictability of their output to the grid in terms of overall size, and that the proposed 5 MW cap is an appropriate balance of such concerns, including

customer desires. The Rate Design Panel also argued that customers with systems larger than 5 MW have the option to connect under Schedule HP. Tr. vol. 12, 215.

In response to questions from the Public Staff, witness Byrd testified that the answers he gave to cross examination questions on the topic of Rider NSC in the expert witness hearing in the Duke Energy Progress, LLC (DEP) rate case were still true and accurate to the best of his knowledge, and that his answers in the DEP proceeding would be consistent with DEC's position. Tr. vol. 11, 49-50. Specifically, in the DEP rate case, witness Byrd agreed that DEP's concern was not about its ability to provide a customer with its contracted capacity, but rather, that the customer's load would shut down unexpectedly and that its generation would suddenly be sent to the grid, also known as "backfeed." He added that a customer could have an outage week for a holiday, and suddenly the Company could have 10 MW of solar generation coming onto that portion of the grid. Tr. vol. 11, Official Exhibits, 48-49. Witness Byrd further testified during the DEP expert witness hearing that when a new generation resource is connected to a transmission or distribution circuit, the Company conducts an interconnection study. He stated that for systems greater than 1 MW, there is a more extensive interconnection study that includes a cluster study, and that this is a very rigorous study for larger system sizes. He agreed that these studies generally look at whether interconnecting a resource would raise reliability concerns and stated that the studies examine the impact of interconnecting a resource on other customers on that particular circuit. He testified that, as far as he knows, the interconnection

studies he had discussed would look at the potential for backfeed to enter the system. "If you have a customer who's installing solar generation, [the interconnection study is] looking at all those potential . . . variances where that generation might be putting a significant amount back on the grid." *Id.* at 46-50.

As stated previously in this Order, the Commission finds that it is reasonable and appropriate to approve the proposed Rider NSC. Here, however, the Commission considers the appropriateness of the 5 MW cap on customer generation systems in the Company's proposal. According to the Company's testimony, its primary concern with removing the 5 MW cap is reliability. Specifically, the Company is concerned about the potential for sudden backfeed onto the system if a customer's load should switch off.

Witness Byrd, however, testified that the Company conducts extensive interconnection studies for systems greater than 1 MW, and "very rigorous" studies for larger system sizes. He also testified that these interconnection studies examine potential reliability concerns, impacts on other customers on a circuit, and the potential for backfeed to enter the system. The Commission is persuaded that DEC's concerns regarding reliability and backfeed can properly be mitigated pursuant to the Company's existing interconnection study process, rather than through the setting of an arbitrary cap on the size of large customer generation systems. The Commission notes that if the 5 MW cap in the proposed Rider NSC is removed, large customers will still be limited to system sizes that are no greater

than their contract demand, which will result in an outer limit on nameplate capacity.

Accordingly, the Commission is of the opinion that it is more appropriate to examine each system on a case-by-case basis based on existing interconnection study procedures than to set a 5 MW cap on large customer net metered systems under Rider NSC. The Commission is aware that large customers with behind-the-meter systems of greater than 5 MW are eligible to take service under Schedule HP but does not find it appropriate to limit large customers to Schedule HP when they may prefer or be able to take greater advantage of the terms of Rider NSC.

Based on the foregoing and the entire record in this proceeding, the Commission finds and concludes that it is reasonable and appropriate to remove the proposed 5 MW cap on nameplate capacity from Rider NSC.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 295-3026

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witness Tommy Williamson, the rebuttal testimony of Company witness Brent Guyton, and the entire record in this proceeding.

In his direct testimony, Public Staff witness T. Williamson expressed concern that at the time a landowner is asked to sign the Company's form easement document, the landowner cannot be assured as to the ultimate location of the easement. Tr. vol. 15, 169-70. That's because the Company's form easement provides that the centerline of the easement is established by the

location of the Company's facilities as subsequently installed; in other words, the easement location is a function of the subsequently installed facilities. *Id.*

Public Staff witness T. Williamson recommended that the Company provide customers with a depiction, map, or survey of the proposed easement area as part of the easement documentation to be executed by the customer. *Id.* He also recommended that the Company update its form easement language to describe an unambiguous easement location so that both the customer and the Company are clear as to the location of the easement at the time the customer signs the easement. *Id.*

In his rebuttal testimony, Company witness Guyton agreed in part with the Public Staff's recommendations. Tr. vol. 8, 239-40. Witness Guyton indicated that the Company "already provides a depiction or map of the planned facilities on every project, and in most cases can record and attach it to the easement." *Id.*

However, in discovery responses entered into evidence by the Public Staff, the Company indicated that it is not a standard Company practice to attach the depiction or map of the proposed locations of DEC facilities to the easement form that is signed by the customer and then recorded by the Company. Tr. vol. 8, 450-52; Official Exhibits vol. 9, Part I, 52.

Based on the foregoing and the entire record in this proceeding, the Commission concludes that as a standard practice, the Company should record a depiction or map of the planned facilities as part of the easement document to memorialize the intended location of the facilities as of the time the customer

executes the easement. The Commission is persuaded, based on the Company's statements in discovery, that such information is not currently provided to landowners on a consistent basis, and is further persuaded that providing such information is essential to fully informing landowners, to the Company's best ability at the time, of the location of the easement they are granting to the Company.

IT IS, THEREFORE, ORDERED as follows:

1. That DEP shall use the base fuel rates, exclusive of the equal percentage allocation but inclusive of voltage differentiated rates, established above in the next (2024) annual fuel adjustment proceeding;

2. That the approved base fuel and fuel-related cost factors by customer class are as follows: 2.808 cents/kWh for the Residential class, 3.097 cents/kWh for the SGS class, 2.580 cents/kWh for the MGS class, 2.138 cents/kWh for the LGS class, and 3.376 cents/kWh for the Lighting class;

3. The production demand allocation method approved for production demand costs using the 12 CP method at NC retail and the modified A&E method for NC retail classes is the most appropriate method for allocating purchased power capacity costs in DEP's annual fuel proceedings;

4. That a capital structure consisting of 52% common equity and 48% long-term debt is appropriate for ratemaking purposes in this proceeding;

5. That DEC's ROE shall be 9.35%;

6. That DEC's cost rate of long-term debt shall be 4.56%;

7. That, as a standard practice, DEC shall record the depiction or map of the planned facilities that DEC provides to customers, as part of the easement document to memorialize the intended location of the facilities as of the time the customer executes the easement;

8. That recovery of DEC's deferred COVID-related costs pertaining to customer fees waived, bad debt expense, and employee safety related costs is hereby allowed over a 12-year period with no return on the deferral period or on the unamortized balance during the amortization period, which shall begin on the effective date of the rates approved in this proceeding, except that these allowed costs shall be reduced by the Company's O&M expense savings during the pandemic including those for employee travel expenses, printing and postage costs, and remote work costs; voluntarily provided employee stipends; DEC's filed ERCs and the DEC portion of DEBS' filed ERCs; and the carrying cost benefit of the delayed payment of the employer portion of Social Security tax and DEC's portion of DEBS' carrying cost benefit concerning the same;

9. That DEC's request to continue the deferral of the incremental bad debt expenses related to the impact of COVID is hereby approved under the conditions that: (1) any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case; (2) DEC shall report on a semiannual basis the actual amounts recorded to the deferral and the

payments received; and (3) expenses associated with call center overtime should not be included in the ongoing COVID deferral;

10. That DEC shall notify all SGS customers that customers may now elect the residential rate schedule for detached garages, barns, and other structures on the same residential premise currently served under a residential rate schedule;

11. That DEC shall notify all lighting class customers of the changes to the lighting services, rate schedules, and service regulations approved herein via bill insert or separate mailing;

12. That DEC shall notify all current OPT-V customers of the change to a 75 kW minimum contract demand threshold and of the alternative rate schedules available to them via bill insert or separate mailing;

~~12.~~13. That the revenue requirement increase approved in this case will be apportioned to design rates/compliance tariffs using the Rate of Return on Rate Base indices for each customer class in each rate year of the MYRP share as reflected within the Corrected Supplemental Exhibits of David M. Williamson; and

~~13.~~14. That Rider NSC, as approved herein, shall not include a cap on nameplate capacity aside from the limitation that the size of the customer-owned generation installation should not exceed 100% of the Customer's contract demand.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____ 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation	)))))	**SUPPLEMENTAL** **PROPOSED ORDER OF** **THE PUBLIC STAFF** **ADDRESSING LITIGATED** **ISSUES**

HEARD: Wednesday, June 21, 2023, at 7:00 p.m., Burke County Courthouse, 201 South Green Street, Courtroom 1A, Morganton, North Carolina

Thursday, June 22, 2023, at 7:00 p.m., Mecklenburg County Courthouse, 832 East 4th Street, Courtroom 5350, Charlotte, North Carolina

Monday, July 24, 2023, at 7:00 p.m., Forsyth County Courthouse, 200 North Main Street, Courtroom 1A, Winston-Salem, North Carolina

Wednesday, July 26, 2023, at 6:30 p.m., via Webex

Monday, July 31, 2023, at 6:00 p.m., via Webex

Monday, August 14, 2023, at 7:00 p.m, Durham County Courthouse, 510 South Dillard Street, Courtroom 7D, Durham, North Carolina

Monday, August 28, 2023, at 2:00 p.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

Monday, October 30, 2023, at 1:00 p.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Kimberly W. Duffley, Presiding; Chair Charlotte A. Mitchell; and Commissioners ToNola D. Brown-Bland, Daniel G.

Clodfelter, Jeffrey A. Hughes, Floyd B. McKissick, Jr., Karen M. Kemerait

APPEARANCES:

For Duke Energy Carolinas, LLC:

Jack E. Jirak, Esq., Deputy General Counsel
Jason A. Higginbotham, Esq., Associate General Counsel
Duke Energy Corporation
410 South Wilmington Street, NCRH 20
Raleigh, North Carolina 27602

James H. Jeffries, IV, Esq., Partner
McGuire Woods LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202

Andrea Kells, Esq.
Kristin M. Athens, Esq.
McGuire Woods LLP
501 Fayetteville Street, Suite 500
Raleigh, North Carolina 27601

Brandon F. Marzo, Esq., Partner
Melissa Oellerich Butler, Esq., Associate
Joshua Warren Combs, Esq., Associate
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street Northeast, Suite 3000
Atlanta, Georgia 30308

Kiran H. Mehta, Esq., Partner
Molly McIntosh Jagannathan, Esq., Partner
Melinda L. McGrath, Esq., Partner
Troutman Pepper Hamilton Sanders LLP
301 South College Street, Suite 3400
Charlotte, North Carolina 28202

For the Using and Consuming Public:

Lucy E. Edmondson, Esq., Chief Counsel
Robert B. Josey., Esq., Staff Attorney
Nadia L. Luhr, Esq., Staff Attorney
Anne M. Keyworth, Esq., Staff Attorney
William S. F. Freeman, Esq., Staff Attorney
William E.H. Creech, Esq., Staff Attorney
Thomas J. Felling, Esq., Staff Attorney
Public Staff - North Carolina Utilities Commission (Public Staff)
4326 Mail Service Center
Raleigh, North Carolina 27699

For the Using and Consuming Public Pursuant to N.C.G.S. § 62-20 and on Behalf of the State and its Citizens Pursuant to N.C.G.S. § 114-2 (8):

Tirrill E. Moore, Esq., Assistant Attorney General
Derrick C. Mertz, Esq., Special Deputy Attorney General
North Carolina Department of Justice (AGO)
114 West Edenton Street
Raleigh, North Carolina 27603

For Carolina Utility Customers Association, Inc. (CUCA):

Marcus W. Trathen, Esq.
Matthew Tynan, Esq.
Christopher B. Dodd, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601

For the Carolina Industrial Group for Fair Utility Rates III (CIGFUR):

Christina D. Cress, Esq., Partner
Douglas C. Conant, Esq., Associate
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
Raleigh, North Carolina 27601

Chris S. Edwards, Esq., Partner
Ward and Smith, P.A.
127 Racine Drive
Wilmington, North Carolina 28403

For Andale, LLC (Andale):

Marcus W. Trathen, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
150 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601

For the North Carolina Sustainable Energy Association (NCSEA):

Ethan Blumenthal, Esq., Regulatory Counsel
Cassie Gavin, Esq., Director of Policy
4800 Six Forks Road, Suite 300
Raleigh, North Carolina 27609

For North Carolina League of Municipalities (NCLM):

Ben Snowden, Esq., Partner
Fox Rothschild LLP
434 Fayetteville Street, Suite 280
Raleigh, North Carolina 27601

For the North Carolina Justice Center, North Carolina Housing Coalition, Natural Resources Defense Council, Southern Alliance for Clean Energy, and Vote Solar (NCJC, et al.):

David L. Neal, Esq., Senior Attorney
Munashe Magarira, Esq., Staff Attorney
Thomas Gooding, Esq., Associate Attorney
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516

For the Commercial Group:

Alan R. Jenkins, Esq.
Jenkins at Law, LLC
2950 Yellowtail Avenue
Marathon, Florida 33050

For The Kroger Co. and Harris Teeter, LLC (Kroger/Harris Teeter):

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East 7th Street, Suite 1510
Cincinnati, Ohio 45202

Ben Royster, Esq.
Royster & Royster, PLLC
851 Marshall Street
Mount Airy, North Carolina 27030

For The Sierra Club:

Catherine Cralle Jones, Esq.
Andrea C. Bonvecchio, Esq.
Law Office of F. Bryan Brice, Jr.
130 South Salisbury Street
Raleigh, North Carolina 27601

For Haywood EMC, Blue Ridge EMC, Piedmont EMC, and Rutherford EMC:

Christina D. Cress, Esq., Partner
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
Raleigh, North Carolina 27601

For NC WARN:

Matthew D. Quinn, Esq., Partner
Lewis & Roberts, PLLC
Post Office Box 17529
Raleigh, North Carolina 27619

Based upon the foregoing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

Equal Percentage Allocation, Base Fuel and Fuel-Related Factors, and Fuel Cost Allocation

1. The equal percentage methodology does not follow cost causation principles.

2. Voltage differentiated fuel rates follow cost causation principles.

3. It is reasonable and appropriate to set the base fuel and fuel-related rates as established herein.

Capital Structure, Cost Rate of Debt, Return on Equity, Earnings Treatment, and Overall Rate of Return

4. The capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return allowed and approved in this Order are intended to provide DEC, through sound management, the opportunity to earn an overall rate of return. The overall rate of return is derived from applying an imputed cost of debt and an imputed rate of return on common equity to an imputed capital structure, proportionately.

5. The overall rate of return, including the rate of return on common equity, must be supported by competent, material, and substantial record evidence; consistent with the applicable jurisprudence, especially the requirements of N.C.G.S. §§ 62-133.16 and 62-133 (including without limitation its

considerations of changing economic conditions); and must balance DEC's need to maintain the safety, adequacy, and reliability of its service with the need of DEC's customers to receive safe, adequate, and reliable electric service.

6. Ultimately, the capital structure, earnings treatment, cost rate of debt, rate of return on common equity, and overall rate of return set by this Order must result in just and reasonable rates.

7. A capital structure consisting of 52% equity and 48% debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that capital structure to apply until altered.

8. A 4.56% cost rate of debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that cost of debt to apply until altered.

9. In setting these figures, especially the authorized rate of return on equity, the Commission has considered changes in risk to the utility and its customers that may result from adopting a multiyear rate plan. The Commission finds the adoption of the multiyear rate plan will reduce the Company's risk and increase the customers' risk, and, therefore, a decrement to the Company's return on equity is warranted. The Commission finds a 9.35% authorized rate of return on equity for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that authorized rate of return to apply until altered.

10. Throughout the term of the multiyear rate plan, it is just and reasonable for the following provisions to apply:

(a) If DEC's weather-normalized earnings fall below the 9.35% authorized rate of return on equity, DEC may file a rate case pursuant to N.C.G.S. § 62-133;

(b) If DEC's weather-normalized earnings on its rate of return on equity are less than 9.85% but equal to or greater than 9.35%, DEC may retain those excess earnings; and

(c) If the weather-normalized earnings of DEC during the rate year are equal to or exceed a 9.85% rate of return on equity, those excess earnings shall be refunded to customers. Any such refund shall be via an earnings sharing mechanism rider.

11. Proportionally applying the cost of debt and return on equity to the capital structure referenced herein results in an overall rate of return ranging from 7.0508% (at an ROE of 9.35%) to 7.3108% (at an ROE of 9.85%).

12. The provision of safe, adequate, reliable, and affordable electric utility service is essential to DEC's customers.

13. The rate increase approved in this case will be difficult for some of DEC's customers to pay.

14. The capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return set by this Order: (a) will result in just and reasonable rates; (b) are in the public interest; (c) are consistent with the applicable jurisprudence, including without limitation, N.C.G.S. §§ 62-133 and 62-133.16 and the rules adopted thereunder; (d) account for the changing economic conditions of North Carolina and are fair to DEC's customers generally and also in light of changing economic conditions; (e) appropriately balance DEC's need to maintain the safety, adequacy, and reliability of its service with the need of DEC's customers to receive safe, adequate, and reliable electric service; (f) assures that no customer or class of customers is unreasonably harmed and that the rates are fair to both the electric public utility and to the customer; (g) reasonably assures the continuation of safe and reliable electric service; (h) will not unreasonably prejudice any class of electric customers and will not result in sudden substantial rate increases or "rate shock" to customers; (i) appropriately balances the benefits received by DEC's customers from the provision of safe, adequate, and reliable utility service with the difficulties some of DEC's customers will experience in paying DEC's increased rates; (j) balances the fairness to the customers' need to pay the lowest possible rates with the need of DEC to obtain debt and equity financing; and (k) are appropriate.

COVID

15. The Commission's December 21, 2021, Order in Docket No. E-7, Sub 1241 (Deferral Order), approved DEC's request to create a regulatory asset into which to defer incremental COVID-19 pandemic-related costs.

16. In this proceeding, DEC seeks to recover the deferred balance, including accrued carrying costs, related to: (1) customer fees waived; (2) bad debt charge-offs; (3) employee stipends to cover unplanned expenses associated with the COVID pandemic; (4) costs related to employee safety; (5) costs related to remote work; and (6) miscellaneous costs, such as employee overtime.

17. Recovery in rates of DEC's deferred COVID-related costs pertaining to customer fees waived, bad debt expense, and employee safety related costs are just and reasonable and should be approved, except that it is appropriate to reduce these allowed costs by the Company's O&M expense savings during the pandemic, including those for employee travel expenses, printing and postage costs, and remote work costs; voluntarily provided employee stipends; DEC's filed ERCs and the DEC portion of DEBS' filed ERCs; and the carrying cost benefit of the delayed payment of the employer portion of Social Security tax and DEC's portion of DEBS' carrying cost benefit concerning the same.

18. It is not appropriate for DEC to recover the carrying costs accrued during the deferral period or a return on the unamortized balance during the amortization period.

19. A 12-year amortization beginning when rates become effective for this proceeding is appropriate.

20. It is appropriate to continue the COVID deferral of the incremental bad debt under the conditions that: (1) any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case;

and (2) expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by the Company for call center overtime was not above the amounts already included in the Company's cost of service.

Revenue Apportionment and Rate Design

21. DEC proposes changes to its residential rate schedules to allow detached garages, barns, and other structures on the same residential premise to be served under a residential rate schedule.

22. DEC proposes the following changes and additions to its lighting rate schedules: (1) adding new fixtures and modifying the pricing structures of Schedules OL and PL; (2) establishing a new tariff for Outdoor Lighting Service Regulations (OSLR) and increasing the contract period from three to five years; and (3) replacing its post top fixtures and many of its decorative mercury vapor (MV) fixtures with 30-Watt LEDs.

23. DEC proposes to include a minimum contract demand of 75 kW in the OPT-V rate tariff but to allow current customers on OPT-V tariffs that have contract demands below 75 kW to remain on their OPT-V rate tariff.

24. The rates ultimately approved by the Commission in this proceeding should allow for the recovery of the total revenue requirement set in this proceeding, which is then equitably apportioned to each customer class to incrementally move each class's rates closer to parity throughout the MYRP while avoiding undue rate shock.

25. DEC proposes to apportion its revenue requirement among its rate classes through the use of a fixed 10% subsidy/excess variance reduction that it believes will gradually reduce interclass subsidies to better align each rate class with the overall rate of return.

26. The Public Staff proposes a revenue apportionment methodology based on the Public Staff's four guiding principles, which seek to mitigate the potential for substantial rate shock to each class of customers, minimize interclass cross subsidization to the greatest extent possible, and ensure that each rate class makes substantial movement towards rate parity by the conclusion of the MYRP through the use of a +/- 10% band of reasonableness.

27. The rates approved herein are just and reasonable to DEC, DEC's customers, and all the parties to this proceeding, and serve the public interest.

Non-Residential Solar Choice Rider (Rider NSC)

28. It is appropriate to remove the proposed five-megawatt (MW) cap on nameplate capacity from Rider NSC.

Easements

29. DEC does not routinely incorporate the depiction or map of the planned facilities that DEC provides to customers in the easement documentation being executed by customers.

30. As a standard practice, it is reasonable and appropriate for DEC to record a depiction or map of the planned facilities as part of the easement document to memorialize the intended location of the facilities as of the time the customer executes the easement.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

Throughout this Order, the Commission notes it is required "to find all facts essential to a determination of the question at issue." However, the Commission "is not required to comment upon every single fact or item of evidence presented by the parties." *State ex rel. Utils. Comm'n; and the N. C. Natural Gas Corp. v. the Public Staff; and the Cities of Wilson, Rocky Mount, Greenville, and Monroe, N. C.*, 323 N.C. 481, 496-97, 374 S.E.2d 361, 369 (1988) (citations and quotations omitted); *and see* N.C.G.S. § 62-79. "Instead, the Commission's summary of the appellant's argument and its rejection of the same is sufficient to enable the reviewing court to ascertain the controverted questions presented in the proceeding, which is all that is required." *Stein II* 381 N.C. at 521 (quotations, brackets, and citation omitted).

The record is voluminous. For the remainder of this Order, the Commission exercises its right to not comment on every fact or item of evidence in the record. Instead, the Commission references those facts and issues essential to the Commission's determinations. The absence of recitation of facts, items, or issues does not mean those matters were overlooked or not considered. Instead, the Commission has deliberated on the whole record before it.

Equal Percentage Allocation

The evidence supporting these findings of fact is contained in DEC's verified Application and Form E-1, the testimony and exhibits of DEC witnesses Janice Hager and Quynh Bowman, the testimony of Public Staff witnesses Jay Lucas and Fenge Zhang and Michelle Boswell (Accounting Panel), the testimony of CIGFUR witness Brian Phillips, and the entire record in this proceeding.

In its Application and Form E-1, the fuel rates presented by DEC were allocated to customer classes utilizing the equal percentage fuel adjustment.

Public Staff witness Lucas testified that DEC currently allocates fuel cost adjustments to customer classes based on an equal percentage change, meaning that fuel and fuel-related costs are recovered using a uniform percent increase or decrease per rate class such that each rate class will, on average, experience the same average monthly percent increase or decrease as the overall fuel and fuel-related costs change. Tr. vol. 13, 136. He testified that the Public Staff first supported the use of equal percentage allocation in DEP's 2008 fuel adjustment proceeding, Docket No. E-2, Sub 929. He cited several reasons for the Public Staff's agreement to the equal percentage allocation, such as the uncertain economic times and the large increase in fuel costs. *Id.* at 136-37. He noted that the equal percentage method of adjusting rates assisted industrial customers financially during the Great Recession and during a period of unprecedented increases in coal prices at the expense of other customers. *Id*.

Public Staff witness Lucas testified that since 2012, in Docket No. E-7, Sub 1002, DEC has allocated fuel cost increases on an equal percentage basis to each of its customer classes as allowed by Session Law 2007-397. *Id*. at 135-38. He indicated that DEC switched to the equal percentage method because large customers believed that moving to equal percentage fuel adjustments would aid in load retention during the economic conditions at the time. *Id.* at 137-38. Mr. Lucas testified that the distortion created by equal percentage fuel adjustments shifts fuel costs away from industrial customers and onto other customer classes. *Id*. at 174-76. He explained that, for this reason, it is the Public Staff's recommendation that the Commission should not allow DEC to make equal percentage fuel adjustments moving forward. *Id.*

Witness Lucas recommended that DEC eliminate equal percentage fuel adjustments in its next fuel proceeding to be filed in February 2024 with rates taking effect on September 1, 2024. *Id*. at 147.

Witness Lucas also testified that DEC should use voltage differentiated fuel rates to reflect the fact that less generation and fuel consumption is required for customers that receive service at higher voltages. *Id.* at 141. Witness Lucas recommended that DEC implement voltage differentiation in fuel rates in its next fuel proceeding to be filed in February 2024 with rates taking effect on September 1, 2024. *Id*. at 147. DEC and the Public Staff agreed to this recommendation in paragraph 49 in their Stipulation filed on August 28, 2023.

Witness Lucas stated that N.C.G.S. § 62-133.16(b) requires the Commission to allocate the utility's total revenue requirement among customer classes based on the cost causation principle and minimize cross subsidies "to the greatest extent practicable." *Id.* at 142-45, 181-82. He noted that the statute defines the cost causation principle to mean "establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service." *Id.* at 142.

Witness Lucas presented the current fuel rates adjusted to remove the equal percentage allocation method. *Id*. at 36. As set forth in his Table 6, the rates in cents per kWh, excluding the regulatory fee, are 2.3345 for Residential customers, 2.3387 for General customers, and 2.3326 for Industrial customers. *Id.* at 145.

In his direct testimony, CIGFUR witness Collins provided support for the equal percentage methodology. Tr. vol. 15, 972-74. He testified that the methodology has been approved without objection by any party in every annual fuel charge adjustment proceeding since 2012 and that the method has served ratepayers well and should continue to be utilized. *Id.* He further stated that the methodology levelizes over time any harsh impacts and results in equal percentage increases or decreases to all customers that are fair, just, and reasonable. *Id.*

The Commission notes that in DEC's 2023 annual fuel proceeding, DEC and the Public Staff agreed that DEC should continue to utilize the equal percentage fuel adjustment for purposes of that case. *See* Agreement and Stipulation of Partial Settlement, Docket No. E-7, Sub 1282 (filed May 31, 2023).

Based on all the evidence in this proceeding, the Commission concludes that use of the equal percentage method of allocating fuel and fuel-related costs does not follow the cost causation principle. The Commission also concludes that the use of voltage differentiated fuel rates does follow the cost causation principle. In reaching these conclusions, the Commission gave substantial weight to the testimony of the Public Staff regarding the cost causation principle set forth in N.C.G.S. § 62-133.16, as well as its demonstration of the distortion that can be created by equal percentage fuel adjustments. Further, the Commission finds that these changes shall be implemented for DEC's next fuel rider proceeding.

Base Fuel and Fuel-Related Factors

In its Application, DEC explained that the rates set forth in the exhibits to the Application included a base fuel and fuel-related rate of Residential – 2.0031¢/kWh; General Service/Lighting – 1.8243¢/kWh; and Industrial – 1.8422¢/kWh, excluding the Experience Modification Factors as approved in Docket No. E-7, Sub 1263 and excluding regulatory fees.

Company witness Q. Bowman testified that DEC made an adjustment (Adjustment No. NC2010) to test period fuel expense to match the fuel clause revenues included in pro forma Adjustment No. NC1010. Tr. vol. 12, 165. She

explained that by matching the expenses to the revenue, the adjustment ensures that no increase is requested in this proceeding related to fuel and fuel-related costs that are recoverable through the fuel clause. *Id.*

In her supplemental direct testimony, witness Q. Bowman explained that DEC had updated pro forma Adjustment No. NC2010 to include revisions due to a formal error in the original application. Tr. vol. 12, 202.

In her second supplemental direct testimony, witness Q. Bowman testified that DEC had made a new adjustment (Adjustment No. NC2020) to adjust the nonfuel component of reliability purchases to reflect the impacts of the Stipulation Regarding the Proper Methodology for Determining the Fuel Costs Associated with Power Purchases from Power Marketers and Others reached with DEP, DEC, and the Public Staff in Docket No. E-7, Sub 1282. Tr. vol. 12, 202. She further explained that based on the stipulation, 15% of energy costs from these power purchases is the appropriate percentage to be deemed as non-fuel costs and appropriate for cost recovery through base rates.

The Commission issued a final order in the Sub 1282 fuel rider proceeding on August 23, 2023. In the Sub 1282 order, the Commission concluded that, effective for service rendered on and after September 1, 2023, DEC shall adjust the base fuel and fuel-related cost factors in its North Carolina retail rates, as approved in the 2019 Rate Case, amounting to 1.6027¢/kWh for the Residential class, 1.7583¢/kWh for the General Service/Lighting class, and 1.6652¢/kWh for the Industrial class (all excluding the regulatory fee), by amounts equal to

1.0260¢/kWh, 0.5013¢/kWh, and 0.2676¢/kWh, respectively, and further, that DEC shall adjust the resulting approved prospective fuel and fuel-related cost factors by EMF increments of 1.2579¢/kWh for the Residential class, 1.2342¢/kWh for the General Service/Lighting class, and 1.3007¢/kWh for the Industrial class and the EMF interest increments of 0.0084¢/kWh for the Residential class, 0.0082¢/kWh for the General Service/Lighting class, and 0.0087¢/kWh for the Industrial Class (excluding the regulatory fee). The Commission further ordered that the EMF increments are to remain in effect for service rendered through November 31, 2024.

In their direct testimony and exhibits, the Public Staff Accounting Panel also used the fuel rates approved in Docket No. E-7, Sub 1263. Public Staff Accounting Ex. 1, Schedule 3-1(e), Tr. Ex. vol. 12. In the Joint Supplemental and Settlement Testimony of Fenge Zhang, Michelle Boswell, and Dustin R. Metz, the Public Staff included an adjustment to fuel costs to reflect the impact of witness Lucas' recommendation to eliminate the equal percentage change in fuel rates. Public Staff Supplemental and Settlement Accounting Exhibit 1, Schedule 3-1(e), Tr. Ex. vol. 17.

The only party that submitted evidence in this proceeding using fuel rates other than those approved in Docket No. E-7, Sub 1263 was the Public Staff. Public Staff witness Lucas recommended that such rates be implemented effective September 1, 2024. No party offered any evidence contesting the testimony of witness Q. Bowman that specifically supported the base fuel and fuel-related cost

factors proposed by DEC. Accordingly, the Commission concludes for purposes of this proceeding that the total of the approved base fuel and fuel-related cost factors, by customer class — the sum of the respective base fuel and fuel-related cost factors set in the 2019 Rate Case and the annual non-EMF fuel and fuel-related cost riders approved by the Commission in Docket No. E-7, Sub 1282 — is just and reasonable to all parties in light of all the evidence presented.

Fuel Cost Allocation

Company witness Hager testified that DEC is proposing that the Commission use production demand as the more appropriate factor to allocate purchased power capacity costs to North Carolina retail and across North Carolina retail customer classes. Tr. vol. 12, 369-70. She testified that allocation based on production demand is more appropriate than production plant because purchased power capacity costs that are not recovered through the fuel clause are allocated on production demand. *Id.* She testified that the change towards allocation based on production demand would align all purchased capacity costs under the same allocator. *Id.* Additionally, most production plant is allocated on production demand, except for jurisdiction-specific amounts that are not related to purchase power costs. Tr. vol. 12, 170.

No party offered testimony opposing DEC's recommendation on the allocation of purchased power capacity costs.

In DEC's previous general rate case, the parties agreed on production plant as an appropriate allocation factor for purchased power capacity costs. Tr. vol. 12,

369. Under N.C.G.S. § 62-133.2(a2)(2), the Commission shall determine how these costs shall be allocated in a general rate case for the electric public utility. Therefore, this proceeding is the appropriate forum for the Commission to reconsider the appropriate cost allocation methodology for such costs, which are to be requested for cost recovery in DEC's annual fuel proceeding. Based upon the evidence presented in this case, the Commission finds and concludes that the same production demand allocation method approved for production demand costs in this case using the 12 CP methodology at NC retail and the Modified A&E methodology for NC retail classes is the most appropriate methodology for allocating purchased power capacity costs in DEC's annual fuel proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 – 14

Capital Structure, Cost Rate of Debt, Return on Equity, Earnings Treatment, and Overall Rate of Return

The Commission here addresses the applicable law and facts related to DEC's capital structure, cost rate of debt, return on equity, treatment of excess return on equity earnings, and its overall rate of return.

A. CERTAIN CITATIONS

Within this section, the Commission makes numerous citations. The short cite for several of the more frequently referenced are set forth below:

Bluefield	*Bluefield Water Works & Improvement Co. v. Public Service Comm'n*, 262 U.S. 679, 43 S.Ct. 675 (1923).
Cooper I	*State ex rel. Utils. Comm'n; Duke Energy Carolinas, LLC; and the Public Staff v. Att'y*

	Gen. Cooper; and the City of Durham, 366 N.C. 484, 739 S.E.2d 541 (2013).
Cooper II	*State ex rel. Utils. Comm'n; Virigina Electric and Power Co.; and Public Staff v. Att'y Gen. Cooper; and Nucor Steel - Hertford*, 367 N.C. 430, 758 S.E.2d 635 (2014).
Cooper III	*State ex rel. Utils. Comm'n; Duke Energy Progress, Inc.; and Public Staff v. Att'y Gen. Cooper; and the N. C. Waste Awareness and Reduction Network*, 367 N.C. 444, 761 S.E.2d 640 (2014) *(N.B.,* appeal affirming *2013 DEP Rate Case Order*).
Cooper IV	*State ex rel. Utils. Comm'n; Duke Energy Carolinas, LLC; and Public Staff v. Att'y Gen. Cooper; N.C. Waste Awareness and Reduction Network; N.C. Justice Center; and N.C. Housing Comm'n*, 367 N.C. 644, 766 S.E.2d 827 (2014) (*N.B.,* appeal on order issuing after *Cooper I* remand).
CUCA I	*State ex rel. Utils. Comm'n; Pennsylvania & Southern Gas Co.; and Public Staff v. Carolina Util. Customers Ass'n, Inc.*, 348 N.C. 452, 500 S.E.2d 693 (1998).
CUCA II	*State ex rel. Utils. Comm'n; Public Service Company of N. C., Inc.; Public Staff; and Attorney General Easley v. Carolina Util. Customers Ass'n, Inc.*, 351 N.C. 223, 524 S.E.2d 10 (2000).
Duquesne	*Duquesne Light Co.; et al. v. Barasch; et al.*, 488 U.S. 299, 109 S.Ct. 609 (1989).
General Telephone	*State ex rel. Utils. Comm'n; and Att'y Gen. Morgan v. General Telephone Co.; and the City of Durham*, 281 N.C. 318, 189 S.E.2d 705 (1972).
Hope	*Fed. Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 64 S.Ct. 281 (1944).
Public Staff I	*State ex rel. Util. Comm'n; and Duke Power Co. v. Public Staff; Att'y Gen. Thornburg; City of*

	Durham; and Eddleman, 322 N.C. 689, 370 S.E.2d 567 (1988).
Public Staff II	*State ex rel. Utils. Comm'n; and N. C. Natural Gas Corp. v. Public Staff; and the Cities of Wilson, Rocky Mount, Greenville, and Monroe*, 323 N.C. 481, 374 S.E.2d 361 (1988).
Public Staff III	*State ex rel. Utils. Comm'n; and Duke Power Co. v. Public Staff; Att'y Gen. Thornburg; and City of Durham* 331 N.C. 215, 415 S.E.2d 354 (1992) (*N.B.,* appeal on order issuing after *Public Staff I* remand).
Stein I	*Stae ex rel. Utils. Comm'n; Duke Energy Progress, LLC; and Duke Energy Carolinas, LLC v. Att'y Gen. Stein; Public Staff; N. C. Just Center; N. C. Housing Coalition; Natural Resources Defense Council; Southern Alliance for Clean Energy; N. C. Sustainable Energy Ass'n; and the Sierra Club*, 375 N.C. 870, 851 S.E.2d 237 (2020).
Stein II	*State ex rel. Utils. Comm'n; Att'y Gen. Stein; and Public Staff v. Virginia Electric and Power Co.,* 381 N.C. 499, 873 S.E.2d 608 (2022).
2023 DEP Rate Case Order	Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Public Notice, *Application of Duke Energy Progress, LLC, For Adjustment of Rates and Charges Application to Electric Service in North Carolina and Performance Based Regulation*, Docket No. E-2, Sub 1300 (August 18, 2023).
2023 Aqua Rate Case Order	Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Approving Water and Sewer Investment Plan, Granting Partial Rate Increases, and Requiring Customer Notice, *Application by Aqua North Carolina, Inc. 202 MacKenan Court, Cary, North Carolina 27511, for Authority to Adjust and Increase Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina and for Approval of a Water and Sewer Investment Plan*, Docket No. W-218, Sub 573 (June 5, 2023).

2023 CWSNC Rate Case Order	Order Approving Partial Settlement Agreement and Stipulation, Deciding Contested Issues, Granting Partial Rate Increase, Approving Water and Sewer Investment Plan, and Requiring Customer Notice, *Application by Carolina Water Service, Inc. of North Carolina for Authority to Adjust and Increase Rates and Charges for Water and Sewer Utility Service in All Service Areas of North Carolina and Approval of a Three-Year Water and Sewer Investment Plan*, Docket No. W-354, Sub 400 (April 26, 2023).
2021 DEC Rate Case Order	Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice, *Petition of Duke Energy Carolinas, LLC, for Approval of Prepaid Advantage Program* (Docket No. E-7, Sub 1213); *Application by Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina* (Docket No. E-7, Sub 1214); *Application by Duke Energy Carolinas, LLC for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego* (Docket No. E-7, Sub 1187) (March 31, 2021).
2013 DEP Rate Case Order	Order Granting General Rate Increase, *Application of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina* (Docket No. E-2, Sub 1023) (May 30, 2013) (*N.B.,* affirmed by *Cooper III*).
2003 Bellsouth Order	Order Adopting Permanent Unbundled Network Element Rates for Bellsouth Telecommunications, Inc., *General Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, Docket No. P-100, Sub 133d (December 30, 2003).
1994 PSCNC Rate Case Order	Order Granting Partial Rate Increase, *Application of Public Service Company of North Carolina, Inc. for an Adjustment of its Rates and*

Charges, Docket No. G-5, Sub 327 (October 7, 1994).

B. HOUSE BILL 951

As an initial matter, the Commission addresses recent impactful legislation. On October 13, 2021, Governor Cooper signed into law House Bill 951 (Session Law 2021-165) (House Bill 951 or HB 951) which, among other matters, included several significant additions to the Public Utilities Act, N.C.G.S. § 62-1 *et seq.* (the Act). Part II of House Bill 951 amended Chapter 7 of the Act to add Section 62-133.16.

Section 62-133.16 represents a substantial supplement to the existing law related to electric public utilities such as the Company. Discussed below are four new concepts allowed for the first time in North Carolina under Section 62-133.16.

First, electric public utilities in North Carolina are now entitled to file a multiyear rate plan, which is "a rate-making mechanism under which the Commission sets base rates for a multiyear period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application . . ." N.C.G.S. § 62-133.16(a)(5).

Second, electric public utilities are now allowed to utilize "decoupling" of the rates for the residential class. Under the decoupling mechanism in N.C.G.S. § 62-133.16, the Company "shall defer to a regulatory asset or liability account the difference between the actual revenue and the target revenue for the residential

class," and this variance will result in an annual adjustment to the residential customer class's bills. N.C.G.S. § 62-133.16(c)(2).

Third, the new law created an earnings sharing mechanism. This mechanism allows the electric public utility to elect to file a new rate case under N.C.G.S. § 62-133 in the event its weather-normalized earnings fall below the authorized rate of return on equity; conversely, it must refund to customers all weather-normalized earnings in excess of the authorized rate of return plus 50 basis points. N.C.G.S. § 62-133(c)(1)(c)(1). Thus, electric public utilities are permitted to retain up to 50 basis points of their excess earnings.

Fourth, the new law employs performance incentive mechanisms (PIMs). A PIM is "a rate-making mechanism that links electric public utility revenue or earnings to electric public utility performance in target areas consistent with policy goals . . ." N.C.G.S. § 62-133.16(a)(6). PIMs either provide the Company with the opportunity to earn a reward to be collected from customers or expose the Company to payment of penalties that are refunded to customers (subject to a cap) related to the Company's achievement of specific criteria in certain areas. N.C.G.S. § 62-133.16(c)(4). Any penalties or rewards from these incentives "will be excluded from the determination of any refund pursuant to [the] earnings sharing mechanism." N.C.G.S. § 62-133.16(c)(1)(c)(1).

The Legislature charged the Commission with consideration of a number of factors in reviewing applications made under the new law, including:

(c) Application. – [ ]
(1) The following shall apply to a MYRP:

a. [ ] In setting the electric public utility's authorized rate of return on equity for an MYRP period, the Commission shall consider any increased or decreased risk to either the electric public utility or its ratepayers that may result from having an approved MYRP.

[ ]

(d) Commission Action on Application. –

(1) The Commission shall approve a PBR application by an electric public utility only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder. In reviewing any such PBR application under this section, the Commission shall consider whether the PBR application:

a. Assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer.

b. Reasonably assures the continuation of safe and reliable electric service.

c. Will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers.

(2) In reviewing any such PBR application under this section, the Commission may consider whether the PBR application:

a. Encourages peak load reduction or efficient use of the system.

b. Encourages utility-scale renewable energy and storage.

c. Encourages DERs.

d. Reduces low-income energy burdens.

e. Encourages energy efficiency.

f. Encourages carbon reductions.

g. Encourages beneficial electrification, including electric vehicles.

h. Supports equity in contracting.

i. Promotes resilience and security of the electric grid.

j. Maintains adequate levels of reliability and customer service.

k. Promotes rate designs that yield peak load reduction or beneficial load-shaping.

N.C.G.S. § 62-133(c), (d) (brackets denote omissions). Further, the Commission adopted Rule R1-17B in accordance with the rulemaking authority delegated to it by N.C.G.S. § 62-133.16(j).

Oversight of DEC's actions taken pursuant to the Commission's conclusions herein does not end with this Order. The Commission and the Public Staff each have the ability to seek to "examine the reasonableness of an electric public utility's rate under a plan, conduct periodic reviews … and initiate a proceeding to adjust base rates or PIMs as necessary." N.C.G.S. § 62-133.16(e).

Although House Bill 951 substantially expands the Act, the new law is not inconsistent with or in derogation of current jurisprudence. In fact, it harmonizes with existing law – for example, Section 62-133.16 itself incorporates and references "traditional" ratemaking statutes. *See* N.C.G.S. § 62-133.16(c), (c)(1)(c)(1).[1] Moreover, Section 62.133-16 explicitly preserves the Commission's existing ratemaking authority, providing: "Nothing in this section shall be construed to [ ] limit or abrogate the existing rate-making authority of the Commission …" N.C.G.S. § 62-133.16(g) (omission denoted via brackets and ellipses).

[1] Further, the concepts Section 62-133.16 employs are familiar and well-known to the Commission. For example, the responsibility "[t]o make reasonable and just rates" has been the obligation of the Commission's predecessors since the 19th century. *See, e.g.,* 1899 N.C. Session Laws, Chapter 164, § 2. The charge that rates be fair to both the customer and utility mirrors the requirements of N.C.G.S. § 62-133(a). The Commission's requiring the provision of safe and reliable utility services is not new. *See, e.g., 2013 DEC Rate Case Order* at 15 (*affirmed by Cooper IV*). The Commission has long been obligated to design a just and reasonable rate structure that does not subject customers to "rate shock" such as would be occasioned by substantial rate increases. *CUCA II*, 351 N.C. 223, 243. Additionally, the Commission has long been required to consider the risk falling on the electric utility provider and ratepayers under traditional ratemaking procedures. Finally, the obligation to avoid prejudice is well-established State policy. N.C.G.S. § 62-2(a)(4).

Accordingly, the Commission finds applicable to this proceeding the well-established methodologies and jurisprudence surrounding the Public Utilities Act.

C. COMMISSION REVIEW

Regulation is a substitute for the marketplace and a proxy for competition. Tr. vol. 7, 430. The Commission has substantial expertise in supervising the public utilities of this State. *State ex rel. Utils. Comm'n; and Attorney General Edmisten v. Mebane Home Telephone Co.*, 298 N.C. 162, 173, 257 S.E.2d 623, 632 (1979). The Commission's decisions are "entitled to great deference given that its members possess an expertise in utility ratemaking that makes them uniquely qualified to decide the issues that are presented for their consideration." *Stein I* 375 N.C. at 900 (citation omitted).

The Commission is "responsible for determining the weight and credibility to be afforded to the testimony of any witness, including any expert opinion testimony." *Stein II,* 381 N.C. at 515 (citation and quotation omitted). "The Commission has been given the authority and responsibility for setting rates for public utilities. In doing so, it must have room to exercise its discretion and judgment." *State ex rel. Utils. Comm'n; and Duke Power Co. v. Eddleman; the Public Staff; Attorney General Thornburg; City of Durham; and Conservation Council of North Carolina*, 320 N.C. 344, 379, 358 S.E.2d 339, 361 (1987) (underlining added).

This Order cites the decisions of prior Commissions, but this Commission understands that "well-established principles of North Carolina law establish that

prior Commission decisions … are not entitled to either *res judicia* or *stare decisis* effect." *Stein II,* 381 N.C. at 524 (citations omitted). *Stein II* made clear that the applicability of the concept of *stare decisis* to the Commission has "no support of any nature in this Court's precedent" and further is "inconsistent with the basic principle of North Carolina ratemaking law." *Id*. at n.4 (citations omitted). This is due, in part, to the fact that "ratemaking activities of the Commission are a legislative function." *Id*. (citation omitted).

In reviewing the topics at issue, the Commission is mindful that the burden of proof for requests for rate changes rests on the Company. *See, e.g., CUCA I*, 348 N.C. at 464; N.C.G.S. §62-75; and N.C.G.S. §62-134(c) ("At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable.")

D. SOURCE OF ALL FACTS ESSENTIAL TO THE COMMISSION'S DETERMINATIONS

The evidence and facts essential to the Commission's determinations and that support these findings of fact and conclusions are taken from public witnesses, expert witnesses (including, without limitation, Company witness Morin, Company witness Coyne, Company witness Newlin, Company witnesses Bateman and Stillman, Public Staff witness Walters, CUCA witness LaConte, NCJC *et al.* witness Ellis, Commercial Group witness Chriss, and CIGFUR III witness Collins), testimony and responses to questions, the application, prefiled testimony, exhibits, documents, filings made in this matter (including its sub-dockets), and the entire

record. The Commission has also had the opportunity to observe, firsthand, the demeanor of those witnesses who provided live testimony and question them in person.

E. CERTAIN FINANCIAL MATTERS

Below are discussed the Company's creditworthiness and finances, capital structure, cost rate of long-term debt, and return on common equity.

1. Creditworthiness and Finances

The Commission is aware that DEC will be expending substantial sums, and its creditworthiness and financial strength are therefore important. However, DEC has sought recovery for these significant costs through its requested revenue requirement, and debt incurred prudently and appropriately for projects not identified in the Company's application can be submitted to the Commission in a subsequent rate case proceeding for evaluation and recovery. Therefore, the fact that large sums of money will be spent by DEC should not be the sole factor reviewed by the Commission.

Independent analysts also agree Duke has a strong, investment grade credit rating. On May 11, 2023, Moody's issued an annual report on DEC's creditworthiness. Public Staff, Newlin – Direct, Cross Ex. 2. Tr. Ex. vol. 9 (Part II). The report is positive for DEC. First, notwithstanding the substantial capital spend forecast by DEC, Moody's "outlook" for DEC is "stable." *Id*. pg. 1. This is important because one signal Moody's can give of an impending credit downgrade is to lower a company's outlook from "stable" to "negative." As the Company explained, a

stable rating means those credit ratings are not likely to change at this time. Tr. vol. 9, 65. Additionally, the Moody's report identifies decoupling as "credit positive" and Section 62-133.16's multiyear performance based ratemaking framework as a "credit strength" that "could reduce regulatory lag." Public Staff, Newlin – Direct, Cross Ex. 2. Tr. Ex. vol. 9 (Part II). Finally, Moody's notes: "We expect Duke Carolinas to maintain adequate liquidity profile." *Id*. pg. 6.

Although the Company generally expressed concern about its creditworthiness, only one party – the Public Staff – performed a mathematical evaluation of the Company's credit strength. Using a 9.35% ROE and a 52% equity ratio, the Public Staff evaluated the funds from operation to debt ratio of the Company and compared those to credit bureau benchmarks. The Public Staff demonstrated that its "ROE and capital structure would support [DEC's] investment grade rating." Tr. vol. 14, 100.

The Company objected to the Public Staff's calculations by arguing they would only barely enable the Company to meet the credit agency metrics – not exceed them. The Company seeks a "cushion" – that is, additional funds above and beyond the debt ratio threshold set by the credit rating agencies. Note that presently, the Company agrees it has a 30-basis point cushion per Moody's. Tr. vol. 16, 79. Thus, the Company concedes that it is forecast to have more than enough funds to maintain its strong credit rating, barring some unforeseen occurrences. It is that last concern – unforeseen circumstances – on which the Company places great importance. However, the Company's stated desire to

guard against the unknown is prohibitively expensive. And the Commission places great weight on the fact that operating under an allowed 9.6% ROE and 52% equity structure, the Company has weathered both COVID and the enormous fuel cost spikes that have buffeted the industry and yet still maintained both its strong credit rating and stable outlook.

The Commission is persuaded that the actions taken in this order will not lower DEC's credit rating. However, concern over the slight costs associated with a one-notch downgrade does not dissuade the Commission from honoring its constitutional obligation to set rates as low as possible.

Even assuming for argument's sake that a one-notch downgrade in DEC's credit occurred on January 1, 2024, DEC itself forecasts the incremental increase in borrowing over three years to be only $5,800,000. Public Staff, Morin – Direct, Cross Ex. 8. Tr. Ex. vol. 9 (Part II). Put another way, the cost of a one-notch downgrade over three years is approximately the same value as one or two basis points over that same three-year horizon. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I).

As noted above, DEC's credit rating remains strong despite forecasted substantial outlays, COVID, and spikes in fuel prices. However, assuming for the sake of argument that a one-notch credit downgrade occurred, Company witness Newlin conceded DEC would still have an "A" credit rating. Tr. vol. 16, 71. Per Company witness Morin, an "A" credit rating is the optimal bond rating. Tr. vol. 7, 441-442. Thus, even the occurrence of a downgrade would still leave the Company

with an optimal credit rating. Therefore, the Commission is not persuaded that a one-notch downgrade would be harmful to DEC.

Fear of impairing the Company's credit metrics is speculative and unwarranted. However, the Company's proposals designed to dispel, in part, that fear are concrete and extravagantly expensive. DEC's proposal to seek an ROE 80 basis points higher than its current rate would cause customers to pay the Company an additional *c.*$350 million over three years. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I). DEC's proposal to increase its equity to 53% would cause customers to pay the Company an additional *c.*$57 million over three years. Public Staff, Newlin – Direct, Cross Ex. 10. Tr. Ex. vol. 9 (Part II).

The Commission finds that the Company's economic vitality should not be impaired by this Order.

2. CAPITAL STRUCTURE

i. Capital Structure, Generally

The Commission now turns to the appropriate capital structure to be used for DEC for ratemaking purposes. Capital structure refers to the Company's percentages of debt and equity relative to its total capital. *CUCA II,* 351 N.C. at 236. The ratios of capital components used for ratemaking purposes are important because of the relative expense to the utility of each form of capital accumulation. "A capital structure containing a higher ratio of a more expensive form of capital will result in higher rates to provide the higher return demanded by investors."

CUCA II, 351 N.C. at 236 (citations omitted). The Commission frequently utilizes an imputed capital structure because a utility's actual debt/equity capital structure ratio fluctuates above and below the target ratio over time. This can be caused by a variety of factors, including, among other things, the timing and size of capital investments and payments of large invoices, debt issuances, seasonality of earnings, and dividend payments to the parent company. Tr. vol. 16, 25. Nevertheless, DEC endeavors to maintain the Commission-approved capital structure. Tr. vol. 9, 82-83.

Presently the Company is utilizing a capital structure consisting of 48% long-term debt and 52% common equity for ratemaking purposes. *2021 DEC Rate Case Order*, *see* pgs. 99-100. This was also the capital structure approved in the prior rate case order (Docket No. E-7, Sub 1146). This is the starting point of the Commission's consideration. In the case currently before the Commission, DEC must demonstrate the evidence supports its proposal to change the Company's capital structure for ratemaking purposes to 47% long-term debt and 53% common equity. Tr. vol. 9, 68.[2]

Under the Application, equity capital is nearly twice as expensive as debt capital. This difference is further exacerbated since for tax purposes corporations can deduct payments associated with debt financing but not common stock

[2] In the past, utilities have sought capital structures with three (or more) capital components. *See, e.g., State ex rel. Utils. Comm'n v. Eddleman*, 320 N.C. 344, 358 S.E.2d 339 (1987) (referencing the utility's capital structure as consisting of common equity, preferred equity, and long-term debt). In the present case, the Company only proposes two capital components – common equity and long-term debt. No party has suggested using preferred equity, short term debt, or anything other than the two components proposed by the Company.

dividend payments. As described in *CUCA II*, holding all else constant but increasing the equity portion of DEC's capital structure will result in higher customer bills. The Court has explained that "the rate of return on common equity … is the most expensive form of capital accumulation, which expense is ultimately borne by the rate payer." *Public Staff III*, 331 N.C. 215, 222-23 (quotation and citations omitted, deletions denoted by ellipses).

ii. Capital Structure, Analysis of DEC's Request

Given that debt is far "cheaper" than equity, altering DEC's capital structure by even the Company's seemingly small 1% requested increase in the equity percentage results in customers paying the Company substantially more than would otherwise be the case, *ceteris paribus*. In fact, over the next three years, changing the capital structure used for ratemaking purposes from the current 52%/48% equity-to-debt ratio approved in the *2021 DEC Rate Case Order* to the Company's requested increase of 53%/47% equity-to-debt ratio would result in increased payments by ratepayers to the Company of more than $57,000,000. Public Staff, Newlin – Direct, Cross Ex. 10. Tr. Ex. vol. 9 (Part II).

According to Company witness Morin, setting an equity ratio far too high would result in "an adverse consequence for the ratepayers." Tr. vol. 7, 453, lines 10-11. Company witness Morin described the appropriate percentage ratios between debt and equity as falling "somewhere in the . . . 48 to 53, 54 . . . range." Tr. vol. 7, 454, line 15. Thus by the Company's own testimony, the requested 53%

equity ratio is on the high end. In fact, the Company's request is either at or approaching the limit set by its own witness.

To the extent the Company relies on arguments that its equity ratio needs to be increased to protect the Company's creditworthiness or finances, those arguments do not persuade the Commission for the reasons set forth in the subsection above.

Nor is the Commission persuaded by the Company's arguments regarding the capital structures approved for its peers. While the Commission looks to capital structures in other jurisdictions to test the reasonableness of its decision, the Commission's decisions are based on the merits of this case and this Company. The Commission is not persuaded by this argument for the following separate and independent reasons.

First, the record shows that for the past seven years, the average authorized common equity ratios for utilities per S&P Global Market Intelligence (data through June 2023) were as set forth below[3]:

Year:	Common Equity Ratio:
2016	49.70%
2017	50.02%
2018	50.60%
2019	51.55%
2020	50.94%
2021	51.01%
2022	51.66%
2023	51.27%
Average	50.84%

[3] Arkansas, Florida, Indiana, and Michigan are excluded from the chart below because those states include non-investor capital (such as deferred taxes) in their capital structures.

Tr. vol. 16, 22-23. DEC's current allowed common equity ratio already exceeds the nationwide average. In fact, to allow DEC's request would take it further out of the mainstream. Therefore, the Commission rejects DEC's argument that a peer comparison supports its requested capital structure change. Related to this point, the equity percentage of the proxy group utilized by CUCA witness LaConte was 51.55%. Tr. vol. 15, 658.

Second, DEC's request would increase customer bills (over the multiyear period) by tens of millions of dollars. Even assuming *arguendo* an increase was appropriate to bring DEC into closer alignment with its peers, the Commission believes the slight advantage that *may* result in DEC's ability to attract capital is outweighed by the definitive costs that *would* be borne by ratepayers. Having weighed the two, the Commission believes the definitive costs outweigh the speculative advantages and therefore rejects this argument. This is especially true in light of the Commission's evaluation of the creditworthiness and finances of the Company above.

Third, Company witness Coyne's testimony regarding the *actual* (as opposed to allowed) capital structures of the subsidiaries of regulated utilities does not persuade this Commission for two reasons. First, it includes some companies with extraordinarily high equity components – Evergy Kansas South is identified as consisting of 83.38% common equity. Public Staff, Coyne – Rebuttal, Cross Ex. 1. Tr. Ex. vol. 16. Company witness Morin testified an 80% equity allocation "would be an adverse consequence for the ratepayers. They'd be paying way, way too

much." Tr. vol. 7, 453. Altering the actual capital component to the allowed capital component for just the four highest companies (of the 60 identified) in witness Coyne's chart yields an equity capital structure of 51.84%. Public Staff, Coyne – Rebuttal, Cross Ex. 1. Tr. Ex. vol. 16. This argues against the increase sought by DEC. Second, if actual structures are used, DEC's parent company, Duke Energy Corporation (Duke Energy), operated with only 41% equity at the end of 2022 (tr. vol. 9, 92) – a far cry from DEC's requested 53%.

Fourth, and related to the third point, the Commission notes that Duke Energy Corporation, which is publicly traded. Duke Energy's equity to debt capital structure ratio is far different from that sought by DEC. For 2022, Duke Energy's actual debt ratio was 59% (*cf.* 47% sought by DEC) and actual equity ratio was 41% (*cf*. 53% sought by DEC). Tr. vol. 9, 92. It is telling that publicly traded entities that are subject to market pressures rely on "cheaper" capital that has favorable tax advantages: long-term debt. This militates against decreasing debt and also militates against increasing equity. Accordingly, the Commission is not persuaded by DEC's argument.

For these reasons, the Commission finds unpersuasive DEC's arguments in favor of a capital structure consisting of 53% common equity and 47% long-term debt.

iii. Capital Structure, Analysis of the Appropriate Capital Structure

The Commission continues its evaluation of an appropriate capital structure. DEC does not have unfettered discretion in this matter. The Company's selection of its capital structure "may not thereby tie the hands of the Commission and compel it [the Commission] to approve rates for service higher than would be appropriate for a reasonably balanced capital structure." *State ex rel. Utils. Comm'n v. Southern Bell*, 22 N.C. App. 714, 721, 207 S.E.2d 771, 776 (1974).

The Commission has considered and weighed the evidence in this matter. In accordance with the Commission's obligation to ensure there is a "reasonably balanced capital structure" (*id.*), the Commission finds and determines that a capital structure consisting of 52% common equity and 48% long-term debt is appropriate for DEC for ratemaking purposes. The Commission's decision is supported by the following separate and independent grounds: (a) debt is less costly to consumers; (b) debt has favorable tax advantages which benefit both customers and the Company; (c) a 52/48 capital structure will not unreasonably harm the creditworthiness of DEC; (d) DEC's parent has 41% equity in its capital structure (*cf.* DEC's request for 53% equity); (e) the average equity component of regulated electric utilities is less than 52% and allowing DEC to move to 53% would take it further out of the mainstream; (f) increasing the equity portion of DEC's capital structure would increase customer bills; (g) increasing the equity component is definitely more expensive for ratepayers while the illusory benefits that may accrue to DEC are uncertain; (h) the Commission's experience in this field leads it to find the capital structure proposed by DEC would be unjust, unfair,

and unreasonable. Conversely, the current capital structure is just, fair, and reasonable.

As separate and independent grounds supporting its decision, the Commission finds that DEC has not met its burden of proof that a higher equity ratio is warranted. There is no evidence in the record that DEC has experienced challenges accessing capital on reasonable terms with its existing equity ratio of 52%. There also is no evidence that DEC will experience challenges with accessing capital on reasonable terms with a 52% equity ratio going forward. There is also no evidence in the record demonstrating that customers will benefit by paying rates based on a higher equity ratio.

iv. Capital Structure, Summary

The Commission rejects DEC's request to alter its capital structure for ratemaking purposes. Instead, in the exercise of its discretion and judgment, after weighing the evidence in the record and arguments of parties, the Commission finds a capital structure consisting of 52% equity and 48% debt for DEC is just, reasonable, and appropriate for this case. On balance, any purported benefits to DEC resulting from a higher equity ratio are more than outweighed by the significantly higher cost that would be borne by customers. It is further just, reasonable, and appropriate for that capital structure to apply to each year of the multiyear rate plan.

3. COST RATE OF LONG-TERM DEBT

The Commission now turns to the cost rate to be used for long-term debt.

The evidence supporting this finding of fact is in DEC's verified Application and Form E-1, the testimony and exhibits of DEC witnesses Newlin and Q. Bowman, the Revenue Requirement Stipulation, and the entire record in this proceeding.

DEC witness Newlin testified that DEC's long-term debt cost as of September 30, 2022, was 4.31%, which was the value DEC used to determine the revenue requirement in DEC's Application. Tr. vol. 9, 72. Section III, Paragraph 1 of the Revenue Requirement Stipulation establishes that the embedded cost of debt as of June 30, 2023, shall be used to calculate DEC's revenue requirement. Tr. Ex. vol. 7. DEC witness Q. Bowman presented in her supplemental testimony that the embedded cost of debt as of June 30, 2023, is 4.56%. Tr. vol. 12, 131.

No intervenor offered any evidence opposing this provision of the stipulation. The Commission therefore concludes that the use of a debt cost of 4.56% per the terms of Section III, Paragraph 1 of the Revenue Requirement Stipulation is just and reasonable to all parties considering all the evidence presented.

The Commission finds a 4.56% cost rate of debt for DEC is just, reasonable, and appropriate for this case. It is further just, reasonable, and appropriate for that cost of debt to appertain to DEC going forward, including (without limitation) by applying to each year of the multiyear rate plan.

4. RETURN ON COMMON EQUITY

i. Return on Common Equity, Generally

The Commission now turns to the appropriate return on common equity, often abbreviated ROE. The North Carolina Supreme Court has explained ROE as follows:

> ROE is the return that a utility is allowed to earn on its capital investment, which is realized through rates collected from its customers. The ROE affects profits to the utility's shareholders and has a significant impact on what customers ultimately pay the utility. The higher the ROE, the higher the resulting rates that customers will pay to the utility.

Cooper I 366 N.C. 444, 485 fn.1 (citation omitted).

The parties to this proceeding have been unable to reach agreement regarding the appropriate rate of return on common equity. This is understandable as this is often one of the most contentious issues to be addressed in a rate case. *See, e.g., 2021 DEP Rate Case Order*, 154; *2023 CWSNC Rate Case Order,* 30; *2023 Aqua Rate Case Order*, 46. Where, as here, there is an issue unresolved by the parties, the Commission must exercise its independent judgment and arrive at its own independent conclusion as to all matters at issue, including the ROE. *See, e.g., CUCA I* 348 N.C. 452, 466. In order to reach an appropriate independent conclusion regarding the rate of return on common equity, the Commission should evaluate the admitted evidence, particularly that presented by conflicting expert witnesses. *Cooper I*, 366 N.C. 484, 492-93.

The baseline for establishment of an appropriate rate of return on common equity is the constitutional constraints established by the decisions of the United

States Supreme Court in *Bluefield* and *Hope* which, as the Commission has previously noted, establish that:

> To fix rates that do not allow a utility to recover its costs, including the cost of equity capital, would be an unconstitutional taking. In assessing the impact of changing economic conditions on customers in setting an ROE, the Commission must still provide the public utility with the opportunity, by sound management, to (1) produce a fair profit for its shareholders, in view of current economic conditions, (2) maintain its facilities and service, and (3) compete in the marketplace for capital.

See, e.g., 2021 DEP Rate Case Order, 154; *2023 CWSNC Rate Case Order,* 31; *2023 Aqua Rate Case Order,* 47; *and General Telephone*. The North Carolina Supreme Court observed these factors constitute "the test of a fair rate of return declared in" *Bluefield* and *Hope*. *General Telephone,* 281 N.C. 318, 370.

The rate of return on common equity is, in fact, a cost. The return that equity investors require represents the cost to the utility of equity capital. *See, e.g., DEP 2023 Rate Case Order*, 154. As the Commission has previously explained:

> [T]he cost of capital to the utility is synonymous with the investor's return, and the cost of capital is the earnings which must be generated by the investment of that capital in order to pay its price, that is, in order to meet the investor's required rate of return.

2023 CWSNC Rate Case Order, 31; *2023 Aqua Rate Case Order*, 47. "The term 'cost of capital' may also be defined as the annual percentage that a utility must receive to maintain its credit, to pay a return to the owners of the enterprise, and to ensure the attraction of capital in amounts adequate to meet future needs." *2023 CWNC Rate Case Order*, 31; *2023 Aqua Rate Case Order*, 47 (brackets omitted).

Long-standing decisions of the North Carolina Supreme Court have recognized that the Commission's subjective judgment is an inherently necessary

part of determining the authorized rate of return on common equity. *Public Staff II,* 323 N.C. 481, 498. The Commission has described that "of all the components of a utility's cost of service that must be determined in the ratemaking process the appropriate ROE is the one requiring the greatest degree of subjective judgment by the Commission." *2013 DEP Rate Case Order*, 35, *affirmed in Cooper III*.

Determination of a ROE is not made by application of any one simple mathematical formula. *2023 DEP Rate Case Order*, 155; *2023 CWNC Rate Case Order*, 32; *2023 Aqua Rate Case Order,* 47. "Setting an ROE for regulatory purposes is not simply a mathematical exercise, despite the quantitative models used by expert witnesses." *2013 DEP Rate Case Order,* 35. The Court in *Hope* held that "the Commission was not bound to the use of any single formula or combination of formulae in determining rates." 320 U.S. 591, 602. As this Commission has stated previously on numerous occasions:

> Throughout all of its decisions, the [United States] Supreme Court has formulated no specific rules for determining a fair rate of return, but it has enumerated a number of guidelines. The Court has made it clear that confiscation of property must be avoided, that no one rate can be considered fair at all times and that regulation does not guarantee a fair return. The Court also has consistently stated that a necessary prerequisite for profitable operations is efficient and economical management. Beyond this is a list of several factors the commissions are supposed to consider in making their Decisions, but no weights have been assigned.
>
> The relevant economic criteria enunciated by the Court are three: financial integrity, capital attraction and comparable earnings. Stated another way, the rate of return allowed a public utility should be high enough: (1) to maintain the financial integrity of the enterprise, (2) to enable the utility to attract the new capital it needs to serve the public, and (3) to provide a return on common equity that is commensurate with returns on investments in other enterprises of corresponding risk. These three economic criteria are interrelated and have been

> used widely for many years by regulatory commissions throughout the country in determining the rate of return allowed public utilities. In reality, the concept of a fair rate of return represents a "zone of reasonableness." As explained by the Pennsylvania commission:
>
> > There is a range of reasonableness within which earnings may properly fluctuate and still be deemed just and reasonable and not excessive or extortionate. It is bounded at one level by investor interest against confiscation and the need for averting any threat to the security for the capital embarked upon the enterprise. At the other level it is bounded by consumer interest against excessive and unreasonable charges for service.
>
> As long as the allowed return falls within this zone, therefore, it is just and reasonable. … It is the task of the commissions to translate these generalizations into quantitative terms.

2023 DEP Rate Case Order, 155; *2023 CWNC Rate Case Order,* 32-33; *2023 Aqua Rate Case Order,* 47-48 (citing Charles F. Phillips, Jr., *The Regulation of Public Utilities* (Public Utilities Reports, Inc., 3rd ed. 1993), at 381-82 (notes omitted)) (ellipses and brackets in original).

The United State Supreme Court has observed that "[t]he economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result." *Duquesne*, 488 U.S. 299, 314. That Court further held:

> To declare that a particular method of rate regulation is so sanctified as to make it highly unlikely that any other method could be sustained would be wholly out of keeping with this Court's consistent and clearly articulated approach to the question of the Commission's power to regulate rates. It has repeatedly been stated that no single method need be followed by the Commission in considering the justness and reasonableness of rates.

Duquesne 488 U.S. 299, 316 (citations, quotations, and brackets omitted). Commissions may find that "circumstances may favor the use of one ratemaking procedure over another." *Id.*

This Commission is mindful of the impact of its decisions and the law, especially the Public Utilities Act. The Supreme Court explained that "[t]he risks a utility faces are in large part defined by the rate methodology because utilities are virtually always public monopolies dealing with an essential service, and so relatively immune to the usual market risks." *Duquesne,* 488 U.S. 299, 315.

In conformity with the requirements of *Cooper I*, recent Commission decisions have explicitly addressed the impact of changing economic conditions on customers when determining the proper ROE for a utility. *See, e.g., 2023 DEP Rate Case Order; 2023 Aqua Rate Case Order; and 2023 CWSNC Rate Case Order*; and N.C.G.S. § 62-133(b)(4). As well, Section 62-133.16 takes into consideration the impact of a multiyear rate plan on risk when setting the authorized return on equity. N.C.G.S. § 62-133.16(c)(1)(a).

The *Cooper I* Court used broad language in its holding:

> Given the legislature's goal of balancing customer and investor interests, the customer-focused purpose of Chapter 62, and this Court's recognition that the Commission must consider *all* evidence presented by interested parties, which necessarily includes customers, it is apparent that customer interests cannot be measured only indirectly or treated as mere afterthoughts and that Chapter 62's ROE provisions cannot be read in isolation as only protecting public utilities and their shareholders. Instead, it is clear that the Commission must take customer interests into account when making an ROE determination. Therefore, we hold that in retail electric service rate cases the Commission must make findings of

> fact regarding the impact of changing economic conditions on customers when determining the proper ROE for a public utility.

Cooper I, 366 N.C. 484, 495 (italics in original).

The Commission must not only adhere to the dictates of both the United States and North Carolina Constitutions, but, as has been held by the North Carolina Supreme Court, it is "the duty of the Commission to set rates as low as constitutionally possible." *Public Staff II,* 323 N.C. 481, 507 (citation omitted). The Court has reminded the Commission that "the primary purpose of Chapter 62 of the General Statutes is not to guarantee the stockholders of a public utility constant growth in the value of, and in the dividend yield from, their investment, but is to assure the public of adequate service at a reasonable charge." *Cooper I,* 366 N.C. 484, 494-95 (citation, brackets, and quotation marks omitted).

The criteria of House Bill 951 require considerations of elements beyond the ROE element, and they inherently necessitate that the Commission make many subjective determinations, in addition to the subjectivity required to determine the ROE. The subjective decisions the Commission must make as to each of the elements of the criteria can, and often do, have multiple and varied impacts on all of the other criteria and elements. In other words, the criteria are intertwined and often interdependent in their impact on the setting of just and reasonable rates. *See generally 2023 DEP Rate Case Order,* 156; *2023 CWNC Rate Case Order,* 33; *2023 Aqua Rate Case Order,* 49.

The Commission must exercise its subjective judgment to balance multiple competing ROE-related factors, including the economic conditions facing the

Company's customers and the Company's need to attract equity financing on reasonable terms in order to continue providing safe and reliable service. The impact of changing economic conditions on customers is embedded in the testimony of expert witnesses regarding their analyses of the rate of return on common equity using various economic models widely used and accepted in utility regulatory rate-setting proceedings. Further,

> [t]he Commission always places primary emphasis on consumers' ability to pay where economic conditions are difficult. By the same token, it places the same emphasis on consumers' ability to pay when economic conditions are favorable as when the unemployment rate is low. Always there are customers facing difficulty in paying utility bills. The Commission does not grant higher rates of return on equity when the general body of ratepayers is in a better position to pay than at other times …

2023 DEP Rate Case Order, 157; *2023 CWNC Rate Case Order,* 34; *2023 Aqua Rate Case Order,* 49-50 (citations omitted).

Economic conditions existing throughout the relevant time periods will affect not only the ability of the utility's customers to pay rates, but also the ability of the utility to earn the authorized rate of return during the period the new rates will be in effect. Economic conditions existing during all relevant times (from the test or base year, at the time of the public hearings, and at the date of this Commission Order) affect not only the ability of the Company's consumers to pay electric utility rates, but also the ability of DEC to earn the authorized rate of return during the period rates will be in effect.

The Commission's duty is to set rates as low as reasonably possible without impairing the Company's ability to raise the capital needed to provide reliable

electric service and recover its costs of providing service. The Commission is especially mindful of this duty in light of the evidence in this case concerning the impact of current economic conditions on customers and the significant upward pressure on rates expected in the coming years. Chapter 62 of the North Carolina General Statutes sets forth a detailed formula the Commission must employ in establishing rates. The rate of return on equity is a significant but not independent element. Each element of the formula must be analyzed to determine the utility's cost of service and revenue requirement. The Commission must make many subjective decisions with respect to each element in the formula in establishing the rates it approves. The decisions the Commission makes in each of the many subjective areas under its purview have multiple and varied impacts on the decisions it makes elsewhere in establishing rates, such as its decision on rate of return on equity.

ii. Return on Equity, Flotation Costs

Flotation costs are the costs associated with the issuance of new equity securities (such as common stock), including printing fees, attorneys' fees, underwriter fees, and the potential dilutive impact of the issuance of such new stock. Tr. vol. 7, 249, vol. 15, 647. DEC, itself, does not issue equity securities; instead, equity security issuances are made by its publicly traded parent, Duke Energy. Tr. vol. 15, 647. DEC is a wholly-owned subsidiary of Duke Energy. Tr. vol. 9, 91.

No new common equity was publicly issued within the historical time period relevant to this matter. Nor is new common equity forecast to be publicly issued in the next several years. DEC written responses to data requests stated "[t]here were no common equity issuance in the test year, 2022, and none are anticipated for 2023 [ ]" and that "[n]o common equity issuances are forecasted for 2023 to 2027." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 7, pg. 2. Tr. Ex. Vol. 8 (Part I). Further, Company witness Newlin echoed this, testifying: "The Company's public comments have been no common equity issuance through '27." Tr. vol. 9, 104. Thus, there was and is no plan to issue equity in the present case.

Notwithstanding the lack of issuance of new equity securities nor even plans for same in the near future, the Company seeks recovery of flotation costs in this rate case. Tr. vol. 7, 329. More specifically, Company witness Morin increased his recommended ROE by 20 basis points to compensate the Company for flotation costs. Tr. vol. 7, 463. Company witness Morin agreed that over the three-year period, increasing the ROE by 20 basis points would cost ratepayers in the ballpark of $80 to $90 million. Tr. vol. 7, 449. Company witness Morin's "ballpark" estimate is consistent with DEC's written response to a data request that values a single basis point at between $1.4 (in year 1) and $1.6 million (in year 3) per year. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I).

Flotation costs may not be recovered under these circumstances for the following four separate and independent reasons.

First, as a matter of law, flotation costs are not recoverable under North Carolina law where, as here, there is no evidentiary support. The North Carolina Supreme Court in *Public Staff I* reversed and remanded the ROE portion of the Commission's Order dated October 31, 1986, Docket No. E-7, Sub 408, for Duke Power Company. The Supreme Court directed the Commission on remand to reconsider the proper rate of return on Duke Power's common equity and to also support its conclusion on flotation costs with specific findings. There was no evidence in that case that Duke Power intended to issue new stock for the next three or four years. On remand, the Commission issued its second E-7, Sub 408 Order, reassessed the evidence, and issued new findings of fact and conclusions. The Commission concluded that 13.2% was a fair rate of return on Duke Power's equity and there was a 0.1% increment in the approved 13.2% ROE to cover future stock issuance costs. On the second appeal, the Supreme Court held that the Commission's inclusion of the "stock" issuance increment is not supported by substantial evidence in view of the whole record. *Public Staff III,* 331 N.C. 215, 218. The Supreme Court concluded the Commission's inclusion of a 0.1% ROE increment for purported future financing costs in the approved ROE was not based upon substantial evidence in view of the whole record. The Supreme Court stated at 221-22:

> As we noted on the first appeal, an 0.1% upward increment in Duke's rate of return on common equity costs ratepayers $ 4.2 million annually in additional rates. Historically, Duke's average costs per issuance of stack was $ 3.2 million. In light of the whole record on this issue, particularly in the absence of any evidence that Duke intended to issue stock in the immediate future, there is simply no substantial evidentiary support for the Commission's addition of a

> 0.1% increment to Duke's rate of return on common equity to cover future stock issuance costs.

The Supreme Court further stated and ruled:

> On the first appeal of this case, we questioned whether the record supported *any* adjustment whatever in the rate of return for purported future stock issuance, or financing, costs. We said:
>
> > Since *no* evidence was introduced that Duke intends to issue new stock for the next three or four years, and because there was no evidence regarding the probable cost of a prospective issuance, we question whether the record supports *any* financing cost adjustment. *State ex. rel. Utilities Commission v. Public Staff*, 322 N.C. at 700, 370 S.E.2d at 574 (emphasis added). We are not satisfied, for the reasons alluded to in our first opinion, that the record supports no such adjustment in the common equity rate of return.

As in *Public Staff III,* there was and is no plan to issue equity in the present case. Accordingly, there is no evidence to support DEC's request to increase its ROE by 20 basis points for flotation costs. Therefore, the Commission rejects the Company's inclusion of 20 basis points in its ROE request to cover flotation costs. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

As a second and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the merits of the case. Although the Company concedes no equity security was or is forecast to be issued from 2021 through 2027, the Company nevertheless seeks recovery of $80 to $90 million dollars from ratepayers in compensation for flotation costs. It would be "grossly extravagant and not justified" (*Public Staff I*, 322 N.C. 689, 701) to cause customers to pay for expenses related to the issuance of stock when none has or

is forecast to be issued. *Accord*, *2023 Aqua Rate Case Order*, 62 (flotation cost over-recovery would be "grossly extravagant and is unjustified."). Ratepayers should not pay for expenses related to events that have not occurred nor are forecast to occur in the next several years. Nor should today's ratepayers be saddled with the obligation for paying for previously issued equity for any of the following reasons: (i) such a request is akin to retroactive ratemaking and therefore inappropriate; (ii) current ratepayers should not pay for expenses incurred on behalf of historical ratepayers since the link between users and payers is diminished with the passage of time (which results in unjust allocation of benefits and costs); and (iii) no specific evidence regarding the purported historical flotation costs was introduced into evidence. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points. This approach has long been employed by the Commission. *See 2023 DEP Rate Case Order*, 164; *2023 Aqua Rate Case Order,* 61-62; and *2003 Bellsouth Order,* 71.

As a third and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the equities of the situation. Both DEP and DEC are ultimately owned by the same parent corporation – Duke Energy. In the *2023 DEP Rate Case Order*, the Commission disallowed recovery of flotation costs for reasons similar to the two set forth above. It would be inequitable for some persons in North Carolina served by DEC to pay flotation costs while their neighbors served by DEP pay none. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

As a fourth and independent reason supporting disallowance for recovery of flotation costs, the Commission looks to the merits. Neither the Company nor the Company witness supporting recovery for flotation costs (Dr. Morin) provided specific numbers incurred by the Company as flotation costs. The lack of hard data is understandable given that no common equity was generally issued nor is forecast to be issued. This means, though, that the record is devoid of evidence of expenses – there are no invoices from printers, statements of underwriter fees, dollar estimates of the purported impact of dilution, itemized attorneys' fees, or any other identified or incurred costs. Instead of actual and verifiable expenses, there is only reference to generic categories. Tr. vol. 14, 102. One of the benefits of actual and verifiable numbers is that they can be reviewed, evaluated for reasonableness, and assessed by the Commission. Given the lack of actual data, there is insufficient evidence to support the allowance of flotation costs. Accordingly, DEC's requested ROE should be adjusted downward by 20 basis points.

For any of these above reasons, the Commission rejects the Company's increasing its ROE request by 20 basis points as compensation for flotation costs. The Commission denies the Company's attempt to recover flotation costs in this case.

In light of the foregoing, there is no need for the Commission to determine whether it is appropriate for flotation costs to reach as far as suggested by the Company so as to include compensation for the purportedly dilutive impact of

issuing equity. Nor should this Order be taken to mean that recovery of flotation costs via an increased ROE is necessarily appropriate. In fact, the Commission notes that it has in the past allowed recovery as a cost (not an increase to ROE). *See*, *1994 PSCNC Rate Case Order,* 60. The North Carolina Supreme Court has discussed, but did not decide, "the interesting question whether the costs of issuing stock should be included as an operating expense rather than as an adjustment to the annual rate of return on common equity." *Public Staff III,* 331 N.C. at 222, n.4. Like the Supreme Court, this Commission sees no cause to answer these interesting questions in this case.

iii. Return on Equity, Data Points

The starting point in the Commission's evaluation is the currently allowed ROE for the Company. DEC was allowed a 9.6% ROE in the *2021 DEC Rate Case Order.* It is the Company's burden to demonstrate a different ROE award is now warranted.

In setting the appropriate return on equity, the Commission is not required to simply rely on mathematical models. The Commission can, and does, rely on this and other information in forming its opinion. Below the Commission discusses the data points that support its ROE award.

First, the impact of an increase is an important data point for the Commission. The Commission is aware that under the Application as filed by the Company there are anticipated to be substantial increases in customer bills. For example, typical DEC residential customers (using 1,000 kWh) are forecast to

experience a 29.25% increase in their bills from February of this year to February of next year. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 6. Tr. Ex. vol. 8 (Part I). In fact, Company witness Morin was concerned about rate shock and affordability. Tr. vol. 7, 462.

The Commission is also aware of the substantial impact ROE has on customers. Even something as small as increasing the ROE by 20 basis points results in customers paying the Company in the range of $80 to $90 million dollars over a three-year period. *See,* Tr. vol. 7, 449; Public Staff, Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part I). With regards to typical residential customers (using 1,000 kWh but excluding riders), approximately 15% to 20% of their bill (or roughly $24) goes towards payment of the Company's ROE. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 3. Tr. Ex. vol. 8 (Part I).

The Company agrees that if its ROE is set too high (that is, above the cost of capital), there would be an improper transfer of wealth from ratepayers to shareholders. Conversely, if the ROE is set too low, that would result in an improper transfer of wealth from shareholders to ratepayers. Tr. vol. 7, 429. The Commission finds that either scenario is unjust.

Second, the Company's own opinion of what constitutes a reasonable ROE is an important data point for the Commission's consideration. In response to a question from Commissioner Hughes, Company witness Morin explained that a reasonable ROE for the Company would fall somewhere between 9.6% and 10.7% once the Company's proposed flotation adjustment is removed. Tr. vol. 8, 80-81.

Third, one strongly persuasive data point is the *2023 DEP Rate Case Order.* Only a few months ago, this Commission found an ROE of 9.8% was appropriate for DEP customers. Although Company witness Morin's recommended ROE has recently fluctuated up and down by 20 basis points with the vagaries of the markets on which he bases his analyses (*see* Tr. vol. 7, 433 ("returns have sort of ping-ponged back and forth between 10.2 and 10.4"); Tr. vol. 8, 25; *2023 DEP Rate Case Order*; and Public Staff, Morin – Direct and Rebuttal, Cross Ex. 18. Tr. Ex. vol. 8 (Part I)), this Commission takes a longer view. In fact, per Company witness Morin, the capital markets that form the basis for many of the mathematical models used by the witnesses in this case are highly volatile and uncertain. Therefore, "the determination of the cost of capital should thus take a more accommodative and flexible longer-term view and should resist the temptation of simply inserting today's numbers into an algebraic equation without regard to the purpose of the exercise." Moreover, the allowed rate of return "should not reflect day-to-day fluctuations in interest rates and current spot circumstances." Tr. vol. 8, 25-26.

As the disparity grows between DEP and DEC customers in North Carolina, so too grows the unjustness of the difference. Given that rates will most likely remain in effect for years, any differences in treatment by this Commission will also last for years. This is especially true where, as here, just a handful of months separate the filings of DEP and DEC. Although there have been minor fluctuations, there is no substantial economic sea change warranting a multi-million-dollar divergence from DEP's ROE.

Fourth, the impact of the *2023 DEP Rate Case Order* itself offers a data point for this Commission. When Company witness Morin was asked about reactions to the *2023 DEP Rate Case Order* (a substantial portion of which dealt with ROE). Company witness Morin testified there was a favorable reaction: "I think the bond rating agencies have -- will and have reacted favorably -- " Tr. vol. 7, 436.

Fifth, as another data point, the Commission finds strongly persuasive the fact that the Company's affiliate entered into a settlement earlier this year in South Carolina in which DEP averred a return on equity of 9.60% was reasonable and in the public interest. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 17. Tr. Ex. vol. 8 (Part I). In reviewing and approving the settlement, the Public Service Commission of South Carolina found in March of this year that a 9.6% return on equity "will result in just and reasonable rates." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 18, pgs. 20 ¶17, 44. Tr. Ex. vol. 8 (Part I). Further, on behalf of the affiliated utility in the South Carolina proceeding, Mr. Newlin testified that it would voluntarily choose to forgo a request to increase the ROE by 20 basis points (to 10.4%) to mitigate any further rate impacts. Public Staff, Newlin – Direct, Cross Ex. 9, p.21. Tr. Ex. vol. 9 (Part II). When asked if DEC would make the same offer in this case, Company witness Newlin stated "[n]o" (tr. vol. 9, 96), notwithstanding the nearly 30% increase faced by typical residential customers (Public Staff, Morin – Direct and Rebuttal, Cross Ex. 6. Tr. Ex. vol. 8 (Part I)).

Unlike North Carolina, South Carolina does not have multiyear rate plans, decoupling, or PIMs. The Commission finds it unjust to require DEC's North

Carolina customers to shoulder a higher ROE expense than DEP's South Carolina customers, especially when North Carolina has, in the parlance of DEC, more constructive and modern regulation. It is unjust to charge North Carolina customers a higher ROE simply because there are more customers in North Carolina.

Sixth, the Commission considers the testimony offered by experts regarding ROE. This is an important data point because the determination of ROE is not merely a mathematical exercise – experts must use their judgment in determining what inputs to use in their various ROE models, which Company witness Morin explained can make the subject contentious: "And it's contentious because the inputs to the various models that require some judgment. So it is a more difficult and more fragile area." Tr. vol. 7, 431.

The Company's sole witness who provided testimony regarding the appropriate ROE was Dr. Morin. The Commission finds it difficult to square Company witness Morin's testimony in various jurisdictions. The Commission finds that consideration of Dr. Morin's testimony in other jurisdictions suggests that it is appropriate to apply downward pressure on the ROE that should be awarded to the Company. Expanding on this point, Company witness Morin agreed North Carolina had a more favorable regulatory climate than Arizona, testifying: "Definitely. Most people do." Tr. vol. 7, 458. In fact, per RRA, Arizona has the lowest ranking of all the states. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 1, p.9. Moreover, Company witness Morin explained Arizona law and that it is "last in the country" for utilities:

> Number one, [Arizona is] still on historical test year. Okay?
>
> Number two, [Arizona has] hardly any risk mitigators, unlike DEC and DEP.
>
> And the third one is lots of disallowances in the past that were unjustified.
>
> [Arizona is] number -- the last in the country.

Tr. vol. 7, 459 (brackets added). This is consistent with the Company's own exhibit which identifies Arizona as having less favorable alternative ratemaking mechanisms than North Carolina. PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16. Notwithstanding this, in the month prior to his oral testimony in this case, Dr. Morin filed testimony on behalf of a utility in Arizona and recommended an ROE of 10.4% (Public Staff, Morin – Direct and Rebuttal, Cross Ex. 15. Tr. Ex. vol. 8 (Part I), which was the same as his recommendation in North Carolina.

When asked to explain how a jurisdiction with less favorable laws and a less favorable regulatory climate towards utilities had the same recommended ROE as North Carolina (with its admittedly better laws and regulatory climate), Company witness Morin stated it was because he was a "[n]ice guy." Tr. vol. 7, 459. When pressed further as to why Arizona's ROE was not higher, Company witness Morin testified "I just didn't want to." Tr. vol. 7, 460. When asked if his ROE should be reduced by 20 basis points given North Carolina's better laws and regulatory climate, Dr. Morin conceded "I would not violently object to that." Tr. vol. 7, 463.

Similarly, RRA identifies South Carolina as having a less favorable regulatory climate than North Carolina towards utilities (Public Staff, Morin – Direct

and Rebuttal, Cross Ex. 1. Tr. Ex. vol. 8 (Part I). In addition, South Carolina laws are less favorable to utilities. South Carolina is one of only five states that the Company's own exhibit identifies as having *no* alternative ratemaking mechanisms. PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16. Nevertheless, Dr. Morin also recommended an ROE of 10.4% for DEP in South Carolina less than a year ago. Public Staff Morin – Direct and Rebuttal, Cross Ex. 16. Tr. Ex. vol. 8 (Part I). These findings in other jurisdictions with less favorable treatment of utilities places downward pressure on the ROE recommendation of Company witness Morin in this case.

Seventh, the Commission determines the appropriate rate of return on common equity based on the evidence and particular circumstances of each case before it and the application of North Carolina law. However, the Commission is not unmindful of awards by other commissions in other jurisdictions. These other awards provide a check or additional perspective, on a case-by-case basis, on potentially appropriate returns on equity. Further, regulated utilities must operate within the same field and therefore "compete" with other regulated utilities for capital and investment. As such, a rate of return substantially lower than other utilities could harm a company's ability to attract capital or investment while a rate of return substantially higher could result in customers paying more than necessary.

At the hearing, evidence was placed into the record showing average and median awarded returns on equity for vertically integrated electric utilities (such as

DEC). Public Staff, Morin – Direct and Rebuttal, Cross Exs. 4, 5. Tr. Ex. vol. 8 (Part I). Below is a summary showing the average ROEs for vertically integrated electric utilities for the past decade through June 30, 2023:

Year	Average ROE
2013	9.95%
2014	9.75%
2015	9.75%
2016	9.77%
2017	9.80%
2018	9.68%
2019	9.74%
2020	9.55%
2021	9.53%
2022	9.69%
2023	9.73%

Public Staff, Morin – Direct and Rebuttal, Cross Ex. 5, p.5. Tr. Ex. vol. 8 (Part I).

This further demonstrates that the 10.40% ROE sought by DEC is far above the nationwide average ROE. In fact, DEC has presented no evidence showing it faces more or different risks that would justify a substantially higher ROE than other similarly situated utilities. If anything, the evidence shows DEC should enjoy a lower ROE in light the favorable laws and North Carolina regulatory climate that benefit it. DEC has presented no evidence as to why it should be a significant outlier.

Eighth, it appears that analysts in the financial community, to whom DEC frequently points in justification of their capital requests, have not contemplated a 10.4% ROE for DEC. For example, one independent evaluation from a non-party

was modeling a 9.0% ROE for Duke Energy. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 20. Tr. Ex. vol. 8 (Part I). When asked, Company witness Morin testified:

> Q. [ ] Does Morningstar -- is Morningstar here telling us that a 9.0 ROE is appropriate?
>
> A. That's one opinion from one analyst.
>
> Q. I understand Dr. Morin --
>
> A. But it's not the consensus.

Tr. vol. 8, 23 (brackets denote omission).

The Commission also considers the mathematical models (discussed below) offered by the parties regarding an appropriate ROE with these data points in mind. As well, the Commission considers the applicable law and its impact on ROE below.

iv. Return on Equity, Multiyear Rate Plan and Section 62-133.16 Analysis

The Commission has evaluated Section 62.133. The Commission believes the multiyear provision in Section 62-133.13 increases the risks borne by ratepayers and decreases the risks borne by the electric public utility. In light of the change in risk occasioned by Section 62-133.16, the Commission finds a 20-basis point decrement to DEC's ROE is just, reasonable, and appropriate.

As discussed above, Section 62-133.16 requires: "In setting the electric public utility's authorized rate of return on equity for an MYRP period, the Commission shall consider any increased or decreased risk to either the electric

public utility or its ratepayers that may result from having an approved MYRP." N.C.G.S. § 62-133.16(c)(1)(a). DEC conceded risk-mitigating mechanisms reduce risk on an absolute (but not relative) basis. Tr. vol. 7, 298.

The multiyear rate plan is new to North Carolina and works a sea-change in North Carolina law. Now, instead of recovering expenses only once capital projects are put into service, DEC can collect funds prior to completion. Further, DEC is allowed to increase its rate base (and therefore revenues) without the time and expenses associated with a rate case. RRA stated, of adjustment clauses generally, that they "effectively shift [ ] the risk associated with a recovery from shareholders to customers." Public Staff, Morin – Direct and Rebuttal, Cross Ex. 10. Tr. Ex. vol. 8 (Part I).

As required by 62-133.16, the Commission finds that multiyear rate plan decreases risk to DEC and increases risk to customers.

The Commission now considers the impact this determination should have on the Company's authorized ROE. In so doing, the Commission also considers all of the changes wrought by Section 62-133.16, including PIMs, decoupling of the residential class (which is the most volatile of the classes), allowing 50 basis points of excess earnings to be retained by DEC, and also the multiyear rate plan.

Public Staff witness Walters and CUCA witness LaConte testified regarding a 20 basis point downward adjustment. The Commission finds a 20-basis point decrement to DEC's ROE is just, reasonable, and appropriate.

The Commission agrees with the Company and Public Staff that the multiyear rate plan decreases risk on an absolute basis for DEC. The multi-year rate plan allows DEC to contemporaneously recover its capital costs, thus removing a natural check on utility capital spending. This new mechanism shifts a significant amount of risk from DEC to customers in that customers will bear the costs of capital projects before they are placed into service. DEC can include future capital investments in rate base and begin earning a return thereon before the capital projects are used and useful and without filing a rate case application. Depending on the timing of a project's completion, DEC may begin earning a return on capital investment a full year earlier, or more, than it would be able to using traditional ratemaking. It also puts customers at risk for bearing costs for projects that are never completed with the hope such costs would be removed from rate base in some future rate case.

The Commission also believes that the Company's risk is decreased both relative to customers and regulated utilities in other states. DEC has access to a number of the risk mitigator mechanisms that Dr. Morin identified, including riders, deferrals, and now residential decoupling. The Commission is aware that many jurisdictions possess the same or similar risk mitigators, thus putting DEC on par, or better, with utilities in other jurisdictions – and that is before the introduction of a multi-year rate plan. Both the Public Staff and DEC agree multiyear rate plans are only available to electric utilities in a minority of states. *See*, Public Staff, Morin – Direct and Rebuttal, Cross Exs. 20-23. Tr. Ex. vol. 8 (Part I). PBR Policy Panel Rebuttal Ex. 1. Tr. Ex. vol. 16 (18 states, per DEC). Both the Public Staff and DEP

agree decoupling is only available in a minority of states. *Id.* (24 states per DEC). In light of that fact, DEC's decision to utilize the multi-year rate plan, and all of the advantages available under 62-133.16, in this case gives it a competitive advantage compared to many other utilities when seeking to access capital on reasonable terms. One utility's credit outlook in another state was upgraded solely on the basis of it allowing multi-year rate plans. Public Staff, Morin- Direct and Rebuttal, Cross Ex. 14. Tr. Ex. vol. 8 (Part I). Independent analysts view the new multi-year statute as favorable. Public Staff, Morin – Direct and Rebuttal, Cross Ex. 19. Tr. Ex. vol. 8 (Part I).

The benefits to DEC from using a multi-year rate plan are clear. Section 62-133.16(d)(1) conditions the Commission's approval of a PBR application on a finding that it "would result in just and reasonable rates" and "is in the public interest." Approving a PBR application and multi-year rate plan without proactively accounting for the shift in risk from DEC to customers would not produce just and reasonable rates and would not be in the public interest. The Commission determines that the reduced risk to DEC should be recognized and flowed through to DEC customers and thus a 20-basis point decrement to DEC's ROE is warranted. There is no evidence in the record indicating DEC's ability to access the capital markets on reasonable terms would be hindered by such an adjustment, but the financial benefits of an annual revenue requirement reduction of $80 to $90 million dollars over the next 3 years are clear.

Independent analysts agree the mechanisms available under Section 62-133.16 are favorable to DEC. Moody's May 11, 2023, credit report identifies decoupling as "credit positive" and Section 62-133.16's multiyear performance based ratemaking framework as a "credit strength" that "could reduce regulatory lag." Public Staff, Newlin – Direct, Cross Ex. 1. Tr. Ex. vol. 9 (Part II). Morningstar Equity Analysts form a similar opinion, as follows:

> In North Carolina, Duke's largest service territory, the outlook has improved significantly. Recent legislation allows for multiyear rate plans, including rate increases for projected capital investments. Duke has filed rate cases at both state subsidiaries. The legislation also allows for performance incentive mechanisms and usage-decoupled rates for residential customers, protecting utilities from underlying usage trends. The legislation also supports utilities playing a critical role in the state's clean energy transition. We view the legislation as a significant improvement in the regulatory constrictiveness in the state.

Public Staff, Morin – Direct and Rebuttal, Cross Ex. 20, p.2. Tr. Ex. vol. 8 (Part I). In addition, intervenors also found a lower ROE was appropriate. *See, e.g.,* tr. vol. 15, 630. The Commission is persuaded that a reduction in ROE is appropriate and just.

v. Return on Equity, Proxy Group and ROE Modelling

Although the ultimate parent of DEC is publicly traded, DEC itself is not. The Commission finds that because DEC is not publicly traded, it is appropriate to look to a proxy group to use in modeling appropriate rates of return. The Commission finds substantial overlap in the parties' choice of companies to place into the proxy group. In fact, the Public Staff and Company used the same proxy group. Tr. vol. 8, 53. Use of a proxy group for modeling purposes is in keeping with the principles

of a fair rate of return established in the *Hope* and *Bluefield* cases, which are recognized as the primary standards for establishment of a fair rate of return for a public utility.

Public Staff witness Walters provided testimony regarding the appropriate return on equity. He testified a reasonable ROE should fall in the range of 9.20% to 9.90%. Tr. vol. 14, 90. Note that Public Staff witness Walters' range of reasonable ROEs does not include an adjustment for flotation costs since he was opposed to recovery of same. Tr. vol. 14, 102-103. Company witness Morin testified that that a reasonable ROE for the Company would fall somewhere between 9.6% and 10.7% once the Company's proposed flotation adjustment is removed. Tr. vol. 8, 80-81. CUCA witness LaConte didn't testify to a specific range but the results of her computations ranged from 8.37% to 10.58%. Tr. vol. 15, 634. Finally NCJC *et al*. witness Ellis's similarly computed a range from 6.06% to 6.63% (which does not include a flotation cost adjustment). Tr. vol. 15, 693. Commercial Group witness Chriss and CIGFUR III witness Collins did not engage in mathematical modeling to determine ROEs.

The recommended ROE of the witnesses was as follows: (1) NCJC *et al.* witness Ellis, 6.15% (Tr. vol. 15, 687); (2) CUCA witness LaConte: 9.20% (or 9.40% in the event the PBR Application/MYRP are denied) (Tr. vol. 15, 634); (3) Public Staff witness Walters: 9.35% (or 9.55% in the event the PBR Application/MYRP are denied) (Tr. vol. 14, 18-19); and (4) Company witness

Morin: 10.40% (Tr. vol. 8, 80-81). Commercial Group witness Chriss and CIGFUR III witness Collins did not engage in mathematical modeling to determine ROEs.

Company witness Morin testified regarding Public Staff witness Walters' work, stating: "We both have the same peer group, and like I said in my rebuttal, there's a lot of common ground between Mr. Walters and my own work." Tr. vol. 8, 53. As well, Company witness Morin "agree[d] with several of Mr. Walters' procedures and methodologies." Tr. vol. 8, 378. Similarly, Company witness Morin noted his shared "common ground" and agreement "with several of the view and procedures" of CUCA witness LaConte. Tr. vol. 8, 377.

On the merits of DEC's proffered ROE testimony, the Commission gives it some weight but finds it overstated and therefore unpersuasive. Dr. Morin was the sole ROE expert for DEC. His testimony regarding ROE is not only the highest among the parties to this case but also far exceeds recent national averages. Public Staff, Morin – Direct and Rebuttal, Cross Exs. 4, 5. Tr. Ex. vol. 8 (Part I). In fact, on average Dr. Morin's testimony typically exceeds the ROE ultimately awarded by commissions (or their equivalent) in other jurisdictions. NCJC *et al*., Morin – Direct and Rebuttal, Cross Ex. 2. Tr. Ex. vol. 8 (Part II). The Commission further notes (as discussed above) Dr. Morin's testimony in other jurisdictions.

Additionally, the Commission is unpersuaded by Company witness Morin since many of the "inputs" he used in his ROE modeling were overstated and placed upward pressure on the ROE results. As Company witness Morin himself noted, the selection of inputs is not a mechanical process but involves an expert's

judgment. Tr. vol. 7, 431. More specifically, the Commission finds Company witness Morin's models on the whole overstate ROE. For example, his DCF results are heavily impacted by growth rates that cannot be sustained in the long run. Regarding CAPM, the projected risk-free rate is increased by 50 basis points and is overstated. Beta is similarly overstated since they are too high relative to historical standards. Similarly, the ECAPM beta adjustment is unwarranted. With respect to the risk premium models, the equity risk premium is far overstated while his Treasury bond yields should instead rely on near-term projected Treasury bond yields. This overstated Treasury bond yield also increases the ROE obtained under the allowed risk premium methodology. For these and the reasons set forth herein, the Commission discounts the testimony offered by the Company and finds Company witness Morin's ROE results should receive a decrement.

The Commission gives great weight and is persuaded by the testimony of Public Staff witness Walters regarding an appropriate ROE. The Commission finds his analyses to be just, appropriate, reasonable, and fair to both the Company and ratepayers.

vi. Return on Equity, Changing Economic Conditions and Section 62-133.16 Review

Next the Commission evaluates the *Cooper I* and House Bill 951 factors. In this case, all parties had the opportunity to present the Commission with evidence concerning the changing economic conditions as they affect customers.

Witnesses Morin and Walters both testified regarding the economic conditions in North Carolina. Without limiting their evaluations, they testified that

unemployment has fallen in North Carolina in the last two years; that North Carolina's unemployment remains low; that North Carolina's economy is highly correlated with the national economy, including North Carolina's per capita personal income; that North Carolina's retail price of electricity has historically been below the national average; and evaluated the counties for which DEC provides service.

The Commission's review also includes consideration of the evidence presented by the testimony of witnesses at the public hearings held in this matter. The testimony presented at these hearings illustrated a number of relevant facts, including the economic conditions facing North Carolinians. The Commission accepts as credible, probative, and entitled to substantial weight the testimony of the public witnesses.

The Commission keeps all factors affected by current economic conditions in mind in the many subjective decisions it makes in establishing rates, including return on equity. In doing so in the case at hand, the Commission approves the 9.35% rate of return on equity in the context of weighing and balancing numerous factors and making many subjective decisions. When these decisions are viewed as a whole, including the decisions to establish the rate of return on equity at 9.35%, the Commission's overall decision results in lower rates to customers in the existing economic environment.

All of the downward adjustments the Commission approves reduce the revenues to be recovered from ratepayers and the return on equity to be paid to

investors. Some adjustments reduce the authorized rate of return on investment financed by equity investors. The adjustments reduce rates and provide rate stability to consumers (and return to equity investors) to recognize the difficulty for consumers to pay in the current economic environment. Use of a rate of return on equity of 9.35% is only one approved adjustment that reduces ratepayer responsibility and equity investor reward. Many other adjustments reduce the dollars the investors actually have the opportunity to receive. Therefore, nearly all of these other adjustments reduce ratepayer responsibility and equity investor returns in compliance with the Commission's responsibility to establish rates as low as reasonably permissible without transgressing constitutional or statutory constraints.

For example, to the extent the Commission makes downward adjustments to rate base, disallows expenses, increases test year revenues, or disallows/reduces the equity capital structure component, the Commission reduces the rates consumers pay during the future period when rates will be in effect. Because the utility investors' compensation for the provision of service to consumers takes the form of return on investment, downward adjustments to rate base, disallowances of test year expenses or increases to test year revenues, or a reduction in the equity capital structure component reduce investors' return on investment irrespective of its determination of rate of return on equity.

The rate base, expenses, revenue adjustments, and capital structure evaluations are instances where the Commission makes decisions in each general

rate case, including the present case, that influence the Commission's determination on rate of return on equity and cost of service and the revenue requirement. The Commission always endeavors to comply with the North Carolina Supreme Court's requirements that it "fix rates as low as may be reasonably consistent" with constitutional requirements irrespective of economic conditions in which ratepayers find themselves. The Commission reaffirms its explicit compliance with the requirements of *Cooper I*.

Based on the changing economic conditions and their effects on DEC's customers, the Commission recognizes the financial difficulty that the increase in the Company's rates will create for some of DEC's customers, especially low-income customers. As shown by the evidence, relatively small changes in the rate of return on equity have a substantial impact on a utility's base rates. The Commission also recognizes that the Company is investing significant sums in system improvements to serve its customers, thus requiring the Company to maintain its creditworthiness in order to compete for large sums of capital on reasonable terms. The Commission must weigh the impact of changing economic conditions on DEC's customers against the benefits that those customers derive from the Company's ability to provide safe, adequate, and reliable electric service. Safe, adequate, and reliable electric service is essential to the well-being of DEC's customers.

vii. Return on Equity - Conclusions

The Commission in every case seeks to comply with the North Carolina Supreme Court mandate that the Commission establish rates as low as possible within constitutional limits. The adjustments the Commission approves in this case comply with that mandate. Nearly all the adjustments reduce the requested return on equity and benefit consumers' ability to pay their bills in this economic environment.

The Commission first notes that DEC's ROE request of 10.4 is significantly inflated and an unreasonable starting point for analysis. Although North Carolina has laws and a regulatory climate favorable to utilities, the Company's expert recommended the same ROE in other states that are less favorable to utilities. Further, there is no evidence to support awarding an ROE so substantially higher than recent average ROEs. Although an affiliate of DEC agreed to reduce its ROE request in South Carolina in consideration of the impact on customers, no such consideration was offered in North Carolina. Further, there is no justification for recovery of flotation costs in the Company's ROE.

Based on the general state of the economy and the continuing affordability of electric utility service, and after weighing and balancing factors affected by the changing economic conditions in making the subject decisions required, the Commission approves a rate of return on common equity of 9.35%. The Commission is persuaded by Public Staff witness Walters' analysis that an ROE of 9.35 and capital structure consisting of 52% equity will still allow the Company

to maintain its investment grade credit rating. The Commission concludes that the return on equity approved by the Commission in this proceeding appropriately balances the benefits received by DEC's customers from DEC's provision of safe, adequate, and reliable electric service with the difficulties that some of DEC's customers will experience in paying DEC's increased rates. The 9.35% ROE will not cause undue hardship to customers, even though some will struggle to pay the increased rates resulting from this decision.

The Commission must ensure the establishment of rates that are fair to both the customer and DEC and our decision in this case is fair to both. It affords DEC a reasonable rate of return that will allow it to continue to attract capital on terms well within the zone of reasonableness. Public Staff witness Walters testified his recommendations would allow DEC to maintain its credit while remaining fair to the customer. The ROE is consistent with ROEs established for regulated utilities in other jurisdictions, thus not putting DEC at a disadvantage when accessing the capital markets. The ROE, debt rate, and capital structure accounts for the economic environment, balances the need for services with the Company's need for capital, and complies with the mandate that rates be as low as reasonably possible within constitutional limits.

The Commission's determinations in this section reasonably ensure the continuation of safe and reliable utility services. The Commission recognizes that the Company has committed to spend and invest significant sums on system improvements to serve its customers and comply with House Bill 951, thus

requiring the Company to maintain its creditworthiness in order to compete for large sums of capital on reasonable terms. Investments and operations by DEC provide significant benefits to DEC's customers and ensure the continuation of safe and reliable utility services. As discussed above, the ROE, debt cost, and capital structure allows the Company to maintain its creditworthiness and also the opportunity to earn billions.

The Commission's determinations in this section will not, themselves, unreasonably prejudice any class of electric customers. Nor will they unreasonably harm any customer or class of customers. The Commission's determinations herein equally impact all customers because they apply to DEC as a whole. For example, *all* customers will be equally impacted by a capital structure, ROE, cost of debt, 50 basis point excess ROE sharing mechanism, the obligations surrounding DEC's abiding by the PBR application, and the overall rate of return.

Additionally, the Commission's determinations in this section will not, themselves, result in a sudden or substantial "rate shock" increases to customers annually or over the term of the plan. This is bolstered by several grounds. First, the Commission leaves unchanged the Company's capital structure which has existed at 52% equity throughout DEC's last several rate cases. Second, the Commission reduces the Company's ROE from its prior rate case which results in a benefit to customers. Third, the Company's cost of debt remains relatively low and does not represent a substantial increase. Additionally, the Commission is aware that the dollar impact of a 9.35% ROE necessarily increases as the base

against which it is computed also increases. However, any increase would be steady *because* the return on equity is simply a percentage. Put another way, an ROE requirement will not cause "spikes" or substantial rate increases in and of itself.

The Commission finds its determinations in this section of its order are in the public interest. The public desires safe, adequate, and reliable investments and services from DEC at the lowest reasonable cost. As discussed above, the Commission finds and concludes that the return on equity, cost rate of debt, and capital structure approved by the Commission in this proceeding meets this requirement. It balances the cost of attracting capital to ensure investment and services with the need for the lowest reasonable rates. When the Commission's decisions are viewed as a whole, including the decision to establish the return of return on common equity at 9.35%, the Commission's overall decision fixing rates strikes the correct balance.

The Commission notes further that its approval of a rate of return on equity at the level of 9.35% (or for that matter, at any level) is not a guarantee the Company will earn a rate of return at that level. Rather, as North Carolina law requires, setting the rate of return on equity at this level merely affords DEC the opportunity to achieve such a return. The Commission finds and concludes, based on all evidence presented and in light of the applicable jurisprudence, that the rate of return on common equity provided herein will indeed afford the Company the

opportunity to earn a reasonable and sufficient return for its shareholders while at the same time producing rates that are just and reasonable to its customers.

F. EARNINGS TREATMENT

As discussed above, Section 62-133.16 provides as follows:

> …If the weather-normalized earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points shall be refunded to customers in the rider established by the Commission. If the weather-normalized earnings fall below the authorized rate of return on equity, the electric public utility may file a rate case pursuant to G.S. 62-133. Any penalties or rewards from PIM incentives and any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) will be excluded from the determination of any refund pursuant to earnings sharing mechanism.

N.C. Gen. Stat. § 62-133.16(c)(1)(c)(1); *and see*, Commission Rule R1-17B (d)(m).

In accordance with said statute and rule, throughout the term of the multiyear rate plan, the following shall apply:

> (a) If DEC's weather-normalized earnings fall below the 9.35% authorized rate of return on equity, DEC may file a rate case pursuant to N.C.G.S. § 62-133.
> (b) If DEC's weather-normalized earnings on its rate of return on equity are less than 9.85% but equal to or greater than 9.35%, DEC may retain those excess earnings.
> (c) If the weather-normalized earnings of DEC during the rate year are equal to or exceed a 9.85% rate of return on equity, those excess earnings shall be refunded to customers. Any such refund shall be via an earnings sharing mechanism rider.

Nothing in this section is intended to impose greater or different restrictions on DEC than found in the applicable jurisprudence.

G. OVERALL RATE OF RETURN

The overall rate of return is a mathematical computation. The "inputs" to that formula are discussed above. Without limiting same, the Commission finds a capital structure consisting of 52% common equity and 48% long-term debt is appropriate. The Commission finds an appropriate cost rate of long-term debt is 4.56%. Further, the Commission finds an appropriate return on equity is 9.35%. Given Section 62-133.16's earnings treatment, DEC would be allowed to retain up to 50 basis points in excess of the approved return on equity, resulting in an upward allowable return on equity of 9.85%.

Proportionately applying the cost of debt and return on equity to the capital structure referenced herein results in an overall rate of return ranging from 7.0508% (at an ROE of 9.35%) to 7.3108% (at an ROE of 9.85%).

For the reasons set forth herein, the Commission finds that the capital structure, cost rate of debt, return on equity, earnings treatment, and overall rate of return set by this Order: (a) will result in just and reasonable rates, (b) are in the public interest, (c) are consistent with the applicable jurisprudence, especially including without limitation N.C.G.S. §§ 62-133 and 62-133.16 and the rules adopted thereunder, (d) account for the changing economic conditions of North Carolina and are fair to DEC's customers generally and also in light of changing economic conditions; (e) appropriately balance DEC's need to maintain the safety, adequacy, and reliability of its service with the benefits received by DEC's customers from safe, adequate, and reliability electric service; (f) assures that no

customer or class of customers is unreasonably harmed and that the rates are fair to both the electric public utility and to the customer; (g) reasonably assures the continuation of safe and reliable electric service; (h) will not unreasonably prejudice any class of electric customers and will not result in sudden substantial rate increases or "rate shock" to customers; (i) appropriately balance the benefits received by DEC's customers from the provision of safe, adequate, and reliable utility service with the difficulties some of DEC's customers will experience in paying DEC's increased rates; (j) balance the fairness to the customers' need to pay the lowest possible rates with the need of DEC to obtain debt and equity financing; and (k) are appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-20

COVID

The evidence supporting these findings of fact is found in the Application and in the testimony of Company witnesses Kendal Bowman, Leslie Quick, Melissa Abernathy, and Nicholas Speros (together, the COVID Panel), Quynh Bowman, and Public Staff witnesses Zhang and Boswell.

Deferral Docket

In August of 2020, DEP and DEC (together, Duke) jointly petitioned the Commission for approval of orders for regulatory accounting purposes authorizing both Companies to establish a regulatory asset to account for incremental costs resulting from the unprecedented COVID-19 pandemic and declared a State of Emergency so that such costs could be deferred pending further action by the

Commission in the next general rate case filed by DEP and DEC. Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of Accounting Orders to Defer Incremental COVID-19 Expenses, Docket Nos. E-2, Sub 1258 and E-7, Sub 1241 (August 7, 2020) (Covid Deferral Docket). DEC and DEP each requested permission to create a regulatory asset to defer costs associated with customer fees waived, bad debt expenses, employee stipends and safety-related costs, remote work costs, and other costs, including overtime and related call center costs.

The Public Staff filed comments in the Covid Deferral Docket opposing Duke's request, arguing among other things that Duke had not substantiated a need for a deferral of the costs enumerated and recommending the Commission deny the request. Further, the Public Staff stated that if the Commission allowed Duke to defer costs, Duke should offset such costs with COVID-related savings such as federal tax credits and reductions in operating expenses.

Concerning the applicability of the Commission's two-prong test for deferral requests (Deferral Test) – with the first prong assessing whether the reason for which the costs were incurred is an unusual and extraordinary event (First Prong) and the second prong assessing whether the impacts of the event on the utility are material (Second Prong) – the parties did not contest that the First Prong was met by the unusual and extraordinary nature of COVID. *Id*. at 3-4. The companies contended that the Second Prong was inapplicable in this instance on the basis that the costs at issue were not reviewed in isolation where there was an ongoing

general rate case in which the Commission could review the overall cost of service such that the Deferral Test is not applicable. *Id*. at 7. After stating its "agree[ment] with the AGO that the fact that the deferral request was filed during the pendency of the rate cases does not moot the relevance of the second prong of the test," the Commission endeavored to apply the Second Prong. *Id*. at 9. However, while recognizing that "it [was] possible that the impacts in this case would be material for the purpose of considering the second prong of the Commission's deferral test," the Commission determined that it "[could] not reach a conclusion on that point because the actual amounts sought to be deferred ha[d] not been determined." *Id*. at 10. Nonetheless, "because of the extraordinary and unprecedented nature of the pandemic and the continuation of the Governor-declared State of Emergency," the Commission allowed the requested deferral "in order to provide the Companies an opportunity to capture the estimated incremental pandemic-related costs and to seek recovery of such costs in the Companies' future rate cases." *Id*. at 10-11. The Commission went on to state that "[t]he parties will have a full opportunity to raise [ ] issues when any such costs are included for cost recovery in a future rate case" and that "the burden of proof will be on the Companies to justify recovery of such costs." *Id*. at 11. The burden of proof is on the Company to justify recovery of its deferred COVID expenses. *Id*.

Summary of the Evidence

DEC Direct and Supplemental Testimony

In the present proceeding, DEC now seeks recovery of its deferred incremental COVID-related costs. In her direct testimony, DEC witness Q.

Bowman presented DEC's request. Witness Q. Bowman explained that DEC deferred and requests to recover: (1) customer fees waived; (2) bad debt charge-offs; (3) employee stipends to cover unplanned expenses associated with the COVID pandemic; (4) costs related to employee safety; (5) costs related to remote work; and (6) miscellaneous costs, such as employee overtime. Tr. vol. 12, 180-82. Witness Q. Bowman maintained that the costs included in the deferral are reasonable and prudent costs that were incurred as DEC provided its essential public service during the pandemic. *Id*.

In her direct testimony, DEC witness Quick explained the efforts DEC undertook to support its customers throughout the pandemic and the return to normal billing practices. Tr. vol. 7, 139-40. Witness Quick explained that DEC suspended service disconnections and waived fees for card payments, walk-in pay location payments, late payment charges, and insufficient funds. *Id*. at 137. Witness Quick also detailed how DEC worked with assistance agencies and customers on an individual basis to connect qualifying customers with assistance funding where possible. *Id*. at 139-40. Witness Quick described DEC's expanded outreach campaign efforts and, in particular, detailed the ways in which DEC adapted its customer operations resources to provide a more tailored experience for customers and utility assistance agencies. *Id*. at 137-38.

DEC witness Speros testified in support of DEC's bad debt calculation. Witness Speros explained that the moratorium on disconnections and late payment fees led to an increase in the number and amounts of past due accounts

outstanding, which in turn led to increased bad debt expense. *Id*. at 540. Witness Speros testified that the deferred bad debt expense was calculated as the total amount of incremental bad debt expense exceeding the amount already being recovered in base rates from the period starting in March 2020 through the July 31, 2023, capital cut-off date in this case. *Id*. Witness Speros also explained that DEC is continuing to incur impacts to business operations from the pandemic, namely that charge-offs related to COVID delinquencies are ongoing and will continue to be. *Id*. at 541.

Witness Q. Bowman explained that DEC's additional deferred expenses include employee safety-related costs, costs for remote work, employee stipends, and other miscellaneous costs. *Id*. at 180-81. She explained that DEC provided, and will continue to provide, employees with the appropriate personal protective equipment, and incurred additional incremental costs for increased cleaning and sanitation supplies, health care, as well as for testing and temperature checks. *Id*. at 181-82. For those employees who could work from home, witness Q. Bowman testified that DEC incurred additional costs for remote work, including costs for expanded conference line capacity, increased network bandwidth, other required information technology improvements, expanded video conferencing licenses, and increased company cellular telephone and data usage. *Id*. at 182. Lastly, for certain eligible employees, witness Q. Bowman stated that DEC provided a one-time cash payment of $1,500 to help with unplanned expenses associated with COVID-19. *Id*. Witness Q. Bowman also clarified that DEC seeks to recover other expenses related to overtime costs needed to implement COVID-19 guidelines to

ensure employee safety and increased costs due to expected increased call volume at call centers when normal billing practices resume. *Id*.

Witness Q. Bowman testified that the proposed new rates requested in this proceeding include recovery of costs deferred from March 2020 through July 2023, and that the adjustment normalizes revenues for waived late fees that will be collected going forward, amortizes the deferred costs over a three-year period, adjusts test year expenses to include certain incremental employee costs that were previously deferred, and includes the deferral balance, net of one year of amortization and deferred taxes, in rate base. *Id*. at 182-83. In her third supplemental direct testimony, witness Q. Bowman updated DEC's amortization amount for the COVID deferral to include actual amounts realized through July 31, 2023.

Public Staff Direct and Supplemental Testimony

In their direct testimony, Public Staff witnesses Zhang and Boswell stated that they continue to have the concerns set forth in their comments in the COVID Deferral Docket. Tr. vol. 12, 1032-33. Witnesses Zhang and Boswell explained their adjustment to the Company's inclusion of the one-time $1,500 stipends provided to some employees, which the Public Staff describes as goodwill by the Company that ratepayers should not be responsible for, particularly given that the expenses paid with the monies do not appear to have been verified by the Company and that the Company has been unable to show that the decrease in absences is in direct correlation to the payment of the stipend. *Id*. at 1033. The

Public Staff also removed approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in NC Retail O&M reductions that the Company stated it experienced through COVID on the basis that DEC did not offset the reductions against the COVID deferral. *Id*. at 1033-34 (confidential). Instead, witnesses Zhang and Boswell noted that the Company stated it was offsetting these savings against reduction in customer load, unfavorable weather, and excess storm costs, none of which were the causation of the savings. *Id*. The Public Staff noted that approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of the O&M reductions were decreases in printing costs and that employee expenses were reduced by at least **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** as compared to the Company's employee expenses in 2019. *Id*. (confidential).

Moreover, witness Zhang and Boswell explained that the Company received certain tax benefits in the form of credits and delayed payments as a result of the COVID pandemic, including an Employee Retention Credit totaling **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**; and delayed payment of Social Security Tax, resulting in an interest-free amount of additional working capital totaling **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for DEC available to the Company (with half of that paid in December 2021 and the remainder in December 2022) and a carrying cost benefit to the Company of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**. *Id*. at 1034-35 (confidential). For each of these tax adjustments related to COVID, the Public Staff included in its adjustments DEC's portion of the

DEBS tax benefits on the basis that, because DEBS provides services to DEC for which DEC is allocated the relevant labor and related costs, DEBS should also allocate the benefits to DEC. *Id*.

Finally, the Public Staff removed the Company's calculated return on the COVID deferral, which represents approximately 12% of the overall COVID deferral cost recovery sought by the Company, on the basis that it would be inappropriate to allow DEC to earn a return on costs for which all other utilities regulated by the Commission did not seek a deferral while under the same government-mandated restraints as the Company. *Id*. at 1035-36. In addition, the Public Staff testified that allowing DEC a return on the COVID deferral would unduly put the entire risk of what the Company has described as a "once in a century" event squarely on ratepayers. *Id*. With regard to the late payment fees, witnesses Zhang and Boswell explained that interest has already been accounted for, such that allowing a return on these expenses would unfairly allow the Company to collect interest upon interest. *Id*.

Other concerns raised by witnesses Zhang and Boswell include the reserve percentage of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** that the Company is applying for all customers on DEC's installment plan and the reserve percentages of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for receivables due from customers with past due accounts of 60-90 days and over 90 days, respectively, which totals an estimated reserve of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** (up from an opening balance

in 2020 of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** – a staggering **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** increase). *Id*. at 1036-37 (confidential).

In addition, the Public Staff expressed concerns with the Company's inclusion of an estimated incremental bad debt amount of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** from May of 2020 to June of 2023, which is over and above the **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per year already being recovered in the base rate case. *Id*. at 1037 (confidential). The Public Staff was not able to determine and compute a reasonable amount for the reserve and incremental bad debt expense that the Company sought for four reasons. First, in the Company's Application, E-1, Item Uncollectible Accounts for NC Retail, the Company filed the numbers at Total System level, which includes all of North Carolina and South Carolina. The Public Staff contended that this presentation is incorrect and misleading on the basis that it inflates the bad debt and provision for reserves amounts since North Carolina and South Carolina had different governmental directives during COVID. Next, the Public Staff disagreed with the Company's approach to the estimation and calculation of bad debt expense that appears to utilize a higher risk of customers being past due in calculating the estimation of bad debt expense. Additionally, the Public Staff testified that the new SAP billing system implemented in April 2021 appears to have skewed the Company's charge-off analysis compared to the legacy system due to changes in write-off percentage as well as the now-expanded reporting of accounts past due and changing from bill date to due date. Finally,

witnesses Boswell and Zhang averred that the lifting of the COVID-19 State of Emergency, effective August 15, 2022, which allowed for customer accounts that were past due but not subject to late payment, contributed to higher bad debt and reserves in the second half of 2022. The higher bad debt and reserves in the second half of 2022 coincided with the Company's development and calculation of a reserve estimate using aging data from November 2022 for the rate case application, resulting in a higher bad debt expense and provision for reserves. *Id*. at 1037-38.

To the extent that the Commission should allow recovery of COVID deferral expenses, the Public Staff recommended an amortization period of 12 years on the basis that this period of time aligns with the MYRP's three-year increment and with historical amortization periods approved for large deferrals, such as major storms. *Id*. at 1036.

With regard to the Company's proposed ongoing COVID deferral, witnesses Zhang and Boswell explained that they removed costs associated with the call center as their review of the data provided by DEC of the last five years indicated that the call center volume and costs decreased in 2021 and 2022 when compared to 2019. *Id*. at 1038.

Finally, the Public Staff adjusted revenue related to customer fees waived for the 2021 test period to reflect a normalized annual level of customer fees waived utilizing a two-year average based upon actual revenues collected in years 2018 and 2019. Witnesses Zhang and Boswell explained that, unlike the pandemic

year of 2021 where the waived fees were much higher, utilizing the average of 2018 and 2019 better represents the customer fees likely to be collected by DEC in the future. *Id*. at 1039.

DEC Rebuttal Testimony

On rebuttal, Company witnesses K. Bowman, Quick, Abernathy, and Speros (collectively, the COVID Panel) stated that this issue is important not only because of the magnitude of the costs at issue, but also because it goes to the core of the relationship between a regulated utility and its regulator. According to the COVID Panel, disallowing cost recovery of the COVID costs at issue would mean that prudently incurred costs resulting from governmental mandates imposed upon the Company to deal with an unprecedented emergency situation would go unrecovered. *Id*. at 210. In addition, the COVID Panel stated that the Public Staff's recommendation to deny COVID cost recovery ignored revenue loss entirely and other challenges faced by the Company such as mild weather that also resulted in substantially lower than projected revenues. *Id*. at 216. In the COVID Panel's view, the Public Staff's approach would penalize the Company for acting appropriately in the face of compounding challenges to the benefit of customers and should be rejected. Tr. vol. 13, 209-17.

Addressing customer engagement, the COVID Panel explained that the Company waived approximately $46 million in customer fees, expanded the pool of customers protected by the Winter Moratorium, extended the length of the Winter Moratorium from February 2021 until the end of March 2022, offered more

flexible payment terms and multiday payment extensions, and gave additional discretion to call center managers to work with customers. The COVID Panel acknowledged that overall call volume declined in 2021 and 2022 but stated that the complexity of calls increased beginning in September 2020, with post-COVID (Q4 2020 through Q4 2022) workload hours totaling an average of 145,700 hours per quarter and pre-COVID (Q1 2019 through Q1 2020) workload hours totaling an average of 134,400 hours per quarter. The COVID Panel went on to explain that, although average workload hours decreased during the Commission-ordered disconnection (Q2 and Q3 2020), the Company could not capture the potential savings associated with reduced workload during this timeframe in light of the uncertainty of when the Company would return to normal, making it such that reducing staffing would not have been prudent; and its view that reducing staffing in the short term, only to have to restaff a few months later, would not have been cost-effective. *Id*. at 219-25.

Concerning the Public Staff's specific adjustments to the COVID deferral balance, the COVID Panel asserted that the Public Staff largely made the same arguments as it made in the COVID Deferral Docket concerning COVID costs being offset by what it considers to be COVID savings, while ignoring the fact that the Company initiated O&M savings to offset net lost revenues (NLRs) attributable to COVID, mild weather, and other factors. The COVID Panel asserted that, for the most part, the Public Staff did not dispute the amount of costs deferred and sought for recovery. The COVID Panel explained that continuation of the deferral should resolve any disputes about the correct reserve percentages to use in calculating

bad debt expense, and that, if the Commission did not approve continuation of the bad debt expense deferral, then test year bad debt expense should be increased by approximately $61 million to reflect a current level of bad debt expense using 2022 actual expense. The COVID Panel contended that the Company did not require expense verification associated with the employee stipends, explaining that the stipends were appropriate to support employees in providing service to customers and to avoid turnover and should be allowed as reasonable and prudent costs. *Id*. at 222-30.

The COVID Panel further explained that, as required by the COVID Deferral Order, the Company tracked specific incremental costs for deferral, and that it is for those costs and only those costs that it seeks recovery in this proceeding. As such, in the COVID Panel's view, the Public Staff's position ignored NLRs against which COVID savings must be netted in order to present a balanced picture in light of the unforeseeable reductions in customer demand, thereby reducing revenue for the Company. While the Company used COVID savings to partially offset the impacts of the NLRs for which it did not seek deferral, the COVID Panel asserted that using the COVID savings to offset both the NLRs and the incremental COVID costs would double count the savings. Moreover, the COVID Panel contended that the COVID Deferral Order required only that the Company track the costs being deferred, but that nonetheless the Company was required to track and report COVID savings (specifically, reduced employee expenses such as reductions or elimination of travel and expenses associated with normal operations while employees of the Company were required to work remotely and adhere to travel

restrictions, and reduced printing and postage costs) and NLRs on a South Carolina retail basis for 2020 and therefore did, and provided to the Public Staff, the incremental COVID savings and NLRs at a system level to which it applied allocation factors to derive the South Carolina retail amounts. According to the COVID Panel, the Company's COVID savings were largely realized in 2020 in the amount of approximately $6.2 million on a North Carolina retail basis, while the Company estimated the NLRs due to COVID in 2020 to have been approximately $47 million on a North Carolina retail basis compared to budget, thereby more than offsetting the savings reductions that the Public Staff suggests were experienced. *Id*. at 232-40.

With regard to the tax benefits that the Public Staff suggested should be used by the Company to offset its COVID expenses, the COVID Panel estimated that the carrying cost benefit of the delayed payment of the employer portion of Social Security tax was approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis. The COVID Panel disagreed with the Public Staff's suggested adjustment in this amount, as well as its recommended adjustment of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** associated with the DEBS payroll, on the basis that DEC received no carrying cost benefit from the Social Security delayed payment associated with DEBS payroll as it was recognized on the DEBS balance sheet as a long-term liability account and was ultimately paid by DEBS. *Id*. at 236-37 (confidential). Concerning ERC, the COVID Panel explained that it filed approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a

North Carolina retail basis attributable to operations from March 13, 2020, through September 30, 2021, and that all claims for DEBS have now been filed in the amount of approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis. Accordingly, the COVID Panel asserted that, even if these benefits to DEC are netted against costs, they fall short of offsetting the total impacts from NLRs. *Id*. at 235-37 (confidential).

The COVID Panel contended that the approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on a North Carolina retail basis of savings from March 2020 through August 2021 cited by the Public Staff as COVID savings were, instead, attributable to Company-instituted cost efficiency measures in response to reduced revenue due to both COVID and mild weather and increased expense related to higher-than-normal storm restoration costs. These cost efficiency measures included revising the scope and timing of generation outages due to lower load requirements, managing headcount, lowering employee and executive short-term incentive expenses for 2020, and experiencing lower than planned interest expense due to favorable timing of capital market transactions in 2020. The COVID Panel stated that these efforts are examples of measures the Company normally considers when impacted by weather, storms, or other factors affecting revenues. Moreover, the COVID Panel explained its view that, even if one were to accept the Public Staff's premise that all cost savings in 2020 were due to COVID, then at minimum the Company should still be allowed to recover its incremental COVID costs, since the NLRs more than offset the total cost savings. *Id*. at 238-40 (confidential).

With regard to the Public Staff's proposed removal of carrying charges, the COVID Panel explained that the Company had to utilize its own investor-provided funds to pay for the costs at issue and that, where utility investors supply the funding for expenditures prior to recovery from customers, a return is generally permitted on such a regulatory asset until recovery has occurred to account for the time value of money, thereby making the investor whole. In essence, the COVID Panel explained that the customers who benefitted from the investors' funding are essentially receiving a loan from the utility since, by definition, these costs are not being recovered in current rates, and the customers will instead pay for the utility's expenditure over a period of time rather than at the point the utility incurs the expenses. The COVID Panel also asserted that additional financing costs are incurred by the Company when fees are due but not paid, and thus it is reasonable and prudent to allow for recovery of such additional financing costs. *Id*. at 241-45.

Concerning bad debt, the COVID Panel explained that the moratorium on disconnections and the suspension of late fees enacted through Governor Cooper's Executive Orders and Commission Orders had an adverse impact on the level of the Company's bad debt expense insofar as the Company realized an increase in the number of past due accounts. In the COVID Panel's view, DEC's bad debt expense was appropriately deferred and included in its COVID regulatory asset as ordered by the Commission. The COVID Panel stated that, in this proceeding, the Company sought only to recover the difference between the level of bad debt expense currently in rates and the amount of bad debt above that level resulting from COVID. In developing the reserve percentages, which represent the

estimated amounts of past due arrears expected to be charged off at various points in time, the COVID Panel explained that the Company analyzed charge-offs and aging data from 2018 and 2019 rather than from 2020 or later due to the erratic and unreliable charge-off data resulting from the disconnection moratorium and the more lenient disconnection policies in effect during the pandemic. The Company divided net charge-off amounts by the aged receivable balance utilizing the historical data from 2018 and 2019 to determine the reserve in addition to assessing numerous qualitative factors such as large customers for whom the Company has a high level of confidence of payment, upcoming government assistance programs, and unusual changes or fluctuations in collections and write-offs, and ultimately considering whether the balance in the loss reserve is reasonable as stated or if an adjustment is required. Given that customers on payment plans have consistent data available and are actively working with the Company, such customers are viewed as having less risk of being charged off than the typical delinquent customer, and therefore their receivables are treated differently than regular aged receivables. *Id*. at 246-50.

Testimony Presented at the Expert Witness Hearing

Public Staff witnesses Zhang and Boswell testified at the expert witness hearing that, with regard to the Company's request to continue deferral of its COVID-related bad debt expense until the next general rate case, the Public Staff does not recommend that the Commission allow the continued deferral on the basis that the Company's calculation of projected bad debt is subjective and is based on a system level (including both North Carolina and South Carolina). Given

that there are substantial differences in how the two states' utilities commissions handled COVID with regard to increased customer flexibility, the Public Staff asserted that it was inappropriate to include South Carolina within the confines of the uncollectibles calculation; however, due to the Public Staff's workload and the complicated nature of untangling the South Carolina component of the uncollectibles calculation, the Public Staff chose not to make an adjustment on this item. Moreover, witness Boswell noted her concern that DEC changed the number of days used for calculation of uncollectibles, further reducing her confidence that the continuation of a COVID deferral was appropriate. Tr. vol. 12, 1058-62.

Concerning the Public Staff's O&M adjustment to the Company's COVID recovery request, witness Boswell testified that remote work and overtime call center costs were included in this adjustment, and that 90 percent of DEC's staff continues to work remotely on either a part- or full-time basis since remote work was initially instituted during COVID. Witness Boswell also explained that all call center overtime costs were already included in the prior rate case's cost of service. *Id*. at 1063-64.

During the COVID Panel's live testimony, with regard to the Public Staff's concern that the Company's overall calculation of uncollectibles included South Carolina expenses, DEC witness Speros testified the Company's bad debt expense drastically increased as a direct result of orders from Governor Cooper and this Commission, such that the inclusion of South Carolina expenses was not a factor in his opinion, although the Company uses a system level of bad debt

expense and a North Carolina allocator. Witness Speros indicated that, earlier that day, he had performed calculations of North Carolina's specific bad debt expense and that, although the Company would actually need to increase the deferral based upon the results of these calculations, the difference was not material. Tr. vol. 13, 267-70.

Company witness Quick detailed the decrease in calls during the disconnection moratorium imposed by executive and Commission orders, followed by an increase in calls upon resumption of disconnections and an increase in the handling time of calls given the number of customers in arrears. In addition, witness Quick explained the 12-month repayment plans offered to customers with arrearages and the Company's observation that customers with lengthier payment plans were more likely to default. *Id*. at 270-76.

DISCUSSION AND CONCLUSIONS

In the proceeding now before us, the Company has sought to recover its deferred COVID expenses. No party has challenged that the expenses for which the Company now seeks recovery pursuant to the COVID Deferral Order were COVID-related expenses. The questions this Commission is tasked with answering are threefold: (1) whether the Company's deferred COVID expenses should be recovered by ratepayers and, if so, to what extent; (2) whether a return on any allowed deferred COVID expenses is appropriate; and (3) whether the Company should be permitted to continue to defer its future COVID expenses.

Cost Recovery

In this proceeding, the Public Staff noted general concerns with regard to the Company's practices surrounding bad debt expense but did not otherwise take issue or make adjustments to the COVID-related expenses pertaining to customer fees waived, bad debt expense, or employee safety related costs. The Commission is persuaded that, other than the adjustments proposed by the Public Staff, these costs are just and reasonable and should be approved. However, based upon the Public Staff's recommendations, the Commission further determines that it is appropriate to reduce these allowed costs by the O&M savings experienced by the Company through COVID, including savings for employee travel expenses, printing and postage costs, and remote work costs; by employee stipends voluntarily provided to certain employees by the Company; and by certain tax-related benefits inured to DEC as a result of COVID.

The Company admits that it experienced COVID savings due to decreased employee travel, printing, and postage. Given DEC's concession that these savings are directly attributable to the pandemic, the benefit of these savings should be netted against the Company's approved deferral.

Regarding the costs of remote work, in order to facilitate employees working remotely to protect their health and safety during the pandemic, DEC incurred incremental costs associated with expanded conference line capacity, increased network bandwidth, other required information technology improvements, expanded video conferencing licenses, and increased company cellular telephone

and data usage. The Commission recognizes that many other businesses and state agencies in North Carolina were able to shift to full or nearly full remote work to respond to the Governor's State of Emergency and also incurred similar incremental costs to accommodate employees working remotely. The Commission notes that in the post-State of Emergency work environment, remote work offerings continue either fully or on a hybrid basis for many businesses, state agencies, and utilities, including DEC. The Commission determines that although the pandemic may have initiated this category of costs, these costs are now largely ongoing in nature and not specific to the pandemic. Moreover, DEC has not indicated that it offset the deferred costs of remote work with the associated decreases in office expenses such as utilities, office supplies, and other miscellaneous expenses related to employees working from the office. Thus, the Commission concludes that it would not be appropriate to recover the deferred costs of remote work from customers.

DEC provided certain eligible employees with a one-time cash payment of $1,500 to help with unplanned expenses associated with COVID. DEC testified that the stipends were appropriate to support employees in providing service to customers and to avoid turnover and should be allowed as reasonable and prudent costs. The COVID Panel contended that DEC did not require expense verification associated with the employee stipends. The Commission concludes that the one-time $1,500 stipends provided voluntarily by DEC to certain hourly employees should be considered voluntary goodwill and should not be recovered from customers. Usage of the stipends was not verified by DEC and employees were

free to spend the funds as they pleased, without oversight, and thus the Commission determines they should be excluded from cost recovery of deferred COVID expenses.

DEC witness Q. Bowman testified that the other category of deferred costs includes overtime to implement COVID-19 guidelines to ensure employee safety and increased costs due to expected increased call volume at call centers when normal billing practices resume. Public Staff witnesses Boswell and Zhang testified that expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by DEC for call center overtime was not above the amounts already included in DEC's cost of service. The Commission is persuaded that, because the amount sought by DEC for call center overtime was not above the amount already included in DEC's cost of service, these costs should not be recovered from customers.

In addition, to balance the fairness and equity between customers and shareholders related to the COVID pandemic, the Commission determines that measures taken by the federal government to assist companies and employers in weathering the impacts of the pandemic should inure to the benefit of customers, as these measures directly relate to COVID. As such, these savings, such as the carrying cost benefit to the Company of delayed Social Security tax payments (and the DEC-portion of the carrying cost benefit to DEBS of the same) and ERCs filed by the Company (and the DEC-portion of the ERCs filed by DEBS) should be netted against the Company's deferred COVID expenses.

With regard to the Company's remaining O&M savings throughout the pandemic, although the Company averred that it instituted mitigation efforts to address mild weather, higher-than-normal storm costs, and lost revenues related to COVID, the Commission gives weight to the Public Staff's position that mild weather and higher-than-normal storm costs were not the true cause of these O&M savings. Instead, the Commission is persuaded that the Company's O&M savings during the pandemic were a result of the Company's mitigation efforts in light of the pandemic. Accordingly, the Commission finds it reasonable to disallow the Company's remaining O&M savings experiences during the pandemic from its allowed deferral.

Despite DEC's assertion that, to the extent that the Company experienced any savings due to COVID, such savings should be offset against estimated NLRs for which the Company did not seek a deferral, the Commission is sensitive to the fact that COVID did not spare any part of society, whether businesses, individuals, or families. All individuals and businesses, regardless of size, felt some impact due to COVID and made necessary adjustments. The Commission is also keenly aware that DEP and DEC were the only Commission-regulated utilities that sought a deferral of COVID costs, even though all Commission-regulated utilities continued to provide service and abide by the State of Emergency Orders without knowing whether they would receive full, or any, payment for the services rendered, and put employees on the front lines to provide those services. In addition to considering these impacts, the Commission is also aware that many businesses experienced certain savings related to COVID (in addition to expenses

related to COVID) as workforces changed and certain O&M expenses were temporarily or permanently reduced.

The Commission notes that, in reaching this determination, it is not appropriate to consider the Company's COVID-related estimated NLRs that were not sought at any point in the COVID Deferral Docket or in any other deferral request. If the Company wished to have its COVID-related NLRs considered, it was free to file such a request at any time. Witness K. Bowman testified that the Company consciously chose not to do so. In any given year, the Company will experience NLRs for which, without a specific Commission order, the Company cannot recover. The Commission therefore declines to take COVID-related NLRs into account.

What is left in reasonably and prudently incurred deferred COVID expenses is approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, based on the Company's third supplemental filing and the adjustments as discussed herein. While the Commission's Deferral Test is typically applied in the context of a deferral request docket such that the nature of the costs and magnitude thereof need not be litigated in the subsequent cost recovery docket, the COVID deferral was unique in the sense that the costs were unusually speculative, the length of time completely unknown, and the magnitude indefinite, leaving the Commission unable to evaluate the Second Prong in a meaningful manner in the COVID Deferral Docket. *See* COVID Deferral Order at 10. That is not to say, however, that the Commission waived its analysis of the Second Prong

with regard to the Company's deferred COVID expenses by not having undertaken this analysis in the COVID Deferral Order. Nothing prevents the Commission from now undertaking an analysis of the magnitude of the deferred COVID expenses now that they are known and measurable, and the Commission chooses to do so in its discretion. There are three main factors that the Commission finds to be relevant in its analysis of the Second Prong in this proceeding: (1) the amount of the Company's deferred COVID expenses; (2) the Company's earnings during the analogous timeframe; and (3) fairness and equity.

The Commission is satisfied that the remaining amount of the Company's deferred COVID expenses are of a magnitude appropriate for deferral treatment. Although the Company has consistently achieved earnings in excess of its authorized ROE since before the COVID pandemic such that its shareholders enjoyed high earnings throughout the pandemic while many of DEC's ratepayers faced significant financial hardship, the Commission is mindful of the unique circumstances of this case and the fact that the Company, as a provider of an essential service, was required to fulfill its obligations to customers to continue operations 24 hours a day, seven days a week despite the pandemic. Government officials, including this Commission, sought to aid North Carolina citizens amidst a turbulent and challenging economic environment by issuing a State of Emergency and various mandates and moratoriums. During the height of the turmoil caused by the pandemic, customers benefitted from the governmental mandates to waive customer fees and discontinue disconnections for non-payment. The pandemic lasted much longer than anyone anticipated. Businesses, families, and individuals

benefitted from these mandates, particularly households that were struggling with financial issues resulting from the pandemic. Further, DEC, at this Commission's direction, provided customers with new, more favorable payment options and worked to connect eligible customers with available financial assistance from new and existing federal and state programs. As such, the Commission is satisfied that, having considered all of the pertinent factors involved and the unique circumstances of the pandemic, the second prong of the Deferral Test has been met such that it is appropriate for the Company to recover the remaining balance of the COVID deferral, after incorporating the adjustments as described above.

The Commission concludes that it is appropriate that cost recovery for the remaining approved deferred COVID-related costs occur over a 12-year amortization period. Due to the material amount of COVID-related costs approved for recovery, the Commission finds that the three-year amortization period requested by DEC would be burdensome for customers. A 12-year amortization period is in line with the amortization period approved for requests of similar size, such as storm deferrals, and takes into consideration the Company's request for a three-year increment to keep in sync with the MYRP, while balancing the needs of the ratepayers and the Company. The Commission determines that amortization of the deferred COVID-related costs should begin upon the effective date of new rates in this proceeding.

Return

The Commission declines to approve DEC's request to recover accrued carrying costs on the deferred costs or to authorize a return on the unamortized balance of the COVID costs during the amortization period. In reaching this decision, the Commission is conscious of the fairness and equity factors inherently at play in considering how to appropriately balance the difficulties experienced by both the utility and ratepayers throughout the pandemic. Taking into consideration the hardships caused by the pandemic on the residents and businesses in North Carolina and DEC's earnings as reported in its E.S.-1 Report during the deferral period, which were at or above the utility's authorized rate of return, the Commission concludes that the amount included in DEC's request related to accrued carrying costs on the deferred costs or a return on the unamortized balance during the amortization period should not be recovered from customers through rates.

Continued COVID Deferral

The Commission again chooses to apply the Deferral Test in determining whether it is appropriate to allow the Company to continue deferring COVID expenses. The Commission continues to be satisfied that, although we are now further removed from the pandemic of COVID, the nature of the costs at issue on a going-forward basis is still extraordinary enough to satisfy the First Prong. Concerning the Second Prong, the Company contends that the impact to the revenue requirement of inclusion of the bad debt expenses in test year O&M

expenses would be approximately $61 million, which the Commission is satisfied is an amount of sufficient magnitude to warrant deferral treatment.

As such, the Commission will allow the Company to continue deferring its COVID expenses under the following conditions:

1. Any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case;

2. DEC should report on a semiannual basis the actual amounts recorded to the deferral and the payments received; and

3. Expenses associated with call center overtime should not be included in the ongoing COVID deferral given that the amount sought by the Company for call center overtime was not above the amounts already included in the Company's cost of service.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-27

The evidence supporting these findings of fact is contained in the direct testimony of DEC witness Morgan D. Beveridge, the direct and supplemental testimony of Public Staff witness David M. Williamson, the rebuttal and supplemental rebuttal testimony of the Rate Design Panel, and the entire record in this proceeding.

Residential Rate Schedules

DEC proposes to allow detached garages, barns, and other structures on the same residential premises to be served under a residential rate schedule. DEC

witness Beveridge stated that this proposal is based on customer feedback. The current policy is to serve detached garages, barns, or other structures on a SGS schedule if the structure is not used for cooking and sanitation. Availability of a residential schedule is dependent on the structure being used for residential purposes only. Tr. vol. 10, 141-42.

DEC is proposing to update the language in the residential rate tariffs to include detached garages, barns, and other structures as eligible for the residential rate tariffs. DEC would allow customers to migrate from a general service rate schedule to a residential rate schedule for detached structures at the same premise as the residential account. Customers who wish to make the change would be required to initiate the process to migrate their commercial account to their residential service account. Tr. vol. 10, 141-43.

Public Staff witness D. Williamson testified that the Public Staff supports this change in the residential rate schedules regarding detached structures but recommends that the Company be required to notify all SGS customers of the change through bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 205. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to the residential rate

schedules regarding detached structures and the Public Staff's related recommendation regarding notice are just and reasonable.

Lighting Rate Schedules

DEC proposes to increase all Existing Pole rates (excluding light emitting diode (LED) fixtures on Schedule OL) by a consistent percentage to achieve the proposed revenue increase, by rate schedule. The stated purpose of this change is to better align LED fixture rates on Schedule OL to Schedule PL. DEC also proposes to increase the new pole adder fee that applies to both the New Pole and New Pole Served Underground rates on Schedules OL and PL. Tr. vol. 10, 156-57. DEC also proposes to add two new low-wattage LED fixtures to Schedules OL and PL, stating that these low-wattage LED fixtures are ideal for areas that require less lumen output than the standard LED 50-watt fixture. Tr. vol. 10, 158.

DEC also proposes to establish a new tariff for Outdoor Lighting Service Regulations (OLSR), and to increase the contract period from three to five years to address attrition of lighting assets and reduce the potential for stranded costs. The template for the proposed OLSR was based on the corresponding tariff in DEP. The primary intent of the OLSR is to consolidate and clarify the Company's common policies related to outdoor lighting. Tr. vol. 10, 157-58.

Company witness Beveridge testified that DEC's mercury vapor ("MV") conversion project is ongoing and nearing completion. The Company has made substantial progress on conversion of standard fixtures on Schedule PL and expects to complete conversions by the end of 2023. However, the Company now

expects conversion of post top and decorative MV fixtures to be completed by the end of 2024. To avoid issues of nuisance or distraction to pedestrians and motorists, DEC is proposing to replace its post top fixtures and many of its decorative MV fixtures with the 30-watt LEDs proposed in this proceeding. Tr. vol. 10, 159-60.

Public Staff witness D. Williamson testified that the Public Staff supports these proposed changes in the lighting rate schedules but recommends that the Company be required to notify all lighting customers of the change to lighting services, rate schedules, and service regulations by bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 214. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to the lighting rate schedules and the Public Staff's related recommendation regarding customer notice are just and reasonable.

Schedule OPT-V

DEC is proposing a minimum contract demand of 75 kW for new customers served under Schedule OPT-V to better delineate between rate classes and rate designs for small (below 75 kW) versus large (75 kW and above) business customers. Company witness Beveridge testified that the rate design and cost of

service rate class of Schedule SGSTC is more appropriate for small business customers than Schedule OPT-V and that the minimum demand requirement will help maintain an attractive and appropriate cost of service rate class for larger business customers under Schedule OPT-V. Existing customers with a contract demand under 75 kW may continue to receive service under Schedule OPT-V. Tr. vol. 10, 149-50.

Public Staff witness D. Williamson testified that the Public Staff supports this proposed change to Schedule OPT-V but recommends that the Company be required to notify all current OPT-V customers of the proposed 75 kW minimum contract demand threshold and the alternative rate schedules available to them through bill insert or separate mailing. Tr. vol. 13, 65. Company witness Beveridge testified that DEC accepts the Public Staff's recommendation that the Company notify affected customers of these changes through bill insert or separate mailing. Tr. vol. 10, 205. No other party or intervenor responded to or otherwise contested this recommendation.

In light of the parties' testimony and all the evidence presented, the Commission concludes that DEC's proposed changes to Schedule OPT-V and the Public Staff's related recommendation regarding customer notice are just and reasonable.

Revenue Apportionment

An objective of the Company's proposed rate design is to achieve the necessary increase in rates to collect the total revenue requirement. Tr. vol. 10,

130. DEC recommends a variance reduction of 10% to gradually reduce interclass subsidies to better align each rate class to the overall rate of return. Tr. vol. 10, 133. DEC disagrees with the Public Staff's proposed methodology to apportion revenues in this case because it differs from the methodology Duke Energy Progress, LLC (DEP) proposed in the Docket No. E-2, Sub 1300 (Sub 1300) rate case and ultimately approved by the Commission, and it believes there is no basis to support deviating from the method used in the Sub 1300 rate case. Tr. vol. 17, 146-47. DEC further argues that the Public Staff approach is not replicable using other revenue requirement figures and uses a level of subjective determination that is not reasonable. Tr. vol. 17, 147-48. Contrary to Duke's assertion that the Public Staff methodology was irreplicable, DEC witnesses Byrd and Beveridge on cross examination conceded that they simply had "no idea" how to replicate the Public Staff revenue apportionment methodology using another revenue requirement, nor had they attempted to do so. Tr. vol. 17, 169. Witnesses Byrd and Beveridge acknowledge that Chapter 62 of the North Carolina general statutes does not prescribe any revenue apportionment method to be used by the Commission and that the Commission has discretion to determine how revenues should be apportioned in each rate case. Tr. vol. 17, 171.

Similar to the Company's objective, the Public Staff's apportionment of revenues to the various customers classes would allow the Company the opportunity to recover the overall revenue requirement from the customer classes. Tr. vol. 17, 71. The Public Staff testified that it developed a revenue apportionment framework by using the Company's per books (Item 45a) MAE-COSS; adjusting

for present and proposed revenues, expenses, and rate base as provided by Public Staff witnesses Zhang, Boswell, and Metz; and applying the Public Staff's four basic revenue assignment principles in a balanced manner. Tr. vol. 17, 42-43. Those four basic revenue assignment principles are: (1) the revenue increase assigned to any customer class is limited to no more than two percentage points greater than the overall jurisdictional revenue percentage increase, thus avoiding undue rate shock; (2) class rates of returns (RORs) are maintained within a +/- 10% band of reasonableness relative to the overall North Carolina (NC) retail ROR; (3) all class RORs are moved closer to parity with the overall NC retail ROR; and (4) subsidization among the customer classes is minimized. Tr. vol. 17, 43. Witness Williamson acknowledged in his direct testimony that DEC's use of the 10% cross subsidy reduction methodology was appropriate. However, once the Public Staff developed its proposed revenue requirement following its audit of DEC's May and June supplements, the Public Staff determined that an alternate methodology for allocating the revenue requirement, which independently moves each rate class closer to RPR parity, would be more appropriate than the Company's proposed methodology. Tr. vol. 17, 48. The Public Staff looked at each individual class rate of return after adjustment to the per books cost-of-service study and apportioned revenues that moved each class's overall return closer to parity, while limiting rate increase impacts to the greatest extent possible in order to minimize rate shock. Tr. Vol. 17, 42-48. As such, not all class rates of return were within the +/- 10% band of reasonableness by the conclusion of the MYRP, but those classes that were far outside of the band under existing rates moved

incrementally closer to the band. *Id.* The Public Staff has historically relied upon the band of reasonableness as a primary guiding principle in apportioning revenues in general rate cases and recommends that the Commission continue to support this principle. Tr. vol. 17, 62, 69-71, 77, 115-16. In addition, witness Williamson explained that the Public Staff's methodology is replicable using any revenue requirement, not only the Public Staff's proposed revenue requirement in this case. Tr. vol. 17, 111-13.

Having considered the record evidence on the issue of rate design, the Commission concludes that the objectives of DEC's rate design – which are to: (1) achieve the necessary increase in rates to collect the total revenue requirement; (2) further align the cost to serve customers within DEC's residential, general service, lighting, industrial, and OPT rate schedules; and (3) develop rates that reflect the costs a customer causes DEC to incur – are reasonable. Further, the Commission concludes that the Public Staff's proposed ROR indices are appropriate for determining the allocation of the approved revenue increase to the customer classes, are reasonable to all parties, and are approved for the purposes of setting rates in this proceeding. Finally, for the foregoing reasons, the revisions to the rate schedules and to the service riders proposed by DEC in this proceeding are reasonable and are approved as proposed, unless otherwise specifically addressed hereinafter in this Order.

Based on the evidence in the record, the Commission is persuaded that the application of a variable cross subsidization reduction is reasonable for application

in this proceeding. In reaching this conclusion, the Commission gives significant weight to the testimony of witness Williamson that allowing for a more targeted approach to address cross subsidization helps move each class toward rate parity and minimizes interclass subsidization, while considering and incorporating other important factors. Additionally, the Commission recognizes that the Company's proposal of a flat variance reduction can be an appropriate way to address cross subsidization as found in the recent DEP case but concludes that a flat variance reduction is not the most appropriate method under the facts and circumstances in this case. While the Commission has approved a flat variance reduction in the past, it is persuaded by the evidence provided by witness Williamson that a departure from this prior practice is warranted in this proceeding, particularly given the passage of HB 951 and the facts and circumstances of this case. In this case, the Public Staff proposed a more tailored reduction in class cross subsidies, and the Commission finds this approach to be appropriate and more in keeping with the plain language and intent of HB 951. Accordingly, the Commission finds that a more targeted subsidy reduction is just and reasonable and consistent with the PBR Statute, and that using the class ROR indices proposed by the Public Staff to allocate costs among classes equitably moves rates closer to cost for all customer classes and will not lead to rate shock.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

Rider-NSC

The evidence supporting this finding of fact is contained in the direct testimony of DEC witness Jonathan L. Byrd, the rebuttal testimony of DEC witnesses Byrd and Morgan Beveridge (Rate Design Panel), and the testimony of Public Staff witness Jordan A. Nader.

In his direct testimony, witness Byrd discussed the Company's proposal for a new Non-Residential Solar Choice Rider (Rider NSC) to replace the existing Rider NM – Net Metering for Renewable Energy Facilities. He explained that the Company is proposing Rider NSC because of the new time-of-use (TOU) periods and three-part demand charge structure also being proposed in this proceeding. Tr. vol. 10, 102-04.

As proposed, Rider NSC requires all future non-residential net metering customers to be served under a general service rate schedule that includes TOU periods. In addition, the proposed rider would limit the size of customer-owned generation installations to the lesser of 100% of the customer's contract demand or 5 MW. This is an increase from the current limit for Rider NM, which is the lesser of the customer's contract demand or 1 MW. Pursuant to N.C.G.S. § 62-126.3(14), the system size limitation for customers with leased generation facilities would remain as the lesser of the customer's contract demand or 1 MW. Witness Byrd testified that the changes to non-residential net metering were discussed during

the Comprehensive Rate Design Study (CRDS) process. Tr. vol. 10, 102-03; Tr. vol. 11, Official Exhibits, 67-69.

Public Staff witness Nader recommended in his testimony that the Commission approve Rider NSC as proposed by DEP, but that the 5 MW cap on nameplate capacity should be removed. He argued that by requiring all non-residential net metering customers to subscribe to a TOU schedule, and under the proposed three-part demand structure, the full fixed cost of service should be recovered regardless of system size, mitigating the risk for material cross-subsidization. Witness Nader further stated that large non-residential customers that seek to install on-site generation will be subject to the capital funding limitations of their own businesses, serving as another limitation to prevent generation in excess of site load from being installed. Tr. vol. 12, 770-72.

In their rebuttal testimony, the Rate Design Panel responded to the Public Staff's recommendation to remove the 5 MW cap, stating that the cap strikes a reasonable balance between stakeholder requests for larger system sizes and considerations for grid operations and reliability. They further testified that during the CRDS, customers and stakeholders requested larger system sizes under net metering, and that the increase from 1 MW to 5 MW is an appropriate response to those requests. They added that large net metered systems require interconnection studies and present additional complexity because of the unpredictability of their output to the grid in terms of overall size, and that the proposed 5 MW cap is an appropriate balance of such concerns, including

customer desires. The Rate Design Panel also argued that customers with systems larger than 5 MW have the option to connect under Schedule HP. Tr. vol. 12, 215.

In response to questions from the Public Staff, witness Byrd testified that the answers he gave to cross examination questions on the topic of Rider NSC in the expert witness hearing in the Duke Energy Progress, LLC (DEP) rate case were still true and accurate to the best of his knowledge, and that his answers in the DEP proceeding would be consistent with DEC's position. Tr. vol. 11, 49-50. Specifically, in the DEP rate case, witness Byrd agreed that DEP's concern was not about its ability to provide a customer with its contracted capacity, but rather, that the customer's load would shut down unexpectedly and that its generation would suddenly be sent to the grid, also known as "backfeed." He added that a customer could have an outage week for a holiday, and suddenly the Company could have 10 MW of solar generation coming onto that portion of the grid. Tr. vol. 11, Official Exhibits, 48-49. Witness Byrd further testified during the DEP expert witness hearing that when a new generation resource is connected to a transmission or distribution circuit, the Company conducts an interconnection study. He stated that for systems greater than 1 MW, there is a more extensive interconnection study that includes a cluster study, and that this is a very rigorous study for larger system sizes. He agreed that these studies generally look at whether interconnecting a resource would raise reliability concerns and stated that the studies examine the impact of interconnecting a resource on other customers on that particular circuit. He testified that, as far as he knows, the interconnection

studies he had discussed would look at the potential for backfeed to enter the system. "If you have a customer who's installing solar generation, [the interconnection study is] looking at all those potential . . . variances where that generation might be putting a significant amount back on the grid." *Id.* at 46-50.

As stated previously in this Order, the Commission finds that it is reasonable and appropriate to approve the proposed Rider NSC. Here, however, the Commission considers the appropriateness of the 5 MW cap on customer generation systems in the Company's proposal. According to the Company's testimony, its primary concern with removing the 5 MW cap is reliability. Specifically, the Company is concerned about the potential for sudden backfeed onto the system if a customer's load should switch off.

Witness Byrd, however, testified that the Company conducts extensive interconnection studies for systems greater than 1 MW, and "very rigorous" studies for larger system sizes. He also testified that these interconnection studies examine potential reliability concerns, impacts on other customers on a circuit, and the potential for backfeed to enter the system. The Commission is persuaded that DEC's concerns regarding reliability and backfeed can properly be mitigated pursuant to the Company's existing interconnection study process, rather than through the setting of an arbitrary cap on the size of large customer generation systems. The Commission notes that if the 5 MW cap in the proposed Rider NSC is removed, large customers will still be limited to system sizes that are no greater

than their contract demand, which will result in an outer limit on nameplate capacity.

Accordingly, the Commission is of the opinion that it is more appropriate to examine each system on a case-by-case basis based on existing interconnection study procedures than to set a 5 MW cap on large customer net metered systems under Rider NSC. The Commission is aware that large customers with behind-the-meter systems of greater than 5 MW are eligible to take service under Schedule HP but does not find it appropriate to limit large customers to Schedule HP when they may prefer or be able to take greater advantage of the terms of Rider NSC.

Based on the foregoing and the entire record in this proceeding, the Commission finds and concludes that it is reasonable and appropriate to remove the proposed 5 MW cap on nameplate capacity from Rider NSC.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 29-30

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witness Tommy Williamson, the rebuttal testimony of Company witness Brent Guyton, and the entire record in this proceeding.

In his direct testimony, Public Staff witness T. Williamson expressed concern that at the time a landowner is asked to sign the Company's form easement document, the landowner cannot be assured as to the ultimate location of the easement. Tr. vol. 15, 169-70. That's because the Company's form easement provides that the centerline of the easement is established by the

location of the Company's facilities as subsequently installed; in other words, the easement location is a function of the subsequently installed facilities. *Id.*

Public Staff witness T. Williamson recommended that the Company provide customers with a depiction, map, or survey of the proposed easement area as part of the easement documentation to be executed by the customer. *Id.* He also recommended that the Company update its form easement language to describe an unambiguous easement location so that both the customer and the Company are clear as to the location of the easement at the time the customer signs the easement. *Id.*

In his rebuttal testimony, Company witness Guyton agreed in part with the Public Staff's recommendations. Tr. vol. 8, 239-40. Witness Guyton indicated that the Company "already provides a depiction or map of the planned facilities on every project, and in most cases can record and attach it to the easement." *Id.*

However, in discovery responses entered into evidence by the Public Staff, the Company indicated that it is not a standard Company practice to attach the depiction or map of the proposed locations of DEC facilities to the easement form that is signed by the customer and then recorded by the Company. Tr. vol. 8, 450-52; Official Exhibits vol. 9, Part I, 52.

Based on the foregoing and the entire record in this proceeding, the Commission concludes that as a standard practice, the Company should record a depiction or map of the planned facilities as part of the easement document to memorialize the intended location of the facilities as of the time the customer

executes the easement. The Commission is persuaded, based on the Company's statements in discovery, that such information is not currently provided to landowners on a consistent basis, and is further persuaded that providing such information is essential to fully informing landowners, to the Company's best ability at the time, of the location of the easement they are granting to the Company.

IT IS, THEREFORE, ORDERED as follows:

1. That DEP shall use the base fuel rates, exclusive of the equal percentage allocation but inclusive of voltage differentiated rates, established above in the next (2024) annual fuel adjustment proceeding;

2. That the approved base fuel and fuel-related cost factors by customer class are as follows: 2.808 cents/kWh for the Residential class, 3.097 cents/kWh for the SGS class, 2.580 cents/kWh for the MGS class, 2.138 cents/kWh for the LGS class, and 3.376 cents/kWh for the Lighting class;

3. The production demand allocation method approved for production demand costs using the 12 CP method at NC retail and the modified A&E method for NC retail classes is the most appropriate method for allocating purchased power capacity costs in DEP's annual fuel proceedings;

4. That a capital structure consisting of 52% common equity and 48% long-term debt is appropriate for ratemaking purposes in this proceeding;

5. That DEC's ROE shall be 9.35%;

6. That DEC's cost rate of long-term debt shall be 4.56%;

7. That, as a standard practice, DEC shall record the depiction or map of the planned facilities that DEC provides to customers, as part of the easement document to memorialize the intended location of the facilities as of the time the customer executes the easement;

8. That recovery of DEC's deferred COVID-related costs pertaining to customer fees waived, bad debt expense, and employee safety related costs is hereby allowed over a 12-year period with no return on the deferral period or on the unamortized balance during the amortization period, which shall begin on the effective date of the rates approved in this proceeding, except that these allowed costs shall be reduced by the Company's O&M expense savings during the pandemic including those for employee travel expenses, printing and postage costs, and remote work costs; voluntarily provided employee stipends; DEC's filed ERCs and the DEC portion of DEBS' filed ERCs; and the carrying cost benefit of the delayed payment of the employer portion of Social Security tax and DEC's portion of DEBS' carrying cost benefit concerning the same;

9. That DEC's request to continue the deferral of the incremental bad debt expenses related to the impact of COVID is hereby approved under the conditions that: (1) any payments associated with the bad debt amounts should be credited on a monthly basis through the next general rate case; (2) DEC shall report on a semiannual basis the actual amounts recorded to the deferral and the

payments received; and (3) expenses associated with call center overtime should not be included in the ongoing COVID deferral;

10. That DEC shall notify all SGS customers that customers may now elect the residential rate schedule for detached garages, barns, and other structures on the same residential premise currently served under a residential rate schedule;

11. That DEC shall notify all lighting class customers of the changes to the lighting services, rate schedules, and service regulations approved herein via bill insert or separate mailing;

12. That DEC shall notify all current OPT-V customers of the change to a 75 kW minimum contract demand threshold and of the alternative rate schedules available to them via bill insert or separate mailing;

13. That the revenue requirement increase approved in this case will be apportioned to design rates/compliance tariffs using the Rate of Return on Rate Base indices for each customer class in each rate year of the MYRP share as reflected within the Corrected Supplemental Exhibits of David M. Williamson; and

14. That Rider NSC, as approved herein, shall not include a cap on nameplate capacity aside from the limitation that the size of the customer-owned generation installation should not exceed 100% of the Customer's contract demand.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____ 2023.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on all parties of record or to the attorney of record of such party in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 6th day of November, 2023.

Electronically submitted
/s/Nadia L. Luhr