

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1243

In the Matter of

Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC For Issuance of a Storm Cost Recovery Docket Financing Order )  
)  
) **PUBLIC STAFF**  
) **PROPOSED FINANCING ORDER**  
) **OF DUKE ENERGY CAROLINAS,**  
) **LLC**  
)

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BEFORE: Chair Charlotte A. Mitchell, Presiding; Commissioners ToNola D. Brown-Bland; Lyons Gray; Daniel G. Clodfelter; Kimberly W. Duffley; Jeffrey A. Hughes; and Floyd B. McKissick, Jr.

APPEARANCES:

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BY THE COMMISSION: This Financing Order addresses the petition of Duke Energy Carolinas, LLC (“DEC,” “Petitioner” or the “Company”) under North Carolina General Statute (“N.C. Gen. Stat.”) § 62-172, filed jointly with Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies”) (“Joint Petition”): (1) to finance its Securitizable Balance;<sup>1</sup> (2) for approval of the proposed securitization financing structure; (3) for approval to issue Storm Recovery Bonds,<sup>2</sup> secured by the pledge of Storm Recovery Property, in one or more series in an aggregate principal amount not to exceed the relevant Securitizable Balance (as of the date the first series Storm Recovery Bonds are issued); (4) for approval of the Financing Costs, including up-front Financing Costs (“Up-

<sup>1</sup> See page [§12](#) defining “Securitizable Balance.”

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning assigned to them in N.C. Gen. § Stat. 62-172 and refer specifically to DEC’s particular transaction approved herein.

front Financing Costs”),<sup>3</sup> incurred in connection with the issuance of Storm Recovery Bonds and on-going Financing Costs (“On-going Financing Costs” and together with Up-front Financing Costs, “Financing Costs”);<sup>4</sup> (5) for approval to create Storm Recovery Property, including the right to (i) impose, bill, charge, collect and receive nonbypassable Storm Recovery Charges sufficient to recover the principal of, and interest on, the Storm Recovery Bonds plus On-going Financing Costs and (ii) obtain periodic formulaic adjustments to the Storm Recovery Charge as provided in this Financing Order; and (6) for approval of the tariff to implement the Storm Recovery Charge (“Tariff”).

### **PROCEDURAL HISTORY**

In 2018, DEC incurred significant storm expenditures from Hurricanes Florence and Michael and Winter Storm Diego (collectively, the “Storms”).

Subsequently, on December 21, 2018, the Company filed a Petition for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego, in Docket No. E-7, Sub 1187 (“Storm Deferral Docket”).

On September 30, 2019, DEC filed an application (“Application”) with the Commission in Docket No. E-7, Sub 1214 (“2019 DEC Rate Case”) requesting a general rate increase, pursuant to N.C. Gen. Stat. §§ 62-133 and -134 and Commission Rule R1-17, along with direct testimony and exhibits. The Application included a request to consolidate the Storm Deferral Docket with the rate case and sought to recover DEC’s deferred asset balance associated with the Storms, including a return on the unrecovered

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<sup>3</sup>Up front Financing Costs are defined in the Evidence and Conclusions for Finding of Fact No. 6.

<sup>4</sup>On-going Financing Costs are defined in the Evidence and Conclusions for Finding of Fact No. 23 & 24.

balance, and with respect to the capital investments, including a deferral of depreciation expense and a return on the investment (“Storm Recovery Costs”).

On November 6, 2019, SB 559 was signed into law, amending N.C. Gen. Stat. § 62-172 to create a new financing tool that may be used by a utility to recover storm restoration costs, utility cost recovery charge securitization (or the “Securitization Statute”). Under this financing tool, an electric public utility company can issue ~~storm recovery bonds~~Storm Recovery Bonds with lower financing costs that are secured by ~~storm recovery property~~Storm Recovery Property including a dedicated ~~storm recovery charge~~Storm Recovery Charge that is separate and distinct from the utility's base rate.

After conducting substantial discovery on the issues raised in the Application, the Public Staff – North Carolina Utilities Commission (“Public Staff”) determined that Storm Recovery Costs were prudently incurred.<sup>5</sup>

On March 25, 2020, in Docket No. E-7, Sub 1214, DEC and the Public Staff reached an Agreement and Stipulation of Partial Settlement (“DEC Settlement”) with respect to several revenue requirement issues presented by the Company’s Application, including the ratemaking treatment of the deferred expenses associated with the Storms. Pursuant to the DEC Settlement, the Company agreed to remove certain capital and operation and maintenance (“O&M”) costs (“Storm Expenses”) associated with the Storms from its revenue requirement in the 2019 DEC Rate Case and instead file a petition for a financing order under the Securitization Statute. For purposes of settlement, DEC and the Public Staff also agreed on the assumptions to be used in the securitization docket to evaluate whether securitization provides quantifiable customer benefits when compared to

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<sup>5</sup> Testimony of Michelle M. Boswell Public Staff—North Carolina Utilities Commission, at 27-28, Docket No. E-7, Sub 1214 (filed Feb. 28, 2020).

traditional storm cost recovery as required by Section (b)(1)(g) of the Securitization Statute.

On October 16, 2020, pursuant to the Securitization Statute, DEC, along with DEP, filed its Joint Petition for issuance of a storm recovery ~~financing order~~Financing Order to recover their respective Storm Expenses.

The Commission approved the DEC Settlement in Docket No. E-7, Sub 1214 on \_\_\_\_ (“DEC Rate Order”), removing from Commission consideration in that docket the Company’s initial request for recovery of its Storm Expenses, and recognizing the Company’s authority to instead file a petition for financing order under the Securitization Statute to securitize its Storm Expenses. Additionally, by the Commission’s DEC Rate Order, the Commission determined that the Storm Recovery Costs (as defined therein) were reasonable and prudently incurred.

On October 26, 2020, DEC and DEP filed their Joint Petition for Financing Orders (Joint Petition) requesting the Commission to grant authorization for the financing of the Companies’ Storm Recovery Costs incurred as a result of the Storms. The Companies further requested that the Commission find that their Storm Recovery Costs and related Financing Costs are appropriately financed by debt secured by Storm Recovery Property, and that the Commission issue orders for DEC and DEP by which each utility may accomplish such financing using a securitization structure authorized by N.C. Gen. Stat. § 62-172, so that the Companies may recover their prudently incurred Storm Recovery Costs.

On November 6, 2020, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony, and Establishing Discovery Guidelines.

On December 17, 2020, Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”) and III (“CIGFUR III” and, together with CIGFUR II, “CIGFUR”) filed a Petition to Intervene.

On December 18, 2020, the Commission granted CIGFUR’s Petition to Intervene.

On December 21, 2020, the Public Staff filed the testimony and exhibits of Joseph S. Fichera, William Moore, Calvin C. Craig, Barry M. Abramson, Steven Heller, Rebecca Klein, Brian A. Maher, Hyman Schoenblum, and Paul Sutherland. On that same day, the Public Staff filed a Motion for Extension of Time to file the joint testimony of Michael C. Maness and Michelle M. Boswell.

On December 22, 2020, the Commission granted the Public Staff’s Motion for Extension of Time and the Public Staff filed the joint testimony and exhibits of Michael C. Maness and Michelle M. Boswell.

On January 6, 2021, the Public Staff filed corrections to the testimony of witnesses Paul R. Sutherland, Steven Heller, Joseph S. Fichera, and the joint testimony of Michael C. Maness and Michelle M. Boswell.

On January 11, 2021, the Companies filed the rebuttal testimony witnesses Thomas J. Heath, Jr., Charles N. Atkins III, and Melissa Abernathy.

On January 13, 2021, the Public Staff filed a revised version of the Public Staff Direct Testimony Corrections filed on January 6, 2021, as well as the fully memorialized testimony (not exhibits) of witnesses Paul R. Sutherland, Steven Heller, Joseph S. Fichera, and the joint testimony of Michael C. Maness and Michelle M. Boswell.

On January 20, 2021, the Companies filed a witness list.

On January 25, 2021, the Companies filed a Notice of Billing Compliance Procedure and the Affidavit and Supporting Exhibits of Jonathan L. Byrd. On that same day, the Companies also filed an Errata to Jonathan L. Byrd’s direct testimony.

On January 27, 2021, the Companies and the Public Staff filed an Agreement and Stipulation of Partial Settlement (“2021 Stipulation”).

On January 27, 2021, the Companies filed a Motion for Temporary Waiver of the 135-Day Timeframe to Issue Financing Orders via a 30-Day Extension of Time.

On January 27, 2021, the Companies and the Public Staff filed a Joint Motion to Excuse Witnesses.

On January 28, 2021, the evidentiary hearing began, and on January 29, 2021, the evidentiary hearing concluded.

On February 1, 2021, and February 2, 2021, the parties filed applicable cross-examination exhibits, redirect exhibits, and witness summaries from the evidentiary hearing.

On February 5, 2021, transcripts from the evidentiary hearing were made available by the clerk in the dockets for this proceeding.

On February 9, 2021, the Companies filed a Motion for Judicial Notice as to the Companies’ Errata to the Direct Testimony of Jonathan L. Byrd.

On February 16, 2021, the Commission entered its Order Admitting Errata to Direct Testimony of Jonathan L. Byrd into Evidence.

### **STATUTORY FRAMEWORK**

The Securitization Statute establishes the process by which a public utility may petition the Commission for a financing order authorizing the public utility to finance storm

~~recovery costs~~Storm Recovery Costs associated with storm recovery activities with the proceeds of ~~storm recovery bonds~~Storm Recovery Bonds that are secured by the ~~storm recovery property~~Storm Recovery Property. Before granting a financing order, the Commission must find that the issuance of the ~~storm recovery bonds~~Storm Recovery Bonds and the imposition of ~~storm recovery charges~~Storm Recovery Charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of ~~storm recovery bonds~~Storm Recovery Bonds. See N.C. Gen. Stat. § 62-172(b)(3)b.2.

To support this finding, the utility must submit a petition that includes (a) a description of its storm recovery activities; (b) an estimate of the ~~storm recovery costs~~Storm Recovery Costs; (c) the proposed level of storm recovery reserve, if any; (d) an indicator of the amount of ~~storm recovery costs~~Storm Recovery Costs to be financed using ~~storm recovery bonds~~Storm Recovery Bonds; (e) an estimate of the ~~financing costs~~Financing Costs related to the ~~storm recovery bonds~~Storm Recovery Bonds; (f) an estimate of the ~~storm recovery charges~~Storm Recovery Charges necessary to recover ~~storm recovery costs~~Storm Recovery Costs; and (g) a comparison between the net present value of the cost to customers estimated to result from the issuance of ~~storm recovery bonds~~Storm Recovery Bonds and the cost that would result from the application of the traditional method of financing and recovering ~~storm recovery costs~~Storm Recovery Costs; this comparison must demonstrate that the issuance of ~~storm recovery bonds~~Storm Recovery Bonds and the imposition of ~~storm recovery charges~~Storm Recovery Charges are expected to provide quantifiable benefits to customers. See N.C. Gen. Stat. § 62-172 (b)(1)a.-g.



When issued, the ~~financing order~~Financing Order must include the amount of ~~storm recovery costs~~Storm Recovery Costs to be financed using ~~storm recovery bonds~~Storm Recovery Bonds, the imposition and collection of ~~storm recovery charges~~Storm Recovery Charges that are nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service from the public utility or its successors or assignees, the maturity period of the bonds, a formula-based true-up mechanism, the creation of ~~storm recovery property~~Storm Recovery Property that will be used to secure the bonds, and a method of tracing funds collected as ~~storm recovery charges~~Storm Recovery Charges. See N.C. Gen. Stat. § 62-172(b)(3)b.1.-11. In addition, the Financing Order shall include any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate. N.C. Gen. Stat. § 62-172(b)(3)b.12.

The Securitization Statute specifies that the financing order must also include a requirement that the public utility file with the Commission at least annually a letter applying the formula-based mechanism, and request adjustments in the ~~storm recovery charge~~Storm Recovery Charge, if necessary, to a sufficient level to ensure the bond payment obligations. The Commission does not have the discretion to disapprove or alter the true-up calculation, except to correct mathematical and clerical errors.

Based on the entire record in this proceeding, the Commission now makes the following:

## FINDINGS OF FACT

### Jurisdiction

#### JURISDICTION

1. DEC is (1) a limited liability company duly organized and existing under the laws of the State of North Carolina; (2) duly authorized by its Articles of Organization to engage in the business of generating, transmitting, distributing and selling electric power and energy; (3) a public utility under the laws of North Carolina, and its operations in this State are subject to the jurisdiction of this Commission; (4) an investor-owned public utility; (5) a public utility under the laws of the State of South Carolina, and its operations in South Carolina are subject to the jurisdiction of the Public Service Commission of South Carolina; and (6) a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. ~~DECs'~~DEC's service area covers 24,000 square miles in the central and western portions of North Carolina and western South Carolina. The service area includes 62 counties, 44 in North Carolina and 18 in South Carolina. ~~The Company~~DEC supplies retail electric service to approximately 2 million customers in North Carolina.

2. The Commission has jurisdiction over the rates and charges, rate schedules, classifications, and practices of DEC regarding its North Carolina operations under Chapter 62 of the General Statutes of North Carolina.

3. DEC is lawfully before the Commission based upon its petition for a financing order pursuant to N.C. Gen. Stat. §§ 62-133, and 62-172 and Commission Rule R1-17.

SECURITIZATION STATUTE

4. N.C. Gen. Stat. § 62-172, the Securitization Statute, was enacted November 6, 2019. This Joint Petition by the Companies is the first petition by a public utility pursuant to the Securitization Statute.
5. The Securitization Statute authorizes the Commission to adopt Financing Orders authorizing the issuance of Storm Recovery Bonds and includes elements to be contained in the Financing Orders.

## JOINT PETITION

4.6. On October 26, 2020, DEC and DEP filed ~~its~~their Joint Petition for a ~~financing order~~ Financing Orders pursuant to the Securitization Statute including DEC's request to issue Storm Recovery Bonds in the amount of approximately: \$230.8 million, which consists of \$225.6 million of Storm Recovery Costs (including carrying costs from the date of the Storms through the projected issuance date of the Storm Recovery Bonds, calculated at the Company's approved weighted average cost of capital (←“Carrying Costs”)<sup>6</sup>), plus Up-front Financing Costs of issuing the Storm Recovery Bonds of approximately \$5.2 million, which are subject to change and update prior to the pricing of the Storm Recovery Bonds plus or minus any adjustment to Carrying Costs necessary to account for the number of days, as applicable, either greater than or less than assumed in the Carrying Cost calculation based on the projected issuance date for the Storm Recovery Bonds. This amount is referred to herein as the “Securitizable Balance.” The Joint Petition includes direct testimony and exhibits supporting the request, as well as an estimate of the Storm Recovery Charges necessary to recover Storm Recovery Costs and a comparison between the net present value of the costs to customers that are estimated to result from the issuance of Storm Recovery Bonds with a final scheduled term to maturity of 15 years and the costs that would result from the application of the traditional method of recovery of Storm Recovery Costs from customers, in accordance with the Securitization Statute.

## 2021 STIPULATION

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<sup>6</sup> This amount assumes the Storm Recovery Bonds are issued on June 1, 2021.

7. On January 27, 2021, the Companies and the Public Staff filed the 2021 Stipulation resolving issues regarding Up-front Financing Costs, On-going Financing Costs, servicing and administration fees, tail-end collections, capital contributions, the Public Staff's ability to audit the Companies' Storm Recovery Costs, and allowing the period to the scheduled final maturity of Storm Recovery Bonds to be between 18 and 20 years from the date of issuance.

8. The Commission, having carefully reviewed the 2021 Stipulation and all of the evidence of record, finds and concludes that the 2021 Stipulation is the product of the give-and-take settlement negotiations between the Companies and the Public Staff, are material evidence in this proceeding, and are entitled to be given appropriate weight in this proceeding.

9. The Commission finds and concludes, based on all of the evidence presented, that the provisions of the 2021 Stipulation are just and reasonable to all parties to this proceeding and serve the public interest. Therefore, the 2021 Stipulation should be approved in its entirety.

#### **EVIDENTIARY HEARING**

10. On January 27 and January 28, 2021, this Commission held a hearing in this docket. All testimony filed in this docket was entered into the record as though read, along with the prefiled exhibits of all witnesses. The hearing considered (a) whether this Commission should issue Financing Orders pursuant to the Companies' Join Petition, and if so, (b) what standards, conditions and procedures should be included in those Financing Orders.

11. During the hearing, the Public Staff witnesses and the Companies witnesses testified regarding the Best Practices provided in testimony by Saber Partners LLC (“Saber Partners”), including the participation of the Public Staff’s financial advisor and any financial advisor retained by the Commission in the structuring, marketing, and pricing of the Storm Recovery Bonds. The Public Staff and the Companies agreed that the Financing Orders should direct that Storm Recovery Bonds shall be structured, marketed and priced so as to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and with the terms of this Financing Order to achieve the maximum present value savings to customers (the “Lowest Charge Standard”), and that each Company would include in its post-Financing Order issuance advice letter (“IAL”) a certification that the Lowest Cost Standard in fact was achieved. For purposes of the Lowest Charge Standard, “consistent with market conditions at the time the Storm Recovery Bonds are priced” means the prices at which Storm Recovery Bonds are sold to parties unrelated to the Companies, including both underwriters and parties purchasing Storm Recovery Bonds from underwriters.

### **COSTS ELIGIBLE FOR FINANCING**

#### **Storm Recovery Costs**

5.12. Consistent with the Commission’s findings and conclusions in its 2019 DEC Rate Case Order issued in Docket No. E-7, Sub 1214E-7, Sub 1214, and subject to completion of the Public Staff audit pursuant to the 2021 Stipulation, Storm Recovery Costs subject to adjustments including the final amount of carrying costs through the issuance date of the Storm Recovery Bonds, are eligible for recovery through securitization and have been found to be reasonable and prudent. Furthermore, the Commission finds

that (i) the proposed issuance of Storm Recovery Bonds and the imposition of Storm Recovery Charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and (ii) the structuring and pricing of the Storm Recovery Bonds are reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order (collectively, the “Statutory Cost Objectives”).

### **Up-front Financing Costs**

~~6.13.~~ DEC’s proposed Up-front Financing Costs, in the estimated amount of \$5.2 million, are reasonable and prudent and eligible for recovery through securitization.

~~7.14.~~ DEC’s request to establish a regulatory asset or regulatory liability to defer any difference between prudently incurred Up-front Financing Costs ~~in excess of and~~ the amounts appearing in the ~~issuance advice letter~~ IAL, as set forth in the 2021 Stipulation, is approved.

### **STRUCTURE OF ISSUANCE**

~~8.15.~~ DEC’s proposed financing structure adheres to the requirements of the Securitization Statute.

### **Special Purpose Entities**

~~9.16.~~ For purposes of securitization it is reasonable for DEC to create one or more Special Purpose Entities (“SPEs”),<sup>7</sup> each of which will be a Delaware limited liability company (“LLC”) with DEC as its sole member. Any such SPE will be an “assignee” as defined in N.C. Gen. Stat. § 62-172(a)(2), when an interest in Storm Recovery Property is

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<sup>7</sup> For purposes of this Financing Order, all references to the SPE shall be applicable to all SPEs that are created to issue other series of Storm Recovery Bonds pursuant to this Financing Order.

transferred, other than as security, to such SPE, and such SPE may issue Storm Recovery Bonds in accordance with this Financing Order.

**Storm Recovery Property**

~~10.17.~~ It is reasonable for DEC to sell or otherwise transfer Storm Recovery Property to the SPE pursuant to the terms of this Financing Order. Upon the transfer by DEC of the Storm Recovery Property to the SPE, that SPE will have all of the rights, title and interest of DEC with respect to such Storm Recovery Property, including the right to impose, bill, charge, collect, and receive the Storm Recovery Charge authorized by this Financing Order and to obtain periodic formulaic adjustments to each Storm Recovery Charge. Such Storm Recovery Property is expected to be pledged by the SPE to and held and administered by an indenture trustee as collateral for payment of the Storm Recovery Bonds to ensure the Statutory Cost Objectives and the Lowest Charge Standard in fact are achieved.

~~11.18.~~ The State of North Carolina and its agencies, including this Commission, has pledged to and agrees with bondholders, the owners of the Storm Recovery Property, and other financing parties that the State and its agencies, including this Commission, will not alter the provisions of the Securitization Statute, which authorize the Commission to create Storm Recovery Property or take or permit any action that impairs the value of the Storm Recovery Property, as further described in N.C. Gen. Stat. § 62-172(k)(1).



### **Form of Transaction Documents**

~~12.19.~~ The form Purchase and Sale Agreement,<sup>8</sup> Administration Agreement,<sup>9</sup> Limited Liability Company Agreement (“LLC Agreement”),<sup>10</sup> form of Indenture,<sup>11</sup> and Servicing Agreement,<sup>12</sup> filed as exhibits to witness Thomas J. Heath Jr.’s testimony, (“Transaction Documents”) are in the public interest and necessary to facilitate the transaction.

### **Offering and Sale of Bonds**

~~13.20.~~ DEC is hereby authorized to issue the Storm Recovery Bonds through a negotiated sale or other sales option to achieve the Statutory Cost Objectives ~~and the~~  
Lowest Charge Standard

~~14.21.~~ In the alternative, DEC is authorized to sell the Storm Recovery Bonds in combination with DEP to a grantor trust (the “SRB Issuer”) that will issue secured pass-through notes that are backed by the Storm Recovery Bonds and ~~storm recovery bonds~~  
Storm Recovery Bonds issued by DEP in one transaction through the use of the SRB Issuer.

### **Amortization, Interest Rates, and Credit Ratings of Storm Recovery Bonds**

~~15.22.~~ The expected term of the scheduled final payment date of the last maturing tranche of bonds issued pursuant to the authority granted herein, as determined in the reasonable discretion of DEC, should be no more than ~~15~~20 years from the issuance of the

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<sup>8</sup> See Heath Exhibit 2a.

<sup>9</sup> See Heath Exhibit 2d.

<sup>10</sup> See Heath Exhibit 2e.

<sup>11</sup> See Heath Exhibit 2c.

<sup>12</sup> See Heath Exhibit 2b.

series of Storm Recovery Bonds. The legal maturity date of each tranche may be longer than the scheduled final payment date for that tranche.

~~16.23.~~ We find that each tranche of the Storm Recovery Bonds should have a fixed interest rate, determined consistent with current market conditions. If market conditions change, and it becomes necessary to achieve the Statutory Cost Objectives and the Lowest Charge Standard for the one or more tranches of bonds to be issued in floating-rate mode, DEC is authorized to issue such bonds but will be required to execute agreements to swap the floating payments to fixed-rate payments.

~~17.24.~~ DEC should strive to achieve AAA(sf) credit ratings, and DEC is authorized to provide the necessary credit enhancements, with recovery of related costs as On-going Financing Costs, to achieve such ratings.

#### **Security for the Storm Recovery Bonds**

~~18.25.~~ DEC's utilization of a Collection Account, including a General Subaccount, a Capital Subaccount, and an Excess Funds Subaccount, is reasonable and appropriate. DEC may include other subaccounts in the Collection Account, if necessary, to obtain AAA(sf) ratings on a series of Storm Recovery Bonds.

#### **DEC as Initial ~~Serviceers~~ Servicer of the Storm Recovery Bonds**

~~19.26.~~ DEC's proposal to act as initial servicer of the Storm Recovery Bonds is reasonable and appropriate.

~~20.27.~~ The on-going servicing fee for DEC, acting as the initial servicer, in the amount of 0.05 percent of the initial principal amount of the Storm Recovery Bonds plus out-of-pocket expenses provided for in the Servicing Agreement is necessary to

compensate the servicer adequately and ensure the high credit quality of the Storm Recovery Bonds.

### **DEC as Administrator of the SPE**

~~21.28.~~ DEC's proposal to act as an administrator of the SPE under the proposed financing transaction is reasonable and appropriate.

~~22.29.~~ The on-going fee to be paid to the administrator of \$50,000 per year plus out-of-pocket expenses included in the Administration Agreement is necessary to cover the costs and expenses of administering the SPE and to preserve the integrity of the bankruptcy-remote structure of the SPE and the high credit quality of the Storm Recovery Bonds.

### **On-going Financing Costs, Tail-End Collections, and Capital Contributions**

~~23.30.~~ The On-going Financing Costs identified in DEC's Joint Petition and that are identified in Attachment 4 of the form ~~Issuance Advice Letter ("IAL")~~ IAL qualify as "financing costs" eligible for recovery pursuant to N.C. Gen. Stat. § 62-172(a)(4).

~~31.~~ It is appropriate for DEC to ~~credit back to customers all periodic~~ establish a regulatory asset or liability to track (as received and incurred) servicing and administration fees in excess of DEC's or an affiliate of DEC's administrative fee received by the Company from the SPEs and the incremental cost of performing the servicer or administrator function in the next rate case when costs and revenues associated with the incurred by the Company in fulfilling the required functions under the servicing and administration fees administrative agreements. Any regulatory asset or liability account established shall be considered for recovery from or returned to customers in the Company's next respective general rate case.

32. It is appropriate for the Public Staff to audit on-going financing costs for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the Company or SPE, discuss concerns or proposed changes to the expenses with the Company, and in cases where resolution cannot be reached, file a recommendation with the Commission, and the amounts will be returned to customers with carrying costs in its next general rate case as resolved by the Commission, as detailed in the 2021 Stipulation.

33. It is appropriate for DEC to track any tail-end collections separately from all other costs included in the cost of this proceeding, and place the amounts, including accrued carrying costs, in a regulatory liability to be considered for recovery in DEC's next general rate case.

24.34. It is appropriate for DEC to earn a return at the interest rate of the highest tranche of service the storm recovery bonds for the Company's capital contributions to each respective SPE.

**Storm Recovery Bonds to be Treated as "Debt" for Federal Income Tax Purposes**

25.35. DEC shall structure the Storm Recovery Bond transactions in a way that meets all requirements for the Internal Revenue Service's ("IRS") safe harbor treatment.

## STORM RECOVERY CHARGES

### Imposition and Computation of Storm Recovery Charges

~~26.36.~~ To repay the Storm Recovery Bonds and On-going Financing Costs, DEC is authorized to impose Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and related Financing Costs are paid in full.

~~27.37.~~ The Securitizable Balance to be financed using Storm Recovery Bonds shall be determined in accordance with the calculation shown in Appendix A to this Financing Order.

~~28.38.~~ The proposed allocation methodology of the Storm Recovery Charges is based upon DEC's existing (and previously approved)<sup>13</sup> allocation methodology in the proposed Tariff and should be approved.

~~29.39.~~ The State of North Carolina and its agencies, including this Commission, has pledged to and agrees with bondholders, the owners of the Storm Recovery Property, and other financing parties that the State and its agencies, including this Commission, will not, except for changes made pursuant to the True-Up Mechanism (as defined in Finding of Fact No. ~~3238~~), reduce, alter, or impair the Storm Recovery Charges until any and all principal, interest, premium, Financing Costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the Storm Recovery Bonds have been paid and performed in full, as further described in N.C. Gen. Stat. § 62-172(k)(1)d.

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<sup>13</sup> See 2019 Rate Order at \_\_\_\_.

### **Treatment of Storm Recovery Charge in Tariff and on Retail Customer Bills**

~~30-40.~~ DEC's proposed Tariff complies with N.C. Gen. Stat. § 62-172(d)(1) and is appropriate for use in this proceeding.

~~31-41.~~ DEC is authorized and directed to include the Storm Recovery Charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill as required by N.C. Gen. Stat. § 62-172(d)(2) and a statement that the SPE is the owner of the rights to the Storm Recovery Charges and that DEC is acting as a servicer for the SPE as required by N.C. Gen. Stat. § 62-172(d)(1).

### **True-Up of Storm Recovery Charges**

~~32-42.~~ The formulaic true-up mechanism ("True-Up Mechanism") and associated procedures described in DEC's Tariff [and revised in the Joint Reply to Commission Questions by the Companies and the Public Staff](#) are reasonable and appropriate and are hereby approved.

### **BOND TEAM COMPOSITION AND DECISION MAKING**

~~43.~~ [The Securitization Statute does not provide that the public utility shall be solely responsible for the structuring, marketing, and pricing of Storm Recovery Bonds.](#)

~~44.~~ [N.C. Gen. Stat. § 62-172 \(b\)\(3\) b.12 provides that the Commission may include in the Financing Order any other conditions not inconsistent with the Securitization Statute that the Commission determines appropriate.](#)

~~45.~~ [The only previous securitization bond proceeding by a Duke Energy Corporation subsidiary electric public utility was the 2015-2016 proceeding for Duke Energy Florida \("DEF"\).](#)

46. In the DEF securitization proceeding, the Florida Public Service Commission (“FPSC”) established a Bond Team consisting of DEF, DEF’s financial advisor, the FPSC staff, and the FPSC’s financial advisor to work together and make all decisions as to the structuring, marketing, pricing, and documentation for the securitization bonds.

47. Designated representatives of the DEF Bond Team members, DEF and the FPSC staff, had equal decision-making authority on the structuring, marketing, and pricing of the securitization bonds. A designated FPSC commissioner was assigned to resolve any issue as to which the designated representatives of DEF and the FPSC staff could not reach agreement.

48. The Bond Team in the DEF securitization transaction was a success, as described by Companies witness Heath and by the Deputy General Counsel to Duke Energy Corporation, as recounted by Public Staff witness Joseph Fichera in oral testimony at the evidentiary hearing.

49. The Public Staff is required by N.C. Gen. Stat. § 62-15 (d)(3) to intervene on behalf of the using and consuming public in all Commission proceedings affecting the rates or service of a public utility.

50. The Public Staff’s advisor in this proceeding has extensive experience with the issuance of securitization bonds, including the DEF 2015-2016 proceeding.

48. 47. The Companies have not shown that there is sufficient potential for SEC liability exposure that would warrant exclusion of the Public Staff from participating as a decision-maker on the Bond Team. The establishment of the Bond Team as provided

in this Financing Order is appropriate and is not inconsistent with the provisions of the Securitization Statute.

49. It is in the public interest that (a) a Bond Team be established consisting of a designated representative of the Companies and the Companies' advisor, a designated Commissioner and the Commission's financial advisor and legal counsel, and a designated representative of the Public Staff and the Public Staff's financial advisor; (b) through these designated representatives, the Companies, the Commission and the Public Staff have equal decision-making authority on all aspects of structuring, marketing, and pricing the proposed Storm Recovery Bonds and any SRB Securities, including without limitation matters that could expose the Companies or the SPE issuer(s) to securities law or other potential liability; and (c) the designated Commissioner resolves any issue as to which the designated representative of the Companies and the designated representative of the Public Staff are unable to reach agreement involving the structure, marketing and pricing of the Storm Recovery Bonds. Upon pricing of the Storm Recovery Bonds, the Bond Team's results and recommendations will be presented to the full Commission for consideration and final approval. The full Commission will decide whether the Storm Recovery Bonds comply with the statute and Financing Orders for final approval by deciding whether to issue a "stop order" preventing issuance of the Storm Recovery Bonds. The Financing Orders should further provide that (i) the Bond Team include in the transaction documents all ratepayer protections found in the transaction documents in the Florida/DEF Transaction (as hereafter defined); (ii) the Bond Team select the underwriters and legal counsel for underwriters through a process mutually agreed upon by all members of the Bond Team; and (iii) the Companies' structuring advisor is not allowed to serve as a sole



bookrunning underwriter for the SRBs, but may allow such structuring advisor to participate in the transaction as an underwriter if the modeling of the SRB offering is independently determined.

### **ISSUANCE ADVICE LETTER PROCESS**

33-50. Because the actual structure and pricing of the Storm Recovery Bonds and any SRB Securities are unknown as of the issuance of this Financing Order, following determination of the final terms of the Storm Recovery Bonds and any SRB Securities and before issuance of the Storm Recovery Bonds and any SRB Securities, DEC will file with the Commission for each series of Storm Recovery Bonds, an IAL, as well as a form of True-Up Adjustment Letter<sup>14</sup> (“TUAL,” and together with the IAL, the “IAL/TUAL”) in the forms attached hereto as Appendices B and C. The IAL/TUAL will be provided to the Commission two days prior to the issuance of the Storm Recovery Bonds, so that the Commission can decide whether the Storm Recovery Bonds should be issued. The initial Storm Recovery Charges and the final terms of the Storm Recovery Bonds described in the IAL/TUAL will be final unless before noon on the third business day after pricing the Commission issues an order finding that the proposed issuance does not comply with the Standards of this Financing Order in this Finding of Fact No. 3350. The “Standards of this Financing Order” are: 1) the issuance of Storm Recovery Bonds and imposition and collection of Storm Recovery Charges as authorized in this Financing Order provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds; 2) the aggregate principal amount of Storm Recovery Bonds issued does not exceed the Securitizable Balance; 3) the Storm Recovery

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<sup>14</sup> The True-Up Adjustment Letter is defined in the Evidence and Conclusions for Finding of Fact No. 3350.

Bonds and any SRB Securities (as defined in Evidence and Conclusions for Finding of Fact Nos. ~~13 and 14~~19 and ~~Storm Recovery Bonds~~20) will be issued in one or more series comprised of one or more tranches having scheduled final payment date of no longer than ~~1520~~ years; 4) the Storm Recovery Bonds or any SRB Securities have received a rating of Aaa(sf) / AAA(sf) from at least two of the three major rating agencies; 5) ~~the any~~ SRB Securities and Storm Recovery Bonds are structured to achieve substantially level debt service payments on an annual basis; 6) the issuance of the ~~SRB Securities and~~ Storm Recovery Bonds ~~has and any SRB Securities have~~ been structured in accordance with IRS Rev. Proc. 2005-62; and 7) the structuring, marketing and pricing of the Storm Recovery Bonds, including the issuance of SRB Securities, if any, resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order: (the Lowest Charge Standard).

### ADDITIONAL INDEPENDENT LOWEST CHARGE STANDARD

#### CERTIFICATIONS

51. It is in the public interest for the Companies' IAL/TUALs to include a certification that the structuring, marketing and pricing of the Storm Recovery Bonds and any SRB Securities in fact achieved the Lowest Charge Standard. In addition, the Commission finds that it is in the public interest that (a) the Public Staff's financial advisor, as well as each lead underwriter of the Storm Recovery Bonds and any SRB Securities, be required to deliver to the Commission an independent certificate confirming that the structuring, marketing and pricing of the Storm Recovery Bonds and any SRB Securities in fact achieved the Lowest Charge Standard; and (b) these certificates be delivered to the

Commission at least two days prior to issuance of the Storm Recovery Bonds and any SRB Securities.

### **MITIGATION OF RATE IMPACTS**

1.52. The issuance of Storm Recovery Bonds and imposition and collection of Storm Recovery Charges as authorized in this Financing Order are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds. The calculation of quantifiable benefits to customers was prepared by the Company in accordance with the requirements set forth in the DEC Settlement.

### **FLEXIBILITY**

2.53. It is appropriate to allow DEC flexibility in establishing the final terms and conditions of the Storm Recovery Bonds and any SRB Securities and therefore the ability, at its option, to cause one or more series of ~~storm recovery bonds~~ Storm Recovery Bonds and any SRB Securities to be issued, in order to achieve the Statutory Cost Objectives and the Lowest Charge Standard.

### **CONCLUSION**

3.54. This Financing Order adheres to the statutory requirements outlined by the Securitization Statute necessary to issue a ~~financing order~~ Financing Order authorizing a public utility to finance ~~storm recovery costs~~ Storm Recovery Costs.

## **DISCUSSION AND CONCLUSIONS**

### **JURISDICTION**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1-3**

##### **Jurisdiction**

The evidence supporting these findings of fact and conclusions is contained in the verified Joint Petition of DEC, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions are informational, procedural, and jurisdictional in nature, and are not contested by any party.

### **SECURITIZATION STATUTE**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 4- 5**

The evidence supporting these findings of fact and conclusions is contained in the verified Joint Petition of DEC, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions are informational, procedural, and jurisdictional in nature, and are not contested by any party.

### **JOINT PETITION**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 46**

The Joint Petition included a description of DEC's storm recovery activities, an estimate of the Storm Recovery Costs, the proposed level of storm recovery reserve, an indicator of the amount of Storm Recovery Costs to be financed using Storm Recovery Bonds, an estimate of the Financing Costs related to the bonds, an estimate of the Storm Recovery Charges necessary to recover costs, and a comparison between the net present value of the cost to customers estimated to result from the issuance of Storm Recovery

Bonds and the cost that would result from the application of the traditional method of financing and recovering its Storm Recovery Costs. As illustrated in the testimony of witness Melissa Abernathy, DEC's comparison demonstrated that issuance of Storm Recovery Bonds and the imposition of Storm Recovery Charges is expected to provide quantifiable benefits to customers.

The Commission finds and concludes that the Joint Petition satisfies the requirements of the Securitization Statute, as discussed further herein, by including each of the necessary items required by subsection (b)(1). Therefore, pursuant to the Securitization Statute, the Commission has jurisdiction to consider DEC's Joint Petition and the information necessary to issue a ~~financing order~~ Financing Order as well as any other relief necessary for DEC to finance its Storm Recovery Costs.

## 2021 STIPULATION

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 7-9

The evidence supporting these findings of fact and conclusions is contained in the 2021 Stipulation, the testimony and exhibits of the witnesses, and the entire record in this proceeding.

On January 27, 2021, the Companies and the Public Staff filed the 2021 Stipulation resolving issues regarding Up-front Financing Costs, On-going Financing Costs, servicing and administration fees, tail-end collections, capital contributions, the Public Staff's ability to audit the Companies' Storm Recovery Costs, and allowing the period to the scheduled final maturity of Storm Recovery Bonds to be between 18 and 20 years from the date of issuance.

Rebuttal testimony filed by witness Abernathy includes an estimate of the Storm Recovery Charges necessary to recover Storm Recovery Costs and a comparison between the net present value of the costs to customers that are estimated to result from the issuance of Storm Recovery Bonds with a final scheduled term to maturity of 20 years and the costs that would result from the application of the traditional method of recovery of Storm Recovery Costs from customers, in accordance with the Securitization Statute.

As the 2021 Stipulation has not been adopted by all the parties, its acceptance by the Commission is governed by the standards set out by the North Carolina Supreme Court in *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc.*, 348 N.C. 452 (1998) (*CUCA I*), and *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc.*, 351 N.C. 223 (2000) (*CUCA II*). In *CUCA I*, the Supreme Court held that

[A] stipulation entered into by less than all of the parties as to any facts or issues in a contested case proceeding under Chapter 62 should be accorded full consideration and weighed by the Commission with all other evidence presented by any of the parties in the proceeding. The Commission must consider the nonunanimous stipulation along with all the evidence presented and any other facts the Commission finds relevant to the fair and just determination of the proceeding. The Commission may even adopt the recommendations or provisions of the nonunanimous stipulation as long as the Commission sets forth its reasoning and makes “its own independent conclusion” supported by substantial evidence on the record that the proposal is just and reasonable to all parties in light of all the evidence presented.

348 N.C. at 466. However, as the Court made clear in *CUCA II*, the fact that fewer than all of the parties have adopted a settlement does not permit the Court to subject the Commission’s order adopting the provisions of a nonunanimous stipulation to a “heightened standard” of review. 351 N.C. at 231. Rather, the Court said that Commission approval of the provisions of a nonunanimous stipulation “requires *only* that the

Commission ma[k]e an independent determination supported by substantial evidence on the record [and] ... satisf[y] the requirements of chapter 62 by independently considering and analyzing all the evidence and any other facts relevant to a determination that the proposal is just and reasonable to all parties.” (Id. at 231-32 (emphasis added).)

The Commission finds and concludes that the 2021 Stipulation is a product of the give-and-take negotiations between the Companies and the Public Staff. The Commission has fully evaluated the provisions of the 2021 Stipulation and concludes, in the exercise of its independent judgment, that the provisions of the 2021 Stipulation are just and reasonable to all parties to this proceeding in light of the evidence presented, and serve the public interest. Therefore, the 2021 Stipulation should be approved in its entirety.

### EVIDENTIARY HEARING

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 10-11

The evidence supporting these findings of fact and conclusions is contained in the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions are informational, procedural, and jurisdictional in nature, and are not contested by any party.

### **COSTS ELIGIBLE FOR RECOVERY**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~5~~711—13**

#### **Storm Recovery Costs**

In its Joint Petition, DEC requested the authority to finance its Storm Recovery Costs through securitization of approximately \$230.8 million in Storm Recovery Costs, which includes \$18.6 million in capital investment, \$169.8 million in O&M expense, plus Carrying Costs in the amount of \$37.2 million (plus or minus any adjustment to such

carrying costs necessary to account of the number of days, as applicable, either greater than or less than assumed in the carrying costs calculation), plus an estimated \$5.2 million in Up-front Financing Costs. The amount of Carrying Costs DEC requests is calculated at the Company's approved weighted average cost of capital. The requested amount is also premised on a Storm Recovery Bond issuance date of June 1, 2021. DEC states that it will report to the Commission the final Carrying Cost so financed in the IAL as described below. N.C. Gen. Stat. § 62-172(a)(14) requires that DEC's Storm Recovery Costs eligible for financing be reasonable and prudent. Except for the Carrying Costs to be calculated as described herein, the Storm Recovery Costs were included in the Company's rate case application in Docket No. E-7, Sub 1214 and have been the subject of discovery and audit by the Public Staff and other interested parties to that proceeding. The Commission's DEC Rate Order found and concluded that DEC's Storm Recovery Costs were reasonable and prudent. Consistent with that Order, the Commission finds that DEC's Storm Recovery Costs are reasonable and prudent and therefore eligible for recovery through financing. In addition, the Commission finds that DEC's Carrying Costs associated with the Storm Recovery Costs are also reasonable and prudent. Accordingly, the Commission finds that DEC should be permitted to finance its Storm Recovery Costs including Carrying Costs as provided in this Financing Order.

#### **Up-front Financing Costs**

DEC has also requested authority to finance certain financing costs associated with the issuance of the Storm Recovery Bonds. DEC's proposed Up-front Financing Costs include but are not limited to, legal fees, consulting fees, structuring adviser fees, placement and underwriting fees, rating agency fees, stock exchange listing and



compliance fees, security registration fees, filing fees, information technology programming costs and any other costs necessary to issue the Storm Recovery Bonds (a complete list of all Up-front Financing Costs will be included on Attachment 2 of the IAL, a form of such letter with preliminary estimates of Up-front Financing Costs, is included in Appendix C of this Financing Order).

In addition, the costs of any outside consultant and counsel retained by the Commission to assist the Commission in performing its responsibilities under N.C. Gen. Stat. § 62-172(b)(3)b., and the costs incurred by the Public Staff for any outside consultants or counsel retained in connection with this securitization of the Storm Recovery Costs are Up-front Financing Costs. DEC's Up-front Financing Costs include reimbursement to DEC for amounts advanced for payment of such costs, and may also include other types of credit enhancement, not specifically described herein, including letters of credit, reserve accounts, surety bonds, interest rate swaps, interest rate locks, and other mechanisms designed to promote the credit quality and marketability of the Storm Recovery Bonds or designed to achieve the Statutory Cost Objectives: [and the Lowest Charge Standard](#). The Up-front Financing Costs of any credit enhancements shall be included in the amount of costs to be financed by the sale of Storm Recovery Bonds. DEC has provided an estimate of Up-front Financing Costs of \$5.2 million based on a range of estimates in Heath Exhibit 1 attached to witness Heath's testimony.

The Commission is mindful of the fact that many of these Up-front Financing Costs, such as legal fees, will not be known until after the financing is completed. Further, other Up-front Financing Costs will vary depending on the size of the final issuance of the Storm Recovery Bonds. Specifically, the Commission realizes that the Securities and

Exchange Commission (“SEC”) registration fee, underwriters’ fees, and rating agency fee are proportional to the amount of qualified costs actually financed. Other Up-front Financing Costs, such as original issue discount, will be determined at the time of the sale. We also acknowledge that the (i) costs of any outside consultant to this Commission and any outside counsel to this Commission or its Designated Member (as defined herein) to assist us in performing our responsibilities under the Securitization Statute, including services provided in assisting us in our active role for the structuring and pricing of the Storm Recovery Bonds, are costs that are solely within the control of this Commission and (ii) costs of any outside consultant or counsel retained by Public Staff are costs which are solely within the control of Public Staff and that all such costs in (i) and (ii) above are fully recoverable from Storm Recovery Bond proceeds to the extent such costs are eligible for compensation and approved for payment under the terms of such party’s contractual arrangements with the Commission or Public Staff, as the case may be, as such arrangements may be modified by any amendment entered into at the Commission’s or Public Staff’s sole discretion. Accordingly, actual Up-front Financing Costs will not be known until after the pricing of the Storm Recovery Bonds.

N.C. Gen. Stat. § 62-172(a)(4) defines “financing costs.” The Commission finds that DEC’s proposed Up-front Financing Costs fall squarely within this definition, and that these issuance costs are therefore financing costs eligible for recovery pursuant to the Securitization Statute. Due to the unknown aspect of these costs, the Commission orders that to the extent the actual Up-front Financing Costs are less than the amount appearing in the final IAL filed within one business day after actual pricing of the Storm Recovery Bonds, ~~such unspent amount will be reflected in the next True-Up Adjustment Letter (as~~

~~defined herein~~ DEC shall establish a regulatory liability for the difference and accrued carry costs to preserve those costs to consider in the Company's next general rate case..

Conversely, to the extent that the actual Up-front Financing Costs are in excess of the amount appearing in the final IAL filed within one business day after actual pricing of the Storm Recovery Bonds, that DEC shall ~~book such prudently incurred excess amounts~~ ~~to establish~~ a regulatory asset to ~~be recovered~~ defer any excess amount of up-front financing costs and accrued carrying costs, and preserve those costs to consider for later recovery in the Company's next respective general rate case.

## **STRUCTURE OF ISSUANCE**

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 814**

#### **General Structure of Issuance**

A description of DEC's proposed transaction is contained in its Joint Petition and the filing package submitted therewith. A brief summary of the proposed transaction is provided in this section.

DEC has proposed a transaction structure that includes all of the following:

- The use of (depending on whether more than one series of Storm Recovery Bonds are issued) one or more SPEs as issuer(s) of Storm Recovery Bonds, limiting the risks to bondholders of any adverse impact resulting from a bankruptcy proceeding of DEC or any affiliate.
- The right to impose, bill, charge, collect and receive Storm Recovery Charges that are nonbypassable and which must be trued-up at least semi-annually, but may be trued-up more frequently at the option of the servicer, to ensure the timely payment of the debt service and On-going Financing Costs as scheduled.
- The use of a collection account which includes, without limitation, a Capital Subaccount at the SPE funded initially by a deposit from DEC equal to at least 0.5 percent of the initial principal amount of the Storm Recovery Bonds issued by the SPE.
- A servicer (initially DEC) responsible for billing and collecting the Storm Recovery Charge from existing and future retail customers.

- The Federal income tax consequences of the transaction are consistent with satisfaction of the provisions established in IRS Revenue Procedure 2005-62.

More specifically, and to facilitate the proposed securitization, DEC proposed that the SPE will be created and then DEC will transfer the rights to impose, bill, charge, collect, and receive Storm Recovery Charges and to obtain true-up adjustments along with the other rights arising pursuant to this Financing Order. Upon such transfer and simultaneously with the issuance of Storm Recovery Bonds, these rights will become Storm Recovery Property as provided by the Securitization Statute.

DEC proposed that the SPE will issue Storm Recovery Bonds and will transfer the net proceeds from the sale of such bonds to DEC in consideration for the transfer of the Storm Recovery Property. The SPE will be organized and managed in a manner designed to achieve the objective of maintaining the SPE as a bankruptcy-remote entity that would not be affected by the bankruptcy of DEC or any other affiliate of DEC or any of their respective successors. The Company has submitted several form agreements for approval, discussed further herein, facilitating DEC's utilization of an SPE.

Specifically, DEC has proposed that the Storm Recovery Bonds be issued pursuant to an Indenture and administered by an indenture trustee. The Storm Recovery Bonds will be secured by and payable solely from the Storm Recovery Property created pursuant to this Financing Order. The Storm Recovery Property and other collateral will be pledged to the indenture trustee for the benefit of the holders of the Storm Recovery Bonds and to secure payment of principal, interest on the Storm Recovery Bonds and On-going Financing Costs.

DEC proposed that the servicer of the Storm Recovery Bonds collect the Storm Recovery Charges and remit those amounts to the indenture trustee on behalf of the SPE.

The servicer will be responsible for making any required or allowed true-ups of the Storm Recovery Charges. If the servicer defaults on its obligations under the Servicing Agreement, the indenture trustee may, acting for the benefit of holders of Storm Recovery Bonds, appoint a successor servicer. DEC also proposed to act as the initial servicer for the Storm Recovery Bonds.

Under DEC's proposal, the Storm Recovery Charges will be calculated to ensure the collection of an amount sufficient to pay the debt service due on the Storm Recovery Bonds together with the related Financing Costs. These related Financing Costs, or more specifically, On-going Financing Costs, include the servicing fee, administration fees for the SPE, rating agencies' fees, trustee fees and expenses, legal and accounting fees, other ongoing fees and expenses and the cost of replenishing the Capital Subaccount (or overcollateralization subaccount, if required). These On-going Financing Costs are "financing costs" eligible for recovery pursuant to the Securitization Statute and are addressed further below in this Financing Order.

DEC has proposed that the Storm Recovery Charges will be calculated and adjusted pursuant to the formula-based method, the True-Up Mechanism, described in witness Shana W. Anger's testimony and included as Appendix B to this Financing Order. DEC has requested approval of Storm Recovery Charges sufficient to recover the principal and interest on the Storm Recovery Bonds plus On-going Financing Costs. DEC proposes that the Storm Recovery Charges be adjusted at least semi-annually until 12 months prior to the last scheduled payment date of a series of the Storm Recovery Bonds, at which point the Storm Recovery Charges shall be adjusted at least quarterly, to ensure

that the amount collected from Storm Recovery Charges is sufficient to pay the debt service on the Storm Recovery Bonds and all On-going Financing Costs.

Witness Charles N. Atkins II states that DEC's proposed bond structure is designed to provide substantially level annual debt service and revenue requirements over the life of the bond issue and would result in declining Storm Recovery Charges over time, assuming growth in customer energy consumption, other factors being equal. The Commission finds DEC's proposed transaction structure reasonable, and compliant with the Securitization Statute. Moreover, portions of DEC's proposed transaction structure, described in this Financing Order, are necessary to enable the Storm Recovery Bonds to obtain the highest bond credit rating possible, with an objective of AAA or equivalent bond credit ratings, so as to further ensure that the proposed issuance of the Storm Recovery Bonds on behalf of DEC and the imposition of the Storm Recovery Charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and meet the Statutory Cost Objectives: [and the Lowest Charge Standard](#). Accordingly, DEC's issuance structure is hereby approved.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. [915](#)**

### **Special Purpose Entity**

Under DEC's financing structure, DEC will create one or more SPEs, each as a bankruptcy remote, Delaware LLC with DEC as its sole member, as set forth in the LLC Agreement discussed further below. Each SPE will be formed for the limited purpose of acquiring Storm Recovery Property from DEC, issuing Storm Recovery Bonds in one or more series (each of which may be issued in one or more tranches), and performing other activities relating thereto or otherwise authorized by the LLC Agreement. The rights,

obligations, structure and restrictions described in this Financing Order with respect to the SPE are applicable to each such purchaser of Storm Recovery Property to the extent of the Storm Recovery Property acquired by it and the Storm Recovery Bonds issued by it.

DEC proposed (i) that the SPE(s) may issue Storm Recovery Bonds in an aggregate amount not to exceed the Securitizable Balance approved by this Financing Order and (ii) to pledge to an indenture trustee, as collateral for payment of the Storm Recovery Bonds, the Storm Recovery Property, including each SPE's right to receive the Storm Recovery Charges as and when collected, and other collateral described in the Indenture. The SPE(s) will not be permitted to engage in any other activities and will have no assets other than ~~storm recovery property~~Storm Recovery Property and related assets to support its obligations under the ~~storm recovery bonds~~Storm Recovery Bonds. DEC states that these restrictions on the activities of the SPE and restrictions on the ability of DEC to take action on the SPE's behalf are imposed to achieve the objective that the SPE will be bankruptcy-remote and not be affected by a bankruptcy of DEC or any affiliate or successor of DEC.

DEC proposed that the SPE will be managed by a board of managers with rights and duties set forth in its organizational documents. As long as the Storm Recovery Bonds remain outstanding, the SPE will have at least one independent manager with no organizational affiliation with DEC other than possibly acting as independent manager(s) for another bankruptcy-remote subsidiary of DEC or its affiliates. The SPE will not be permitted to amend the provisions of its LLC Agreement or other organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent manager(s). Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against

it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager(s). Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the rating agencies. The Commission agrees with DEC that these restrictions are reasonable and help ensure that the SPEs are bankruptcy-remote.

The SPE will have no staff to perform administrative services (such as routine corporate maintenance, reporting and accounting functions). DEC proposed that these services will be provided by DEC pursuant to the terms of the Administration Agreement between the SPE and DEC.

Per rating agency and IRS requirements, DEC will transfer to the SPE an amount required to capitalize each of its SPEs adequately (the “SPE Capitalization Level”) for deposit into the Capital Subaccount. The SPE Capitalization Level is expected to be 0.50 percent<sup>15</sup> of the initial principal amount of the Storm Recovery Bonds to be issued by the SPE or such greater amount as might be needed to meet IRS or rating agency requirements. The actual SPE Capitalization Level will depend on tax and rating agency requirements. The Commission finds that DEC may earn a return on this capital contribution in an amount equal to the rate of interest payable on the longest maturing tranche of Storm Recovery Bonds. Moreover, the Commission confirms that the SPE will be an “assignee” as defined in N.C. Gen. Stat. § 62-172(a)(2), when an interest in Storm Recovery Property is transferred, other than as security, to such SPE, and such SPE may issue Storm Recovery Bonds in accordance with this Financing Order as discussed further herein.

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<sup>15</sup> See IRS Rev. Proc. 2005-62 5.04(2).



**Storm Recovery Property**

The Commission determines, consistent with N.C. § 62-172(a)(15), that Storm Recovery Property consists of: (1) all rights and interests of DEC or any successor or assignee of DEC under this Financing Order, including the right to impose, bill, charge, collect, and receive ~~storm recovery charges~~ Storm Recovery Charges authorized in this Financing Order and to obtain true-up adjustments to such ~~storm recovery charges~~ Storm Recovery Charges as provided in this Financing Order, and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

Pursuant to N.C. Gen. Stat. § 62-172(b)(3)c., DEC has requested that this Financing Order provide that the creation of the Storm Recovery Property will be conditioned upon, and simultaneous with, the sale of such Storm Recovery Property to the SPE and the pledge of such Storm Recovery Property to secure the Storm Recovery Bonds.

In addition, the Commission determines that the creation of Storm Recovery Property pursuant to this Financing Order is conditioned upon, and shall be simultaneous with, the sale or other transfer of the Storm Recovery Property to the SPE and the pledge of the Storm Recovery Property to secure the Storm Recovery Bonds.

The Storm Recovery Property shall constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of Storm Recovery Charges depends on DEC performing its servicing functions relating to the collection of Storm Recovery Charges and on future electricity consumption. Such property shall exist regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to retail customers by DEC or its successors or assignees and future consumption of electricity by retail customers. Furthermore, the Storm Recovery Property shall continue to exist until the Storm Recovery Bonds are paid in full and all Financing Costs and other costs of the Storm Recovery Bonds have been recovered in full.

The Storm Recovery Property also constitutes a present property right for purposes of contracts concerning the sale or pledge of property. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in the Storm Recovery Property, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by DEC or any other person or in connection with the reorganization, bankruptcy, or other insolvency of DEC or any other entity. *See* N.C. Gen. Stat. § 62-172(e)(1).

The creation, attachment, granting, perfection, priority and enforcement of liens and security interests in Storm Recovery Property are governed by N.C. Gen. Stat. § 62-172(e)(2).

Pursuant to by N.C. Gen. Stat. § 62-172(e)(2)e., the priority of a security interest in Storm Recovery Property is not affected by the commingling of Storm Recovery Charges

with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all Storm Recovery Charges that are deposited in the collection account or any other cash or deposit account of DEC in which Storm Recovery Charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when such funds are transferred to the collection account.

When DEC transfers Storm Recovery Property to the SPE pursuant to this Financing Order under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the “absolute transfer” provisions of N.C. Gen. Stat. § 62-172(e)(3), that transfer shall constitute an absolute transfer and true sale and not a pledge of or secured transaction or other financing arrangement, and title (both legal and equitable) to the Storm Recovery Property shall immediately pass to the SPE. After such a transfer, the Storm Recovery Property shall not be subject to any claims of DEC or its creditors, other than creditors holding a properly perfected prior security interest in the Storm Recovery Property perfected by N.C. Gen. Stat. § 62-172(e).

As provided by N.C. Gen. Stat. § 62-172(e)(3)b., the characterization of the sale, conveyance, assignment, or transfer of Storm Recovery Property as an absolute transfer and true sale or other absolute transfer and the corresponding characterization of the transferee’s property interest shall not be affected by: (1) commingling of Storm Recovery Charges arising with respect to the Storm Recovery Property with other amounts; (2) the retention by DEC of a (i) partial or residual interest, including an equity interest, in the Storm Recovery Property, whether direct or indirect, or whether subordinate or otherwise or (ii) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of ~~storm recovery charges~~Storm Recovery Charges; (3) any recourse that

the transferee may have against DEC other than any such recourse created, contingent upon, or otherwise occurring or resulting from one or more of DEC's retail customers' inability to timely pay all or a portion of the Storm Recovery Charge; (4) any indemnification rights, obligations, or repurchase rights made or provided by DEC, other than indemnity or repurchase rights based solely upon DEC's retail customers' inability or failure to timely pay all or a portion of the Storm Recovery Charge; (5) the obligation of DEC to collect Storm Recovery Charges on behalf of the SPE; (6) DEC acting as the servicer of the Storm Recovery Charges or the existence of any contract that authorizes or requires DEC, to the extent that any interest in Storm Recovery Property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (7) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (8) granting or providing to holders of the Storm Recovery Bonds a preferred right to the Storm Recovery Property or credit enhancement by DEC or its affiliates with respect to the Storm Recovery Bonds; or (9) any application of the True-Up Mechanism.

The Commission finds that the terms and conditions discussed above regarding Storm Recovery Property are reasonable and adhere to the requirements of the Securitization Statute. In addition, the Storm Recovery Property and all other collateral is to be held and administered by an indenture trustee pursuant the Indenture, which helps ensure lower Storm Recovery Charges, and that the Statutory Cost Objectives [and the Lowest Charge Standard](#) can be achieved. Accordingly, the Commission approves of the

(i) creation of Storm Recovery Property, including the rights to impose, bill, charge, collect and receive Storm Recovery Charges and obtain periodic adjustments to the Storm Recovery Charges and (ii) DEC's sale of the Storm Recovery Property to the SPE.

If DEC defaults on any required remittance of amounts collected in respect of Storm Recovery Property specified in this Financing Order, the Superior Court in Wake County, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from such Storm Recovery Property to the other financing parties. Any such order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to DEC or its successors or assignees, provided; however, that in no circumstances shall the retail customers of DEC be responsible to pay storm recovery charges issued on behalf of DEP or the retail customers of DEP be responsible to pay the Storm Recovery Charges for Storm Recovery Bonds issued on behalf of DEC.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. [1218](#)**

**Transaction Documents**

DEC has submitted in connection with its Joint Petition a form of the Purchase and Sale Agreement, the Administration Agreement, and the Servicing Agreement, which set out in substantial detail certain terms and conditions relating to the transaction structure for each issuance of Storm Recovery Bonds, including the proposed sale of Storm Recovery Property to the SPE, the administration of the SPE, and the servicing of the Storm Recovery Charges and Storm Recovery Bonds. DEC requested that we approve the substance of the

form of the agreements between DEC and the SPE in connection with issuance of this Financing Order.

Drafts of these agreements were filed in order that this Commission may evaluate the principal rights and responsibilities of the parties thereto. The final versions of these agreements, however, will be subject to change based on the input from rating agencies, investors and other parties involved in the structuring and marketing of the Storm Recovery Bonds.

DEC has also submitted a form of Indenture between the SPE and an indenture trustee, which sets forth proposed security and terms for the Storm Recovery Bonds. DEC requested that we approve the substance of the Indenture, subject to such changes based on the input from rating agencies, investors and other parties involved in the structuring and marketing of the Storm Recovery Bonds.

DEC has also submitted a form of the LLC Agreement with DEC as the sole member that DEC proposed would constitute the organizing document of the SPE. DEC requested that we approve the substance of the LLC Agreement, which would be executed substantially in the form submitted to this Commission, subject to such changes as DEC deems necessary or advisable to satisfy bankruptcy opinion and rating agency considerations. In addition, DEC proposed to execute a Servicing Agreement with the SPE which may be amended, renewed, or replaced by another servicing agreement in accordance with its terms. DEC will be the initial servicer but may be succeeded as servicer as detailed in the Servicing Agreement. Pursuant to the Servicing Agreement, the servicer is required, among other things, to impose, bill, charge, collect and receive the Storm Recovery Charges for the benefit and account of the SPE, to make the periodic true-up

adjustments of Storm Recovery Charges required or allowed by this Financing Order and to account for and remit its collection of Storm Recovery Charges to or for the account of the SPE in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the Servicing Agreement.

Under the Servicing Agreement, if any servicer fails to fully perform its servicing obligations, the indenture trustee or its designee may, and upon the instruction of the requisite percentage of holders of the outstanding bonds shall, appoint an alternate party to replace the defaulting servicer. The obligations of the servicer under the Servicing Agreement, the circumstances under which an alternate servicer may be appointed, and the conditions precedent for any amendment of such agreement will be more fully specified in the Servicing Agreement. The rights of the SPE under its Servicing Agreement will be included in the collateral pledged to the indenture trustee under its Indenture for the benefit of holders of the Storm Recovery Bonds and holders of ~~the~~any SRB Securities.

The Commission determines that the Transaction Documents described above are necessary to facilitate the proposed financing structure approved herein. Moreover, the Transaction Documents are reasonable and will help to achieve the Statutory Cost Objectives- and the Lowest Charge Standard. Accordingly, the form Transaction Documents are approved.

**Offering and Sale of the Bonds**

DEC has proposed that the Storm Recovery Bonds be offered pursuant to an SEC-registered offering. The Company has provided testimony to the effect that virtually all utility securitizations have been sold as SEC-registered public transactions. Further, DEC has provided testimony to the effect that an SEC-registered, public offering, is likely to result in a lower cost of funds relative to a non SEC-registered offering, including a Rule 144A qualified institutional offering, all else being equal, due to the enhanced transparency and liquidity of publicly-registered securities. Accordingly, subject to the IAL procedure described further below, the Commission finds that an SEC-registered public offering is most likely to result in the lowest costs to consumers, and should be approved. However, the Commission further finds DEC, subject to the IAL procedures described in the Evidence and Conclusions for Finding of Fact No. 3350, may also pursue a Rule 144A qualified institutional offering of the Storm Recovery Bonds.

DEC has proposed that the Storm Recovery Bonds be sold pursuant to a sale to one or more underwriters in a negotiated offering as described in the testimony of witness Atkins. DEC, consistent with its other securities offerings, will select the lead managing underwriter(s) to achieve its Statutory Cost Objectives- and the Lowest Charge Standard. DEC has testified that a negotiated underwriting is likely to provide greater flexibility and availability of investor funds.

The Commission finds, subject to the IAL procedures, that the issuance of the Storm Recovery Bonds pursuant to an SEC-registered negotiated sale is likely to result in



lower overall costs and satisfy the Statutory Cost Objectives and the Lowest Charge Standard, and should therefore be approved. However, DEC, subject to the IAL procedures, is also authorized to pursue other sale options, including a Rule 144A offering, in order to satisfy the Statutory Cost Objectives- and the Lowest Charge Standard. The Commission therefore finds it necessary to grant DEC flexibility and authority to pursue other sale options that result in the lowest Storm Recovery Charges for customers consistent with market conditions at the time the Storm Recovery Bonds are priced- (the Lowest Charge Standard).

DEC has testified that the SPE may, as an alternative to directly issuing and marketing the Storm Recovery Bonds to unaffiliated investors through either a registered public offering or unregistered exempt offering, issue the Storm Recovery Bonds to a single special purpose trust, the SRB Issuer, established jointly by DEC and DEP or by Duke Energy Corporation.

In this case, notes or similar instruments would be issued by the SRB Issuer to investors backed by the SPE's Storm Recovery Bonds and ~~storm recovery bonds~~ Storm Recovery Bonds issued by an SPE wholly-owned by DEP pursuant to DEP's financing order held by the SRB Issuer (the "SRB Securities"). The SRB Issuer would engage in no activities other than the holding of the Storm Recovery Bonds and the ~~storm recovery bonds~~ Storm Recovery Bonds issued by an SPE wholly-owned by DEP, issuing the SRB Securities and engaging in other related activities. A form of the proposed Declaration of Trust is attached to the testimony of witness Heath as Heath Exhibit 2f and co-sponsored by witness Atkins. DEC asks the Commission to approve the substance of the Declaration

of Trust, subject to such changes based on input from rating agencies, investors and other parties involved in the structuring and marketing of the SRB Securities.

The SRB Securities would be sold either through a registered public offering or unregistered exempt offering described above. The SRB Securities would be structured in order to achieve the highest possible credit rating from applicable rating agencies based upon the underlying structure of the SRB Issuer secured by Storm Recovery Property and the ~~storm recovery property~~Storm Recovery Property owned by a SPE wholly-owned by DEP and supported by the True-Up Mechanism.

~~Combining~~The testimony of witness Atkins and witness Heath indicate that combining the issuance of DEC's Storm Recovery Bonds and DEP's ~~storm recovery bonds~~Storm Recovery Bonds in one transaction through the use of the SRB Issuer ~~will likely, as detailed in the testimony of witness Atkins and witness Heath,~~might result in enhanced marketability and other efficiencies, thereby lowering costs for both DEC's and DEP's customers. None of the SPEs would be obligated, however, with respect to any other SPE's ~~storm recovery bonds~~Storm Recovery Bonds; therefore, the customers of DEC would not be affected by the actions of DEP or the adequacy of the ~~storm recovery property~~Storm Recovery Property of DEP. The SRB Issuer would transfer an allocable portion of net proceeds from the sale of the SRB Securities to each SPE, and each such SPE would in turn transfer those proceeds to DEC or DEP, as applicable in consideration for the ~~storm recovery property~~Storm Recovery Property sold to such SPE by DEC or DEP.

The Commission ~~finds the testimony of witness Heath and witness Atkins to be persuasive, and~~ agrees that combining the issuance of DEC's Storm Recovery Bonds and DEP's ~~storm recovery bonds~~Storm Recovery Bonds in one transaction through the use of

the SRB Issuer may result in lower Storm Recovery Charges for customers, and help ensure that the Statutory Cost Objectives [and the Lowest Charge Standard](#) can be met. Accordingly, the Commission hereby grants DEC the authority in this Financing Order to issue Storm Recovery Bonds in a combined transaction with DEP through the use of the SRB Issuer. By allowing the Companies flexibility to determine which of the above issuance structures are best tailored to then-existing rating agency considerations, market conditions, and investor preferences, the financing of Storm Recovery Costs can be reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced- [\(the Lowest Charge Standard\)](#).

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. [15—1721—23](#)**

**Amortization, Interest Rates, and Credit Ratings of Storm Recovery Bonds**

Regarding the principal amortization, the Commission determines that the expected term of the scheduled final payment date of the last maturing tranche should be no later than [1520](#) years from the issuance of the series of Storm Recovery Bonds. The legal maturity date of each tranche may be longer than the scheduled final payment date for that tranche. Annual payments of principal of and interest on the Storm Recovery Bonds shall be substantially level over the expected term of the Storm Recovery Bonds.

The first payment of principal and interest for each series of Storm Recovery Bonds shall occur within 12 months of issuance. Payments of principal and interest thereafter shall be no less frequent than semi-annually. The Commission finds that this proposed structure—providing substantially level annual debt service and revenue requirements over the life of the Storm Recovery Bonds—is in the public interest and should be utilized.

As to interest rates, the Commission determines that each tranche of the Storm Recovery Bonds should have a fixed interest rate, based on current market conditions. If market conditions change, and it becomes necessary to achieve the Statutory Cost Objectives [and the Lowest Charge Standard](#) for the one or more tranches of bonds to be issued in floating-rate mode, DEC is authorized to issue such bonds but will be required to execute agreements to swap the floating payments to fixed-rate payments. This flexibility will ensure that DEC can achieve economic benefits for customers.

The Company anticipates that each series of Storm Recovery Bonds will have a AAA or equivalent rating from at least two nationally recognized rating agencies. The Commission hereby grants DEC authority to provide necessary credit enhancements, with recovery of related costs as a form of On-going Financing Costs, to achieve such ratings.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. [1824](#)**

##### **Security for Storm Recovery Bonds**

DEC proposed that the payment of the Storm Recovery Bonds and related Storm Recovery Charges authorized by this Financing Order is to be secured by the Storm Recovery Property created by this Financing Order and by certain other collateral as described herein. The Storm Recovery Bonds will be issued pursuant to an Indenture under which the indenture trustee will administer the trust.

DEC proposed that the SPE will establish a Collection Account as a trust account to be held by its indenture trustee as collateral to facilitate the payment of the principal of, interest on, and On-going Financing costs related to, the Storm Recovery Bonds in full and on a timely basis. Each Collection Account will include the General Subaccount, the

Capital Subaccount and the Excess Funds Subaccount, and may include other subaccounts if required to obtain AAA(sf) ratings on the Storm Recovery Bonds.

DEC proposes that Storm Recovery Charge remittances from the servicer with respect to the Storm Recovery Bonds will be deposited into the General Subaccount for the SPE. On a periodic basis, the money in the General Subaccount will be allocated to pay expenses of the SPE, to pay principal of and interest on the Storm Recovery Bonds, and to meet the funding requirements of the other subaccounts, according to specified payment priority established in the Indenture. Funds in the General Subaccount will be invested by the indenture trustee in short-term, high-quality investments and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal of and interest on the Storm Recovery Bonds and all other components of the Ongoing Financing Costs payable by the SPE.

When the Storm Recovery Bonds are issued, DEC proposes that it will make a capital contribution to its SPE, which the SPE will deposit into its Capital Subaccount. The ~~storm recovery~~ Storm Recovery Bond proceeds will not be used to fund this capital contribution. The amount of the capital contribution will be at least 0.5 percent of the original principal amount of the Storm Recovery Bonds issued by the SPE. Each Capital Subaccount will serve as collateral to facilitate timely payment of principal of and interest on the Storm Recovery Bonds. To the extent that a Capital Subaccount must be drawn upon to pay these amounts due to a shortfall in the Storm Recovery Charge collections, it will be replenished to its original level through the true-up process described below. The funds in each Capital Subaccount will be invested in short-term, high-quality investments and, if necessary, such funds (including investment earnings) will be used by the indenture

trustee to pay principal of and interest on the Storm Recovery Bonds and the On-going Financing Costs payable by the SPE. DEC will be permitted to earn a rate of return on its invested capital in the SPE equal to the rate of interest payable on the longest maturing tranche of Storm Recovery Bonds and this return on invested capital should be a component of the Periodic Payment Requirement (as defined below), and accordingly, recovered from Storm Recovery Charges.

DEC proposed that any Excess Funds Subaccount will hold any Storm Recovery Charge collections and investment earnings on the Collection Account in excess of the amounts needed to pay current principal of and interest on the Storm Recovery Bonds and to pay all of the On-going Financing Costs payable by the SPE including, but not limited to, funding or replenishing each Capital Subaccount. Any balance in or amounts allocated to such Excess Funds Subaccount on a true-up adjustment date will be subtracted from any amounts required for such period for purposes of the true-up adjustment. The funds in the Excess Funds Subaccount will be invested in short-term, high-quality investments, and such funds (including investment earnings thereon) will be available to pay principal of and interest on the Storm Recovery Bonds and the On-going Financing Costs payable by the SPE.

DEC also proposed that any Collection Account and the subaccounts described above are intended to facilitate the full and timely payment of scheduled principal of and interest on the Storm Recovery Bonds and all other authorized components of the On-going Financing Costs payable by the SPE. If the amount of Storm Recovery Charge collections in the General Subaccount is insufficient to make, on a timely basis, all scheduled payments of principal of and interest on the Storm Recovery Bonds and to make payment on all of

the other components of the On-going Financing Costs payable by the SPE, the relevant Excess Funds Subaccount and the relevant Capital Subaccount will be drawn down, in that order, to make such payments. Any deficiency in a Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up process.

In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Upon the maturity of the Storm Recovery Bonds and upon the discharge of all obligations with respect to such bonds, amounts remaining in each Collection Account, as well as later collections of Storm Recovery Charges, will be released to the appropriate SPE and will be available for distribution by the SPE to DEC. As noted in this Financing Order, equivalent amounts, less the amount of any Capital Subaccount, will be booked to a regulatory liability ~~and, will accrue carrying costs at~~ DEC's net-of-tax WACC, and will be credited back to customers in the Company's next rate case following the maturity of the Storm Recovery Bonds.

Based upon the foregoing, the Commission finds that utilization of a Collection Account, including a General Subaccount, a Capital Subaccount and an Excess Funds Subaccount, as proposed by DEC is reasonable and should help achieve the Statutory Cost Objectives- and the Lowest Charge Standard. Moreover, it is necessary to grant DEC the flexibility and authority to include other subaccounts in the Collection Account where required to obtain AAA(sf) ratings on the series of Storm Recovery Bonds, which will in turn lower Storm Recovery Charges for customers.

**DEC as Initial ~~Serviceers~~ Servicer of the Storm Recovery Bonds**

DEC proposes to execute a Servicing Agreement with the SPE, the final version of which shall be filed with this Commission concurrent with its filing with the SEC.

Under the Servicing Agreement, the servicer shall be required, among other things, to impose, bill, charge, collect and receive the Storm Recovery Charges for the benefit of its SPE, to make the true-up adjustments of Storm Recovery Charges required or allowed by this Financing Order, and to account for and remit the Storm Recovery Charges to or for the account of its SPE in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the Servicing Agreement. The appropriate servicing fee shall be as set forth in this Financing Order.

To preserve the integrity of the bankruptcy-remote structure of the SPE and ensure the high credit quality of the Storm Recovery Bonds, the servicer must be adequately compensated for the services it provides, including the calculation, billing, and collection of Storm Recovery Charges, remittance of those charges to the indenture trustee, and the preparation, filing, and processing of the TUAL. DEC's proposed form of Servicing Agreement provides for an on-going servicing fee for the initial servicer in the amount of 0.05 percent of the initial principal amount of the Storm Recovery Bonds plus out-of-pocket expenses. DEC has submitted testimony on the costs anticipated to be incurred by it in connection with the servicing functions under the Servicing Agreement, and we find such costs to be reasonable and appropriate.



DEC's proposed form of Servicing Agreement provides for an annual fee for ongoing services of 0.05 percent of the initial principal amount of the Storm Recovery Bonds so long as DEC acts as servicer plus out-of-pocket expenses. In addition to the annual ongoing servicing fee, DEC proposes to recover as an Up-front Financing Cost, approximately \$5.2 million, to recover set-up costs of the servicer, including information technology programming costs to adapt DEC's existing systems to bill, charge, collect, receive and process Storm Recovery Charges, and to set up necessary servicing functions. The evidence shows that these amounts represent a prudently incurred cost to DEC, and we find that those costs are reasonable.

However, the servicing fees collected by DEC, or any affiliate acting as the servicer under the Servicing Agreement, will be reflected in DEC's ongoing cost of service such that any amounts in excess of DEC's incremental costs of servicing the Storm Recovery Bonds shall be returned to DEC's retail customers in the Company's next rate case. The expenses incurred by DEC or such affiliate to perform obligations under the Servicing Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

DEC has proposed that it will not be permitted voluntarily to resign from its duties as a servicer if the resignation will harm the credit rating on Storm Recovery Bonds issued by its SPE. Even if DEC's resignation as servicer would not harm the credit rating on the Storm Recovery Bonds issued by the SPE, we find and direct that DEC shall not be permitted to voluntarily resign from its duties as servicer without consent of the Commission. If DEC defaults on its duties as servicer or is required for any reason to discontinue those functions, then DEC proposes that a successor servicer acceptable to the

indenture trustee be named to replace DEC as servicer so long as such replacement would not cause any of the then current credit ratings of the Storm Recovery Bonds to be suspended, withdrawn or downgraded. We find that any successor servicer to DEC also should be acceptable to the Commission.

DEC has proposed that, and we find and direct that, the servicing fee payable to a substitute servicer should not exceed 0.60 percent per annum on the initial principal balance of the Storm Recovery Bonds issued by the SPE, unless a higher fee is approved by the Commission.

DEC shall indemnify its retail customers to the extent retail customers incur losses associated with higher servicing fees payable to a substitute servicer as a result of DEC's negligence, recklessness or willful misconduct in acting as a servicer. This indemnification provision shall be reflected in the Transaction Documents for these Storm Recovery Bonds.

We find and direct that the SPE and the indenture trustee shall not be permitted to waive any material obligations of DEC as transferor or as servicer of Storm Recovery Property without express written consent of this Commission.

Furthermore, it is contemplated that DEC shall act as the servicer for the Storm Recovery Bonds until the Storm Recovery Bonds are fully amortized. If the State of North Carolina or this Commission decides to allow billing, collection, and remittance of the Storm Recovery Charges by a third party supplier within the DEC service territory, such authorization must be consistent with the rating agencies' requirements, as outlined in the testimony of witness Atkins necessary for the Storm Recovery Bonds to maintain the targeted AAA or equivalent rating.

The Commission finds and concludes that it is reasonable for DEC to act as initial servicer under the proposed financing transaction and that such will reduce risk associated with the proposed securitization therefore resulting in lower Storm Recovery Charges and greater benefits to ratepayers. Accordingly, this Financing Order grants DEC authority and flexibility to act as initial servicer pursuant to the Servicing Agreement under the proposed financing structure.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~21~~ & ~~2227~~ &**

**28**

**DEC as Administrator of the SPE**

Under the above-described Administration Agreement, DEC will perform the administrative duties necessary to maintain the SPE. The appropriate administration fee shall be as set forth in this Financing Order.

DEC's proposed form of Administration Agreement provides for a \$50,000 annual fee plus out-of-pocket expenses paid to an administrator for performing the services required by the Administration Agreement. Witness Heath discusses the costs anticipated to be incurred by it in connection with the Administration Agreement in his testimony. We find that DEC has demonstrated that this annual fee is necessary to cover any costs to be incurred by DEC in performing services as administrator.

The Commission finds and concludes that it is reasonable for DEC to act as an administrator of the SPE under the proposed financing transaction. Accordingly, this Financing Order grants DEC authority and flexibility to act as administrator pursuant to the Administration Agreement under the proposed financing structure.

The administration fees collected by DEC or any affiliate acting as the administrator under the Administration Agreement will be included in DEC's cost of service such that any amounts in excess of DEC's incremental costs of administering the SPE shall be returned to DEC's retail customers. The expenses incurred by DEC or such affiliate to perform obligations under the Administration Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. [23 & 24](#) & [29](#)**

**30**

**On-going Financing Costs, Tail-End Collections, and Capital Contributions**

Heath Exhibit 1, attached to the testimony of witness Heath, provides an estimate of the On-going Financing Costs associated with the Storm Recovery Bonds, which DEC proposes to recover through the Storm Recovery Charge. DEC's On-going Financing Costs include, without limitation, rating agency surveillance fees, servicing fees, administration fees, legal and auditing fees, regulatory assessment fees, trustee fees, independent manager(s) fees and the return on invested capital.

Certain of these On-going Financing Costs, such as the administration fees and the amount of the servicing fees for DEC (as the initial servicer) are determinable, either by reference to an established dollar amount or a percentage as discussed above, on or before the issuance of the Storm Recovery Bonds. Other On-going Financing Costs will vary over the term of the Storm Recovery Bonds.

Having reviewed DEC's proposal, the [Public Staff testimonies of Maness and Boswell, and the 2021 Stipulation, the](#) Commission determines that the proposed ~~On-~~

going Financing Costs identified in DEC's Joint Petition and Attachment 4 of the form of IAL qualify as "financing costs" pursuant to N.C. Gen. Stat. § 62-172(a)(4) and are therefore eligible for recovery through a ~~storm recovery charge~~. Storm Recovery Charge. Additionally, consistent with the Commission's conclusions for Finding of Fact ~~Nos. 20 and 22~~ No. 30, the Commission reiterates that it is appropriate for ~~DEC to credit back to customers all period~~ to establish a regulatory asset or liability to track (as received and incurred) servicing and administration fees in excess of DEC's or an affiliate of DEC's administrative fee received by the Company from the SPEs and the incremental cost of performing the servicer or administrator function in the next rate case when costs and revenues associated with the incurred by the Company in fulfilling the required functions under the servicing and administration fees administrative agreements. Any regulatory asset or liability account established shall be considered for recovery from or returned to customers in the Company's next respective general rate case. The Commission also finds it is appropriate for the Public Staff to audit on-going financing costs for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the Company of SPE, discuss concerns or proposed changes to the expenses with the Company, and in cases where resolution cannot be reached, file a recommendation with the Commission, and the amounts will be included in DEC's cost of service returned to customers with carrying costs in its next general rate case as resolved by the Commission, as detailed in the 2021 Stipulation.

Also, based on the Public Staff testimony of witnesses Maness and Boswell and the 2021 Stipulation, the Commission also finds it appropriate for DEC to track any tail-end collections separately from all other costs included in this proceeding, and place the

amounts, including accrued carrying costs, in a regulatory liability to be considered for recovery in DEC's next general rate case. Furthermore, the Commission finds it is appropriate for DEC to earn a return at the interest rate of the highest tranche of the storm recovery bonds for the Company's capital contributions to each respective SPE.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2531**

**Storm Recovery Bonds to Be Treated as "Debt" for Federal Income Tax Purposes**

In light of the IRS safe harbor rules, we find that DEC shall be responsible to structure the Storm Recovery Bond transactions in a way that clearly meets all requirements for the IRS' safe harbor treatment, including that, for federal income tax purposes, the Storm Recovery Bonds shall be treated as debt of DEC.

**STORM RECOVERY CHARGES**

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 26—2932—35**

**Imposition and Computation of Storm Recovery Charges**

DEC seeks authorization to collect from its customers, in the manner provided in this Financing Order and/or the Tariffs approved hereby, Storm Recovery Charges in an amount sufficient to provide for the timely payment of principal of and interest on the Storm Recovery Bonds and all other On-going Financing Costs as described in the Evidence and Conclusions for Finding of Fact Nos. 23 & 2429 & 30.

To repay the Storm Recovery Bonds and On-going Financing Costs, DEC is hereby authorized to implement Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and associated Financing Costs are paid in full. The Storm Recovery Charges are nonbypassable, and must be paid by all existing or future retail customers receiving transmission or distribution

services from DEC or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state. *See* N.C. Gen. Stat. § 62-172(a)(13) and (b)(3)b.4. In the event there is a fundamental change in the regulation of public utilities, the Storm Recovery Charges shall be collected in a manner that will not adversely affect the rating on the Storm Recovery Bonds.

In summary, the Securitization Statute provides for the recovery of ~~storm recovery costs~~Storm Recovery Costs through ~~storm recovery bonds~~Storm Recovery Bonds. Accordingly, to compute the Storm Recovery Charges, DEC first applied the allocation factors to the total first year revenue requirements as presented in witness Abernathy DEC Exhibit 3 in order to allocate the revenue requirements to each customer rate class. These revenue requirements were grossed-up to reflect uncollectible account write-offs and the regulatory fees to arrive at the storm recovery revenue requirements by rate class. Next, the rate was calculated by dividing total revenue requirements for each customer rate class by the effective kWh sales forecast for each customer rate class.

DEC applied the allocation factors to the customer rate classes in the manner in which these costs or their equivalent costs were allocated in the cost-of-service study proposed by DEC in Docket No. E-7, Sub 1214, as required by the Securitization Statute. DEC used the allocation factors as well as the sales forecast (based on the 2021 retail sales forecast filed in the Company's most recent Integrated Resource Plan) to calculate the proposed initial Storm-Recovery Charge per kWh by customer rate class. The resulting

Storm Recovery Charges were then set forth in proposed Tariffs, as shown in witness Jonathan Byrd's Exhibit 2, needed to implement the Storm Recovery Charge.

A formula-based mechanism as described in N.C. Gen. Stat. § 62-172(b)(3)b.6., the True-Up Mechanism, to calculate, and adjust from time to time, the Storm Recovery Charges for each customer rate class was submitted by DEC. DEC submitted with the Joint Petition the supporting testimony of witness Angers, which provided the True-Up Mechanism to determine the Periodic Payment Requirement (defined further below) to be recovered from the Storm Recovery Charge. This True-Up Mechanism is attached as Appendix B.

DEC also submitted with its Joint Petition the supporting testimony of witness Byrd with respect to allocation of these periodic costs and the computation of the Storm Recovery Charges for each customer rate class for DEC. As discussed in the testimony of witness Abernathy and shown in Abernathy DEC Exhibits 1-4, DEC computed the estimated Storm Recovery Charges, as described in N.C. Gen. Stat. § 62-172(a)(13).

We hereby find that the cost allocation formula described in DEC's testimony and embedded in the True-Up Mechanism is consistent with N.C. Gen. Stat. § 62-172(b)(3)b.6. and is reasonable.

In the event DEC chooses to issue Storm Recovery Bonds to a trust or another SPE, as described in Finding of Fact No. [1420](#), the obligations of customers of DEC to pay relevant ~~storm recovery bonds~~Storm Recovery Bonds shall not be joint and several with customers of the other utility meaning that each ~~storm recovery charge~~Storm Recovery Charge shall only be adjusted pursuant to the True-up Mechanism to ensure the collection



of amounts sufficient to pay principal of, interest on and other on-going financing costs related to the relevant ~~storm recovery bonds~~Storm Recovery Bonds.

In N.C. Gen. Stat. § 62-172(k), the State pledges to and agrees with the bondholders, the owners of Storm Recovery Property, and other financing parties that the State and its agencies, including this Commission will not: (1) alter the provisions of the Securitization Statute, which authorize this Commission to create an irrevocable contract right or chose in action by the issuance of this Financing Order irrevocable binding, or nonbypassable charges, to create Storm Recovery Property, and make the Storm Recovery Charges imposed by this Financing Order; (2) take or permit any action that impairs or would impair the value of Storm Recovery Property or revises the Storm Recovery Costs for which recovery is authorized; (3) in any way impair the rights and remedies of the bondholders, assignees, and other financing parties; or (4) except for changes made pursuant to the True-Up Mechanism, reduce, alter, or impair Storm Recovery Charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related Storm Recovery Bonds have been paid and performed in full. This Commission finds that this State Pledge will constitute a contract with the bondholders, the owners of Storm Recovery Property, the SRB Issuer, holders of SRB Securities and other financing parties.

This Commission anticipates stress case analyses, as described in witness Atkins' testimony, will show that the broad-based nature of the True-Up Mechanism under N.C. Gen. Stat. § 62-172(b)(3)b.6., and the State Pledge under N.C. Gen. Stat. § 62-172(k), will

serve to minimize credit risk associated with the Storm Recovery Bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest when due).

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~30 & 31~~ 36 &**

**37**

**Treatment of Storm Recovery Charge in Tariff and on Retail Customer Bills**

DEC submitted a proposed Tariff included as Byrd DEC Exhibit 2 attached to witness Byrd's testimony to impose the Storm Recovery Charge. Pursuant to N.C. Gen. Stat. § 62-172(d)(1), the tariffs must "explicitly reflect that a portion of the charges on such bill represents ~~storm recovery charges~~ Storm Recovery Charges approved in a ~~financing order~~ Financing Order issued to the public utility and, if the ~~storm recovery property~~ Storm Recovery Property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to ~~storm recovery charges~~ Storm Recovery Charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee." In addition, the "tariff applicable to customers must indicate the ~~storm recovery charge~~ Storm Recovery Charge and the ownership of the charge." N.C. Gen. Stat. § 62-172(d)(1).

The Commission finds that DEC's proposed Tariff included as Byrd DEC Exhibit 2 and attached to witness Byrd's testimony include the required language necessary to effectuate N.C. Gen. Stat. § 62-172(d) and is hereby approved.

In addition, and in accordance with N.C. Gen. Stat. § 62-172(d)(2), the Commission determines that DEC's applicable Storm Recovery Charge must be recognized as a separate line item on retail customer bills entitled Storm Securitization Charge and include both the rate and the amount of the charge. Moreover, all electric bills issued by DEC must state

that, as approved in a financing order, all rights to the Storm Recovery Charge are owned by the SPE and that DEC is acting as collection agent or servicer for its SPE.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3238**

**True-Up of Storm Recovery Charges**

Pursuant to N.C. Gen. Stat. § 62-172(b)(3)b.6., the servicer of the Storm Recovery Property will file for standard true-up adjustments to the Storm Recovery Charges at least semi-annually to ensure Storm Recovery Charge collections are sufficient to provide for the timely payment of the principal of and interest on the Storm Recovery Bonds and of all of the On-going Financing Costs payable by the SPE in respect of Storm Recovery Bonds as approved under this Financing Order. This required periodic payment of all such amounts will also include deficiencies on past due amounts for any reason for a series of Storm Recovery Bonds.

Pursuant to N.C. Gen. Stat. § 62-172(b)(3)b.6., this Financing Order must include a formula-based true-up mechanism for making expeditious periodic adjustments in the Storm Recovery Charges that retail customers are required to pay pursuant to this Financing Order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of the Periodic Payment Requirement (as defined below).

Consistent with Section N.C. Gen. Stat. § 62-172(b)(3)d., DEC proposed to file with the Commission at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled payment date for the latest maturing tranche of a series of Storm Recovery Bonds) a letter applying the formula-based True-Up Mechanism and, based on

estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the necessary adjustments.

In addition to the semi-annual true-up adjustments, DEC proposed that the servicer of the Storm Recovery Property also be authorized to make optional interim true-up adjustments at any time and for any reason in order to ensure the recovery of revenues sufficient to provide for the timely payment of Periodic Payment Requirement.

The Commission accepts the Company's true-up proposals as reasonable, and finds that DEC shall adhere to the following requirements:

After issuance of Storm Recovery Bonds on behalf of DEC, the servicer will submit at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled final payment date of the last maturing tranche of a series of Storm Recovery Bonds) a letter in this docket for Commission review, as described in N.C. Gen. Stat. § 62-172(b)(3)d., and in the form attached hereto as Appendix B.

The TUAL will apply the formula-based True-Up Mechanism described herein and in Appendix B to this Financing Order for making expeditious periodic adjustments in the relevant Storm Recovery Charge to correct for any over-collection or under-collection of the charges or to otherwise ensure the timely payment of the Periodic Payment Requirement for each series of Storm Recovery Bonds.

The "Periodic Payment Requirement" will be composed of the following components for each collection period: (i) the payments of the principal of and interest on the Storm Recovery Bonds issued by the SPE, in accordance with the expected amortization schedule, including deficiencies on past-due principal and interest for any reason, (ii) On-going Financing Costs payable during the collection period and the costs of

funding and/or replenishing the Capital Subaccount and any other credit enhancements established in connection with the Storm Recovery Bonds and other related fees and expenses.

The first Periodic Payment Requirement established through the IAL procedures may be calculated based upon a set of collection periods greater or less than twelve collection periods. Notwithstanding the foregoing, in the event that any Storm Recovery Bonds are outstanding following the last scheduled payment date for the tranche of the latest maturing series of Storm Recovery Bonds, the Periodic Payment Requirement will be calculated so that collections are sufficient to make all payments on those Storm Recovery Bonds, and in respect of Financing Costs, no later than the immediately following payment date.

Along with each TUAL, the servicer shall provide workpapers showing all inputs and calculations, including its calculation of the Storm Recovery Charge and by customer rate class. Pursuant to N.C. Gen. Stat. § 62-172(b)(3)d., the Commission, upon the filing of a TUAL made pursuant to this Financing Order, shall render an administrative approval of the request or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible, but no later than 30 days following the servicer's true-up filing. Notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's true-up filing. If no action is taken within 30 days of the filing of the TUAL, the true-up calculation shall be deemed approved. Upon approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of this Commission will be required prior to implementation of the true-up.

To ensure adequate Storm Recovery Charge collections and to avoid large over-collections and under-collections over time, we direct that the servicer shall reconcile Storm Recovery Charges using DEC's most recent forecast of electricity deliveries (i.e., forecasted billing units and Commission-approved customer class allocations) used for all corporate purposes and DEC's estimates of related expenses. Each periodic true-up adjustment should ensure that Storm Recovery Charge collections are sufficient to meet the Periodic Payment Requirement. The calculation of the Storm Recovery Charges will also reflect both a projection of uncollectible Storm Recovery Charges and a projection of payment lags between the billing and collection of Storm Recovery Charges based upon DEC's most recent experience regarding collection of Storm Recovery Charges.

This Commission hereby approves the True-Up Mechanism and determines that each TUAL shall be based upon the cumulative differences, regardless of the reason, between the Periodic Payment Requirement (including scheduled principal and interest payments on the Storm Recovery Bonds) and the amount of Storm Recovery Charge collections and estimated Storm Recovery Charge collections to the indenture trustee.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 39-49**

##### **BOND TEAM COMPOSITION AND DECISION MAKING**

The evidence supporting these findings of fact is found in the Joint Petition, the testimony of Companies witnesses Heath and Atkins, the testimonies of Public Staff witnesses Klein, Sutherland, Heller, Abramson, Maher, Schoenblum, Fichera and Moore, and the entire record in this proceeding.

In the Joint Petition, the direct testimony of witness Heath, and the proposed forms of Financing Orders filed with the Petition, the Companies did not propose establishment

of a Bond Team to work together on the structuring, marketing, and pricing of the Storm Recovery Bonds. Instead, the Companies asserted that DEC and DEP, along with the Companies' selected bookrunning underwriters and the Companies' financial advisor, should have exclusive authority to make all the decisions on the structuring, marketing, and pricing of the Storm Recovery Bonds. In paragraph 26 of the Join Petition, the Companies stated:

The Securitization statute does not contemplate Commission involvement in the bond issuance process following granting of a financing order, which is consistent with the Commission's historic practice of allowing public utilities authority to execute Commission approved transactions without further regulatory action. In other public utility bond offerings, however, some state utility commissions have elected or have been statutorily required to participate in the bond issuance process. Therefore, to the extent requested by the Commission, the Companies propose to provide a Commissioner or Commission Staff member ("a Designated Member") with timely information to allow for the Designated Member's participation in the actual structuring, pricing, and issuance of the storm recovery bonds. Joint Petition pp 16-17.

However, in the rebuttal testimonies of Companies witnesses Heath and Atkins, if the Commission determines to form a Bond Team in connection with this transaction, the Companies recommended a Bond Team similar to DEF's bond team. The DEF bond team consisted of DEF and its advisor, as well as the FPSC and its financial advisor. The DEF's designated representative and the FPSC's designated representative had decision-making authority on all aspects of the structuring, marketing and pricing of the securitized and selected the underwriters. Witness Heath testified that the Public Staff is an intervenor in this North Carolina proceeding, and to his and Companies witness Atkins' knowledge, there had never been an intervener on a securitization bond team.

**Companies Witness Thomas Heath, Jr.**

Witness Heath testified that the Companies attached as Exhibits 1 and 2 to witness Heath's rebuttal testimony all discovery produced by the Companies to the Public Staff, and all discovery produced by the Public Staff to the Companies, as this is the first storm securitization transaction proposed by the Companies before the Commission, and the Companies believe that the record in these cases may benefit from the additional information conveyed in responses to data requests.

Witness Heath testified while the Companies think there may be a role for the Public Staff in post-Financing Order activities, if the Commission deems such role necessary or helpful, the Companies have serious issues with the nature of the recommendations proposed by the Public Staff and its consultants on the post-Financing Order activities in this proceeding.

A footnote on page 5 of witness Heath's rebuttal testimony stated while the Companies do not object to a continuing role of the Commission actively participating in the structuring, marketing, and pricing of Storm Recovery Bonds in this instance or to an advisory role for the Public Staff, as is explained in more detail later in his testimony, the Companies believe that a continuing and co-equal role for an intervenor such as the Public Staff is problematic and unprecedented in the circumstances, in addition to raising issues around the scope of the Public Staff's statutory authority.

Company witness Heath testified that none of the prior Duke Energy and its electric company subsidiaries bond issuances have been subject to the direct and active supervision of a commission, except for the 2016 securitization transaction by DEF. He testified all transactions related to DEC and DEP in particular have been preliminarily approved by this Commission prior to issuance pursuant to the requirements of N.C. Gen. Stat. 62-160



et seq. He also testified none of the issuances have been subject to the direct and active supervision of intervenors. Further, witness Heath testified in every case, the interest and fees associated with these long-term debt issuances have been flowed through to Duke Energy's customers as part of the ratemaking process.

Witness Heath testified to assist the Commission in evaluating the final terms of the transaction and whether or not the statutory cost objectives were in fact met, the Companies propose an IAL process which would include certifications from each respective Company as to the satisfaction of the statutory cost objectives and the Lowest Charge Standard, and which would give the Commission final authority over the issuance of the Storm Recovery Bonds.

On rebuttal, witness Heath testified it was his opinion that these Storm Recovery Bonds are not materially different from other long term debt issuances by the Companies.

Witness Heath on rebuttal testified the Companies opposed the following recommendations of the Public Staff consultants, Saber Partners who recommended that the Commission: (1) incorporate into its Financing Orders the "best practices" outlined by the Public Staff consultants Saber Partners, including (a) creation of a post-Financing Order and pre-bond issuance review process, (b) provisions in a Financing Order that are designed to achieve the Lowest Charge Standard , (c) retention of an independent financial advisor and/or counsel to take part actively in all aspects of the structuring, marketing, and pricing of the Storm Recovery Bonds; (2) require certifications from the Companies, the bookrunning underwriters, and the Public Staff consultant Saber Partners that the structuring, marketing, and pricing of Storm Recovery Bonds in fact achieved the lowest storm recovery charges consistent with market conditions at the time of pricing and the

terms of the Financing Order; and (3) approve oversight by the Commission, the Public Staff and its Consultant through their participation on a Bond Team, that has joint decision-making authority with the Companies, on all matters related to the structuring, marketing, and pricing of the Storm Recovery Bonds.

Witness Heath on rebuttal testified that many of the Public Staff's recommended "best practices" have already been incorporated into the Companies' proposed Financing Orders as they were practices utilized in the DEF transaction. However, he testified some additional "best practices" recommended by witness Schoenblum were not present in the DEF transaction and the Companies believe are not appropriate for the Companies' transactions in these dockets. He further testified, some of these "best practices" do not adhere to the statutory framework of the Securitization Statute and deviate from standard North Carolina regulatory practices.

Witness Heath testified in addition to the creation of the Bond Team, should the Commission desire, the Companies are not opposed, consistent with the DEF transaction, for a member of the Commission staff (or a Commissioner) being a designated joint decision-maker in matters along with a designated representative of the Companies concerning the structuring, marketing, and pricing of the bonds.

Witness Heath testified the Companies invite the Commission and/or its outside consultant and counsel to fully participate in the pricing process, including participation on any pricing calls so there is full transparency. He further testified the Companies support the establishment of a Bond Team to participate in the structuring, marketing and pricing of the Storm Recovery Bonds and a member of the Commission staff (or a Commissioner) along with a designated representative of the Companies, would be joint decision-makers.

Companies witness Heath on rebuttal further testified the Storm Securitization Statute does not contemplate Commission or intervenor involvement post-issuance of a Financing Order.

On rebuttal Companies witness Heath testified under federal securities law, DEC and DEP will be the issuers of the underlying bonds in this instance and as such will have all the obligations under the federal securities laws with regard to such issuances. To the extent that the Public Staff and its consultants and/or other intervenors, now or in the future, remain actively involved in the structuring, marketing, and pricing of bonds, the Companies have concerns about how that impacts their potential liabilities under the securities laws and to what extent such activities could expose the Public Staff and other intervenors, now or in the future, to potential liability.

Companies witness Heath testified that while the Commission and the State of North Carolina have ongoing obligations pursuant to the Securitization Statute, including to support the true-up mechanism and to uphold the state pledge, the intervenors have no such obligations or authority.

Witness Heath testified the Companies do not accept the Public Staff consultants' assertion that the proposed transaction is significantly "more complex" than other sophisticated debt transactions undertaken by the Companies. He testified while the proposed transaction does involve certain unique aspects and structural considerations, it is still at its most fundamental level the issuance of publicly issued debt to institutional investors.

Witness Heath in rebuttal testified the Public Staff consultants Saber Partners recommendation for a Bond Team goes beyond the bond team used in the DEF transaction

by recommending an intervening party, the Public Staff, be included as a member of the Bond Team and have joint decision-making authority. He testified membership on the DEF bond team was limited to DEF and its financial advisor and designees of the FPSC, including the FPSC's financial advisor Saber Partners. He testified there was no joint decision-making authority among all of the members of the DEF bond team because decision making was limited to the designated representative of DEF and the designated representative of the FPSC.

Companies witness Heath testified while the Companies believe this is ultimately a decision for the Commission, the Companies would support a Bond Team comprised of the Companies, their advisor(s) and counsel, and a designated Commissioner or member of Commission staff, including any independent consultants or counsel hired by the Commission to ensure that the structuring, marketing, and pricing of the Storm Recovery Bonds will achieve the statutory cost objectives and the Lowest Charge Standard.

Witness Heath testified that similar to the DEF transaction, a designated representative of the Companies and a member of the Commission or Commission staff, as a designated representative of the Commission, could be joint decision-makers in all aspects of the structuring, marketing, and pricing of the Storm Recovery Bonds including on hiring decisions for the underwriters, except for those recommendations that in the sole view of the Companies would expose either Companies or any SPE issuer to liability.

Witness Heath testified while the Public Staff should not be a formal member of the Bond Team, the Companies are not opposed to the underwriters or the Public Staff and its consultants being invited to join all Bond Team meetings. He testified discussion among

the Bond Team, the underwriters and Public Staff will allow for multiple voices and suggestions about the best way to structure, market, and price the Storm Recovery Bonds.

### **Companies Witness Charles Atkins, II**

Companies witness Atkins on rebuttal testified that he is not aware of, and the Public Staff consultants have not presented any evidence of, any previous utility securitization transaction sponsored by an investor-owned utility where an intervenor was a member of a post-financing order bond team, or any case where an intervenor had “co-equal” or “joint” decision-making authority with designated representatives of the commission and the sponsoring utility. He testified for this reason, and the reasons articulated in Companies witness Heath’s testimony, he did not recommend such an unprecedented arrangement.

Companies witness Atkins further testified that the Companies proposed an IAL process that includes Company certificates attesting to key structuring, marketing, and pricing steps that ensure a thorough and transparent satisfaction of the Companies’ statutory cost objectives. He testified to the extent the Commission wishes to undertake a significant level of post-Financing Order involvement, the Companies do not object to an approach similar to the one followed during the 2016 DEF transaction.

On rebuttal Companies witness Atkins testified that if the Commission does adopt the “Bond Team” approach, the Companies propose that only a designated representative of the Companies and a designated Commissioner or a member of Commission staff, have joint decision-making authority.

**Rebecca Klein**

Public Staff Witness Rebecca Klein, an advisor for Saber Partners, testified utility customers have the potential to realize meaningful savings if specific actions, practices and processes are undertaken through the life-cycle of stages of a Ratepayer-Baked Bond (RBB) program. She testified adherence to the lowest cost standard results in benefits to the ratepayer, at no cost to the utility. Texas completed three RBB transactions during her tenure as a commissioner of the PUCT for approximately \$2.5 billion. She testified the practices that the PUCT undertook resulted in an average ratepayer savings for the three transactions of \$23 million nominal and \$17 million net present value, as compared to the pricing of other RBBs issued during the same time frame.

Witness Klein testified it is important to ensure ratepayer interests are represented at every stage of the transaction. She testified the PUCT took an approach of being actively engaged in implementing the terms, conditions and provisions of each phase of the transaction process, i.e. the structuring of the bond; the marketing of the bond; and the pricing of the bond. She testifies to engage the utility, underwriters and investors effectively, the PUCT was supported by the special expertise of its financial advisor. Witness Klein testified in Texas, the PUCT was a joint-decision-maker with the sponsoring utility in all matters relating to the structuring, marketing and pricing of the securitized “transition bonds.” She testified there is no reason why ratepayer interests and the utilities’ interests cannot be aligned in light of the fact that any savings that could benefit ratepayers do not affect what the utilities will receive as part of the securitization amount necessary to recover storm damage costs on behalf of its ratepayers. She testified on the other hand, the interests of underwriters and investors are not aligned with the ratepayers, and therefore it is imperative that the ratepayers’ interests be represented at the negotiating table.

Public Staff witness Klein testified the statutory requirements in Texas provided that the “structuring and pricing” of transition bonds must result in the lowest transition bond charges consistent with market conditions. She testified North Carolina has a statutory provision (N.C. Gen. Stat., Sec. 62-172(b)(3)b.), which directs the North Carolina Utilities Commission, similar to the Texas commission, to include in its Financing Orders “[a]ny other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.” Given this authority, the PUCT believed that it was important to insert “marketing” as a function of lowering transition bond charges because the manner in which the bonds would be marketed would have a strong impact on pricing, and ensure lower “transition bond charges.”

Witness Klein testified the financing orders in Texas directed the PUCT’s financial advisor to be actively engaged throughout the transaction process in order to ensure the greatest opportunity to meet the “lowest transition bond charge” transaction standard. Ms. Klein further testified although the financial advisor (Saber Partners) in this instance is not supporting the Commission, the financial advisor is supporting the Public Staff who represents ratepayers. Similarly, the financial advisor in Texas lent its expertise to the PUCT given that the agency had purview to protect customers of electric services consistent with the public interest.

Witness Klein concluded by stating maximizing the chance of collaborative and collegial process rests on the Commission clarifying that the ultimate decision-making authority for all aspects of structuring, marketing, and pricing the proposed bonds rests with a designated member of the Commission. In addition, the Commission should be clearly dedicated to having the day-to-day decision-making rest with an ensemble that

includes a designated Commissioner, Commission Staff, the Public Staff and its respective financial advisors, as well as the Companies.

Witness Klein testified on redirect that in the cases before the PUCT, the PUCT staff would file testimony on behalf of customers. In response to questions from Chair Mitchell, witness Klein testified the Texas Office of Public Utility Counsel was not on the Bond Team because the PUCT already had ratepayer interests represented in the Commission. Ms. Klein testified the PUCT is authorized to represent ratepayers and not just regulate utilities. Ms. Klein testified the PUCT represents the public interest, and ratepayers are part of that public interest.

**Paul Sutherland**

Public Staff Witness Sutherland testified he worked for over 20 years with Florida Power & Light Company, primarily in the area of corporate finance. He then spent another 20 years with Saber Partners, involved in the 13 utility securitization transactions raising over \$9 billion in an advisory role to public utility commissions on behalf of ratepayers. His particular role as Senior Advisor has been in the area of quantitative analysis.

Witness Sutherland testified that ratepayers benefit from Ratepayer Backed Bond financing, and more specifically, there are ways that benefit can be measured and maximized through optimal structuring and application of “best practices” by a properly structured Bond Team. His testimony focused on the quantitative analysis of structuring and pricing decisions. By comparing past Ratepayer-Backed Bond pricings both with and without “best practices.” his testimony demonstrates the importance of having on the Bond Team expert representation on behalf of the ratepayer.



Witness Sutherland testified the biggest net present value (NPV) savings in a utility securitization results from the fact that rating agencies (S&P, Fitch) generally treat utility securitization debt as off-balance sheet despite the fact that it may not be so for other accounting or regulatory purposes. This is important because utilities set their capital structure (i.e. their ratio of debt to equity) based on what is necessary to maintain an acceptable bond rating by the credit rating agencies. This means that utilities can issue securitization debt without having to issue a similar amount of equity to maintain what the rating agencies consider the proper debt to equity ratio.

Witness Sutherland testified there are two major aspects with which the bond issuer has some ability to affect the amount of additional ratepayer savings resulting from a well-executed securitization financing. The first is the interest rate on the bonds, and the second is the structure of the financing. Decisions on structure might include the maturity or weighted average life (WAL) of the bonds and the number and size of tranches or series of bonds. Both the interest rate and the structure are determined as part of the pricing process of bond issuance. Consequently, the extent to which the pricing process results in savings is determined by the efforts of the Bond Team prior to and at the time of pricing.

Witness Sutherland testified interest rates are established based on a spread (in basis points, or hundredths of a %) to the rate on a benchmark security. The DEF transaction of 2016 was priced using a spread to U.S. Treasury debt. The securitized debt should be priced relative to a security of the same WAL. Public Staff witness Sutherland testified while an issuer cannot control the interest rate on the underlying benchmark security at any point in time, the issuer has the ability to achieve attractive spreads to benchmark rates by effective marketing, educating investors about unusually attractive aspects of the RBBs, and by

exercising good analytical and negotiating skills. He testified, in order to achieve the lowest cost for the ratepayer, the Bond Team should include a representative of the Public Staff or Staff's financial advisor, since that is who has the greatest incentive to protect ratepayer interests. He testified this is most important with utility securitization issues because, unlike conventional utility debt, securitization debt is a direct obligation of the ratepayer and not the utility.

Witness Sutherland testified that sometimes, additional savings can be generated simply by changing the number or size of the tranches in a securitization. An example is given from the DEF securitization in 2016 when, at the suggestion of the Commission's financial advisor, a simple change from a 4-tranche to a 5-tranche structure resulted in an additional \$3 million NPV savings for ratepayers. Witness Sutherland testified a type of structural change involves extending the final scheduled maturity of the financing. In direct testimony, the Companies recommended a 15-year final scheduled maturity for both DEC and DEP despite the fact that a 20-year structure offers substantially greater net present value savings.

Witness Sutherland recommended that the Public Staff and its financial advisor have equal authority with the Companies regarding all major decisions involving structuring, marketing and pricing the securities. He recommended that the Commission should follow "best practices" as described by witness Fichera and other Public Staff witnesses.

**Steven Heller**

Public Staff witness Heller, a consultant, testified he has structured seven (7) issues of Ratepayer-Backed Bonds (4 while at an investment bank and 3 as a consultant). He

testified he was the structuring/financial modeler for the DEF \$1.294 billion Ratepayer-back Bond offering that received top ratings from Moody's, S&P and Fitch. He testified he worked directly for Tom Heath of Duke Energy in that transaction and interacted with Saber Partners as the financial advisor representing the ratepayers.

Witness Heller testified AAA- rated Ratepayer-Backed Bonds have no material risk of loss or payment variability because of the frequent legislatively mandated and Commission enforced true-up mechanism. Investors can expect to receive the scheduled cash flows with near perfect certainty. Public Staff witness Heller testified from his personal experience, he has seen that ratepayers' interests are best served when independent advisors are involved directly in overseeing the structuring process. He testified the lowest cost to the ratepayer may not be the desired structure for the underwriters. He testified with longer maturities, like 10-, 15-, or 20-year scheduled final maturities, even one basis point can be significant.

#### **Barry Abramson**

Public Staff witness Barry Abramson testified he has covered the U.S. utilities sector from the investment side as a Wall Street investment banker and money management analyst for more than 40 years in investment banking firms and in large money management firms as an analyst and portfolio manager. He testified he has covered Duke Energy and its predecessor companies for more than 40 years. He testified he managed large portfolios that invested in the stocks and bonds of U.S. electric, gas and water utilities.

Witness Abramson testified he believes that the Public Staff and its independent financial advisory, should be a full and equal participant on the Bond Team. The Public Staff was directly created by law, to protect the interest of ratepayers in North Carolina.

He testified the principal and interest on Ratepayer-Backed Bonds are the direct obligation of the ratepayers, and not an obligation of the utility that benefits from the proceeds of the bond sale.

Public Staff witness Abramson testified he does not regard the Public Staff as an intervenor. He testified in more than 40 years of following the regulated utility industry in the U.S. he has looked at hundreds of utility rate cases and other regulatory proceedings. In nearly every case, there were outside intervenors, pursuing a narrow agenda. The Public Staff in North Carolina is not an outside intervenor. He testified the Public Staff was established by law. He testified N.C. Gen. Stat. § 62-15 (“Office of the executive director, public staff, structure and function”) provides in part: “(d) It **shall** (emphasis added) be the duty and responsibility of the Public Staff to: . . . (3) Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or services of any public utility.”

Witness Abramson testified using an independent financial advisor, acting solely in the interest of ratepayers would result in the greatest possible savings to ratepayers and should satisfy the goals of the Commission and the Public Staff. He testified the independent advisor is not a beneficiary of the bond offering, and thus can be truly independent.

Public Staff witness Abramson further testified this is likely to be the first of many Storm Recovery Bond issuances in North Carolina. He testified studies by climate scientists and meteorologists predict that frequency and severity of storms will increase. Therefore, it is important to get it right the first time and create a model for future issuances of Storm Recovery Bonds. He testified he believes that costs of damage from future storms

will continue to increase, due to: Climate Change, Customer Growth, Inflation, Work From Home Trends, and Electric Vehicle Market Growth and EV Related Infrastructure. Mr. Abramson concluded by testifying the Commissioners, the Commission Staff, and the Public Staff, all will benefit from being fully involved in the structure, pricing and marketing of this Ratepayer-Backed Bond issue. This is the first of many such bond issuance likely in North Carolina. Knowledge will be gained by all parties from full participation on the Bond Team. The active involvement of the independent financial advisor will facilitate the spread of knowledge and make the experience more worthwhile.

**Brian Maher**

Public Staff witness Brian Maher testified a key concept for the Commission to consider is whether or not the parties involved have what is often referred to as a “fiduciary relationship” as opposed to Companies, underwriters or advisors acting primarily in their own financial interest. He testified in broad terms, a service provider that has a fiduciary responsibility to its client commits to act in the client’s best interest to the exclusion of any contrary interest. He testified where a fiduciary relationship exists, the client should be comfortable that the service provider is looking out for the client’s best interests. The issue of whether a fiduciary relationship exists impacts what the Commission should consider in deciding how to evaluate information it receives from different parties to the proposed transaction. He testified in his experience, for example, underwriters claim they have no fiduciary relationship to issuers. He testified underwriting agreements prepared by counsel for underwriters now typically include a specific declaration that the underwriters have no fiduciary relationship with the issuer. He testified issuers frequently are asked to acknowledge this affirmatively in the underwriting agreement.

Witness Maher testified bond underwriters will typically propose an offering process whereby the underwriters use their “professional judgement” in establishing price guidance and change that price guidance “solely in their professional judgement.” However, the underwriters act for their own benefit and cannot always be counted on to act solely on behalf of the issuer. He testified pricing is arguably the most important component of offering securities in the market, and he believes this is a compelling reason why bond issuers need to be very active in offering the process to protect their own interests.

Public Staff witness Maher testified that in response to data request questions inquiring if underwriters of securities have a duty to the issuer of those securities and if it is a fiduciary duty, the Companies’ witness Heath stated that the underwriters do not have a fiduciary duty to the issuer. Mr. Maher testified in response to PS DR 2-2(g), Mr. Heath acknowledges that the engagement letters between the Companies and Guggenheim Securities and Atkins Capital, do not create a fiduciary relationship between the parties. Mr. Maher testified in contrast, as financial advisor to the Public Staff, Saber Partners considers itself as having a fiduciary duty to North Carolina ratepayers.

Witness Maher testified the proposed Storm Recovery Bond transaction is different from normal corporate debt issues in which the issuer has a direct interest in minimizing the cost of the transaction in order to maximize economics for its shareholders. He testified while he does not doubt that the Companies would desire that its ratepayers incur low Storm Recovery Charges, the Companies’ main motivation is to receive the debt proceeds in a timely, efficient manner. Therefore, the Companies do not share the same incentives to achieve the lowest overall cost of funds. Mr. Maher testified it is left to the Commission

and the Public Staff to ensure that the ratepayers achieve the lowest overall cost of funds for the bonds and the lowest Storm Recovery Charges consistent with market conditions at the time the bonds are priced. Witness Maher testified he believes that the Commission and Public Staff need to be fully involved in working in a cooperative way with the Companies and the Companies' advisors to achieve that objective.

Public Staff witness Maher testified he believes that the Bond Team for the proposed Storm Recovery Bond issue should consist of the Companies, the Companies' advisor (provided such advisor is not one of the banks acting as underwriter for the transaction), the Commission, either directly or through a designated Commissioner, the Public Staff and the independent advisors and counsel. He testified he believes it is very important for the lead Commission representative to be closely involved in the project. He testified there are many complexities, and this is probably not the type of work that Commissioners undertake on a regular basis. He testified it is important that the Bond Team operate independently and entirely in the interest of the ratepayers and not include any of the underwriting banks due to their inherent conflict of interest.

Witness Maher testified in his many years overseeing ExxonMobil's capital markets activities, he learned that bond issues could almost always be done at lower rates than the best market preliminary indications given by the banks. This was true despite the fact that ExxonMobil was a well-known and coveted "AAA"-rated debt issuer. He testified active involvement by ExxonMobil to create competition among the banks and to demand the best execution consistently added value.

Witness Maher concluded by testifying the proposed Storm Recovery Bonds should achieve "AAA(sf)" rating and perform well in the market. But superior performance is not

automatic since all “AAA” and “AAA(sf)” rated bonds do not trade alike. The key takeaway should be that, while factors such as underwriters’ professional opinions are valuable, underwriters do not have any fiduciary responsibility to the ratepayer. Similarly, the Companies’ primary responsibility is to their own shareholders. Therefore, the Commission, the Public Staff and their independent financial advisors(s) are in the primary position of having to look out for the ratepayers’ best interests. It is critical that they play an active role in all aspects of the transaction.

### **Hyman Schoenblum**

Public Staff witness Hyman Schoenblum testified he is Senior Advisory to Saber Partners and also has 35 years of utility financial experience. He testified he was employed by Consolidated Edison Company of New York (Con Ed) in various senior financial capacities such as Treasurer, Controller and Vice President of Strategic Planning. He testified he was also a key member of the investor relations team and met regularly with investors and bankers.

Witness Schoenblum’s testimony in the proceeding addressed three major issues:

1. The need for Commission and Public Staff involvement in all aspects of the issuance of Ratepayer-Backed Bonds.
2. Differences between incentives that exist for standard utility bond issuances versus Ratepayer-Backed Bonds.
3. The need for a fiduciary relationship between the various participants in the issuance of Ratepayer-Backed Bonds.

Witness Schoenblum testified that since ratepayers are effectively the ones who will repay the debt to bondholders, the Commission should ensure that their interests are



best served through enhanced regulatory oversight. He testified the most efficient manner to achieve these goals is through a “Bond Team” that includes all participants, including the Public Staff, its independent financial advisor and the Commission. He testified this approach worked very effectively in the 2015 DEF \$1.3 billion transaction in which he testified and that transaction was praised by the markets and the FPSC staff as being an efficient process, yielding superior results. He testified this process also worked well in other states.

Witness Schoenblum testified these Storm Recovery Bonds will not be subject to normal later regulatory oversight in future rate proceedings. The Commission and the State of North Carolina pledged not to interfere. He testified recovery of issuance costs and interest costs are guaranteed and the true-up ensures full cost recovery. He testified as such, it is extremely important to get it right the first time. He testified adopting the “best practices” recommended by Saber Partners and having all parties work in a collaborative manner, will in his opinion, create the appropriate incentives for a successful transaction.

Public Staff witness Schoenblum testified, as witnesses Abramson and Klein point out, the Commission is establishing a Ratepayer-Backed Bond program from North Carolina’s investor-owned utilities and not just doing a one-time transaction. He testified it is important that the first transaction under a new program firmly establish the policies and principles that future transactions will follow.

Witness Schoenblum testified in 2015, DEF filed a petition and related testimony for the securitization of \$1.3 billion to recover the costs of a retired nuclear plant. In that proceeding, the parties, including DEF, reached a stipulation for the creation of a “Bond Team,” including an independent financial advisor, to work collaboratively with the

Commission Staff and DEF toward a successful bond issuance. He testified the Bond Team approach resulted in a highly praised bond offering for DEF, which yielded significant savings to ratepayers. In the DEF Ratepayer-Backed Bond transaction he was able to observe first-hand the benefits of his collaborative process and its impact on the final results on a successful offering.

Witness Schoenblum testified that the Commission, Public Staff, their independent advisors and the Companies need to be integral and equal partners in all aspects of the process. He testified all of these parties need to play an active and visible role in presenting the proposed Storm Recovery Bonds to the capital markets. In his view, the process needs to be viewed by investors and all participants as a joint collaborative process, so that investors and ratepayers are assured that they are well protected.

Public Staff witness Schoenblum testified another reason the Commission and Public Staff involvement is necessary after the issuance of the Financing Orders is that the interests of underwriters are fundamentally adverse to the interests of ratepayers. Underwriters will want to negotiate for relatively high rates of interest so that the bonds can be sold with the least effort, satisfying the desires of their investors for high interest rates relative to competing investments. Underwriters will also negotiate aggressively for the highest possible underwriting fees. There is nothing inherently wrong about this process. It is part of a “market system” where each participant acts in his or her own economic interest.

Witness Schoenblum testified the commissions in Florida, Texas, New Jersey, West Virginia, Ohio and Louisiana have been actively involved in the structuring, marketing and pricing of Ratepayer-Backed Bonds. He testified the degree of involvement

and success has varied, but involvement in a post-financing order/pre-bond issuance review process is consistent.

Witness Schoenblum testified when commissions in other states have applied a “lowest securitized charges” standard, they often have required to take into account not only decisions related to “structuring and pricing,” but also decisions related to “marketing” the Ratepayer-Backed Bonds. Examples include the 2016 Florida transaction for DEF, the 2007 Florida transaction for Florida Power & Light Company, the 2007 and 2009 West Virginia transactions for Monongahela Power Company and for the Potomac Edison Company, and the three Texas transactions described in witness Klein’s testimony. He recommended that the Commission’s Financing Orders in this proceeding take into account not only decisions related to “structuring and pricing,” but also decisions related to “marketing” the Storm Recovery Bonds.

Witness Schoenblum further testified the Companies, as well, have little or no experience in issuing securitized Ratepayer-Backed Bonds. Their sister utility, DEF, has done one transaction. He testified this heightens the benefits of a continuing and collaborative process with the Commission, Public Staff and its experienced financial advisor after the Financing Orders are issued.

Witness Schoenblum testified that receiving IALs from the Companies, including the certification from the Companies that pricing of the Storm Recovery Bonds resulted in the lowest Storm Recovery Charge, is not sufficient as an indicator of a successful transaction. He testified from his perspective, issuance advice letters may not always be conflict free. He testified there is an inherent conflict of interest on the part of utility and underwriters pricing any bonds. Based upon his experience as the Treasurer of a very large

utility, he realized very quickly the underwriters of his company's issuances were not necessarily "on the same page" as his company, the issuer was. He testified they shared many of the same goals concerning the execution of an efficient transaction, but the underwriters' desire to maximize profits for themselves and investors were not always in line with his company's goals as issuer.

Witness Schoenblum concluded testifying that it is his opinion that the form of IAL outlined in the proposed Financing Order filed by the Companies with the Joint Petition, needs to be strengthened to include certification that the structuring, marketing and pricing have, in fact, resulted in the "lowest storm recovery charge" consistent with market conditions at the time the Storm Recovery Bonds are priced and based on information available through the date of pricing.

**Joseph S. Fichera**

Public Staff witness Joseph Fichera, the CEO of Saber Partners, testified the Commission is being asked to use its powerful regulatory authority in ways that have not previously been done in North Carolina. It will create a bond of unusual strength, a completely separate credit from the Companies. He testified this proceeding will establish a template for future issuance of Storm Recovery Bonds, as more damaging hurricanes are expected to occur in North Carolina.

Witness Fichera testified the Public Staff Saber Partners Team witnesses with decades of experience all agree that Ratepayer Backed Bonds are unique transactions and require certain best practices to achieve the lowest cost to the customer. He testified their experience says that three simple "best practices" should be followed to achieve the lowest Storm Recovery Charges for ratepayers:

1. Ratepayer representation
2. A clear decision-making standard
3. Independently verified written certifications

Witness Fichera testified the capital markets are often thought of as a “black box” of buyers and sellers rapidly exchanging millions of dollars. They are thought to produce efficient results because each market participant pursues its own economic interest, with full knowledge and understanding of each transaction, so that prices are determined through “perfect competition” based on a free flow of information. He testified, however, his experience is that this is not the case for the capital markets in general or in the market for securitized Storm Recovery Bonds in particular.

As to ratepayer representation, Public Staff witness Fichera testified that all top-rated securities, even AAA-rated securities, do NOT price the same. He testified nothing is automatic in the capital markets except that self-interest rules. The economic interests of the underwriters and the Companies will not necessarily align with the interests of ratepayers. As with any publicly-offered securities, the underwriters will represent their own economic interests, and the Companies will represent their own interests. He testified unless the Commission acts to create a process involving the Public Staff and the Commission, the results are likely to be skewed against ratepayers’ interests. He testified this will affect the pricing, the transaction documents and every aspect of the transaction.

Witness Fichera testified nothing will occur without the hard work and collaborative efforts of all parties involved. The Companies, the Public Staff and the Commission can work together. He testified they can create the balance necessary to manage competition among underwriters and investors. He testified decisions affecting

ratepayers should be made in consultation with an independent advisor with experience in this unique segment of the capital markets and with a specific and direct fiduciary duty to ratepayers.

Witness Fichera testified that a clear decision-making standard is critical. He testified the standard should be the best possible deal for ratepayers at the time of pricing, the lowest possible cost of funds that maximizes present value savings to customers. He testified anything less allows for less-than-optimal results. He testified without a lowest cost, best price present value standard, there is little incentive for any additional effort and hard work, as the bonds can be priced very quickly and move on.

Public Staff witness Fichera testified the simple facts are that unless a market participant negotiates hard on its own behalf with Wall Street, across the table from those sophisticated and large investors with differing views, that market participant will leave substantial amounts of money on the table. Each side is looking out for its own economic interests. He testified the underwriters and investors want the best deal for themselves. Other market participants must negotiate equally hard and be equally diligent to arrive at a fair transaction that achieves the lowest cost to ratepayers and is fair value to the investor. Witness Fichera testified without a clear standard and negotiating position that includes potential for the issuer and ratepayer representatives saying “no” when evaluating offers, underwriters and investors will have the negotiating leverage to dictate a final cost to ratepayers.

Witness Fichera testified the third and final element of “best practices” is a basic business principle “put into writing” with written certifications. He testified the key transaction participants – the Companies, underwriters, and an independent financial

advisor – should deliver to the Commission independent written certifications, without material qualifications, confirming that what they have done has in fact led to the lowest cost of funds and the lowest Storm Recovery Charges consistent with market conditions at the time of pricing (the Lowest Charge Standard). With these confirming certifications in hand, the Commission can make an informed final “go, no-go” decision.

Witness Fichera concluded stating these best practices were successfully implemented for the benefit of DEF ratepayers on a similar transaction, and North Carolina ratepayers deserve no less.

### **William Moore**

Public Staff witness William Moore testified he retired in 2011 as President and CEO of Westar Energy after a 33-year career in the Electric Utility industry. He testified most of his career was in the financial area as Financial Assistant, Treasurer, VP Finance, EVP Finance and CFO. He testified during those years, he negotiated terms and conditions for the issuance of over \$4.5 billion of both investment grade and non-investment grade securities, \$1.5 billion of bank facilities, over \$1 billion of equity and several other ways of sourcing funds. He testified his investor relations responsibilities included many meetings with analysts and investors to provide information on his company and to hopefully raise interest in his company’s securities.

Witness Moore testified he supports the need for a Bond Team as it is the right thing to do for ratepayers. The Bond Team should include active Commission, Commission Staff and Public Staff representation with the Public Staff’s independent advisor in all aspects of structuring, marketing and pricing the proposed Storm Recovery Bonds.

Witness Moore testified the structuring, marketing and pricing of Ratepayer-Backed Bonds are more complex than that of “plan vanilla” utility bonds, such as first mortgage bonds. This is because ratepayers are directly responsible to repay Ratepayer-Backed Bonds and associated financing cost through a nonbypassable, automatically adjustable rate component, in this case a “Storm Recovery Charge,” with the Commission required to give up future review. He testified it is a good business practice, and commonsense, that the party directly responsible for repaying the bonds (ratepayer) should be “at the negotiating table” throughout the many steps in structuring, marketing and pricing the Ratepayer-Backed Bonds.

Witness Moore testified that his 33-year experience with Wall Street on many securities offerings has shown him it is not always wise to rely solely on the underwriters’ “professional judgement” when pricing bonds. He testified for Ratepayer-Backed Bonds, ratepayer representatives should have eyes and ears on what the underwriters are saying to and hearing from potential investors before floating “price talk.” He further testified a Bond Team that includes Commission, Commission Staff, and Public Staff representatives should have the mandate to be involved in first-hand discussions with the sales force and investors to be effective in helping to achieve the lowest Storm Recovery Charge benchmark.

The Commission concludes, based upon all the evidence, that a Bond Team shall be established consisting of the Companies and their financial advisor, the Public Staff and its financial advisor, and the Commission with a designated Commissioner and the Commission’s financial advisor and counsel. The Bond Team shall work together and make all decisions as to the structuring, marketing, and pricing of the Storm Recovery



Bonds. In addition, the Bond Team shall select the underwriters and approve all the documents including the following: Storm Recovery Property Purchase and Sale Agreement, Storm Recovery Property Servicing Agreement, Indenture, Administration Agreement, Amended and Restated LLC Agreement, and Declaration of Trust for the Finance Entity.

A designated Commissioner shall also have decision making authority on all matters considered by the Bond Team, and the designated Commissioners has final decision making authority on all decisions.

N.C.G.S. 62-172(b)(3)b.12. authorizes the Commission to include in the Financing Order any other conditions not inconsistent with the statute that the Commission deems appropriate. Nowhere in N.C.G.S. 62-172 (the Securitization Statute) –does it state that the public utility will be the sole decision maker in all decisions as to the structuring, marketing, and pricing of the storm recovery bonds, the selection of the underwriters, and the approval of the documents listed above. The Commission concludes that establishment of the Bond Team as provided in this Order is appropriate and is not inconsistent with the provision of the Securitization Statute.

The uncontroverted evidence is that the bond team structure was an outstanding success in DEF’s \$1.3 billion securitization bond offering in 2015. Companies witness Heath acknowledged that the bond team process was very successful, and the bonds were oversubscribed by investors. Witness Heath testified there were five successful investor road shows with full participation by the DEF bond team. The DEF bond team consisted of DEF, DEF’s advisor, a representative of the FPSC, and FPSC’s financial advisor. The Companies ultimately acknowledged that the Commission should be involved in the post-

Financing Order process, but claims that involvement of the Public Staff is unnecessary and unprecedented. The Commission finds that the involvement of the Public Staff – as the agency statutorily charged with representing the interest of customers – is in the public interest, is not inconsistent with the Securitization Statute, and will be allowed.

The Public Staff is required by statute to intervene on behalf of the using and consuming public in all Commission proceedings affecting the rates of any public utility. N.C.G.S. 62-15(d)3. This securitization proceeding is the first in North Carolina.

The storm recovery bonds in this proceeding will be paid entirely by the customers through the storm recovery charges. The fact that other consumer advocates have not actively participated in bond team activity does not preclude this Commission from determining that it is in the best interest of North Carolina’s customers for the Public Staff and its advisors to be on the bond team.

The Companies argue that Public Staff involvement is not needed because the Companies have experience with issuing first mortgage and other bonds. The Commission finds and concludes that issuance of securitization bonds differs from issuance of other bonds. The interest paid on first mortgage bonds and other long term debt bonds only go into the customer rates after each specific bond issuance becomes part of a company’s capital structure in a general rate case. For bonds issued between general rate cases, the interest is paid out of the Companies’ profits, i.e. the shareholders.

### **SEC Litigation**

Companies witness Heath stated in his rebuttal testimony that the Companies have concerns about federal securities law liability should the Public Staff and its advisors remain actively involved in the structuring, marketing, and pricing of the bonds. On cross

examination witness Heath testified no SEC litigation has resulted from the DEF 2015 securitization proceeding and witness Atkins testified he knew of no SEC litigation arising out of the 25 securitizations proceedings in which he was previously involved. The Commission concludes that the Companies have failed to provide credible and probative evidence as to the possibilities of SEC litigation or that a Bond Team would increase the possibilities of SEC litigation. Therefore, the assertions of possible SEC litigation are not a factor in the Commission's Bond Team approval and the composition of the Bond Team.

### **ISSUANCE ADVICE LETTER**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3350**

DEC shall file a combined IAL/TUAL in final form with the Commission within one business day after actual pricing. As shown in the form of IAL/TUAL, the combined IAL/TUAL shall include the following information: the actual structure of the Storm Recovery Bond issuance; the scheduled final payment dates and legal maturities of the Storm Recovery Bonds shall be under the direct control of DEC and its counsel at the Company's sole discretion; over-collateralization levels (if any); any other credit enhancements; revised estimates of the Up-front Financing Costs proposed to be financed and estimates of debt service and other On-going Financing Costs for the first collection period and other information specific to the Storm Recovery Bonds from proceeds of the Storm Recovery Bonds. Finally, the combined IAL/TUAL shall include certifications from DEC, ~~if required~~, that the structuring and pricing of the Storm Recovery Bonds in fact achieved the Statutory Cost Objectives and the Lowest Charge Standard. The actual details of the transaction, including certifications from DEC, included with the IAL/TUAL shall

be provided no later than the first business day after pricing (unless the Commission, acting through its representatives agree to a longer time). Unless the Commission issues an order stopping the Storm Recovery Bond issuance before noon on the third business day after pricing because the Commission determines that the IAL/TUAL and all required certifications have not been delivered or the transaction does not comply with the Standards of this Financing Order, the transaction proceeds without any further action of this Commission. The Commission shall only issue an order to stop the transaction if the Commission determines that (a) the transaction does not comply with the Standards of this Financing Order, or (b) DEC has not delivered the required certification in a form acceptable to the Commission. However, this Commission retains discretion either to allow the transaction to be completed or to issue an order to stop the transaction if DEC fails to deliver the required certification or is unable or unwilling to deliver the required certification in a form acceptable to this Commission. The Commission will not issue an order to stop the transaction for any other reason, including, but not limited to, a change in market conditions after the moment of pricing.

Prior to the filing of the IAL/TUAL and through the period ending with the issuance of the Storm Recovery Bonds, DEC will, to the extent requested by this Commission, provide this Commission or a designated Commissioner or member of Commission Staff (the “Designated Member”) with timely information so that the Commission acting for itself or through its Designated Member can participate fully and in advance regarding all material aspects relating to the structuring and pricing of , and Financing Costs relating to the Storm Recovery Bonds.

DEC will retain sole discretion regarding whether or when to assign, sell or otherwise transfer any rights concerning Storm Recovery Property arising under this Financing Order, or to cause the issuance of any Storm Recovery Bonds authorized in this Financing Order; *provided*, that any issuance must satisfy the Statutory Costs Objectives. Subject to the IAL procedures described above, the SPE will issue the Storm Recovery Bonds on or after the fifth business day after pricing of the Storm Recovery Bonds.

In the event either (i) DEC determines that the issuance of the Storm Recovery Bonds would not achieve the Statutory Cost Objectives and the Lowest Charge Standard or (ii) the Commission will not permit issuance of the Storm Recovery Bonds by issuing an order to stop the transaction in accordance with the IAL procedures, then DEC shall not be precluded from seeking to recover Financing Costs incurred and Carrying Costs accrued post issuance of the DEC Rate Order.

### ADDITIONAL INDEPENDENT LOWEST CHARGE STANDARD

#### CERTIFICATIONS

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 51 & 52

The evidence supporting these findings of fact are found in the testimony of Companies witnesses Heath and Atkins, and the testimonies of the Public Staff witnesses.

The purpose of an IAL is to advise the Commission of the structuring, marketing, and pricing of the Storm Recovery Bonds and that the Lowest Charge Standard in fact has been met so that the Commission should not issue a stop order. The Companies assert that issuance of an IAL with a confirming certification from the Companies to the Commission alone is sufficient.

The Public Staff witnesses recommend that this Financing Order also require delivery of certifications from the bookrunning underwriters and from the Public Staff's financial advisor, without material qualifications, confirming what they have done has in fact met the Lowest Charge Standard.

Witness Klein testified that the initial financing orders in Texas, which she implemented as Chair of the PUCT, directed the PUCT's financial advisor to be actively engaged throughout the transaction process in order to ensure the greatest opportunity to meet the statutory "lowest transition charge" standard. One example of the proactive initiatives the PUCT undertook in connection with those transactions to ensure that the "lowest transition charge" mandate was met was to require certifications not only from the sponsoring utilities, but also from the bookrunning underwriter(s) and the PUCT's financial advisor that the structuring, marketing and pricing of the transition bonds in fact resulted in the lowest transition bond charges consistent with market conditions at the time the transaction priced and the terms of the financing order.

In addition, witness Klein sponsored Klein Exhibit 2, the financing order issued by the FPSC authorizing the issuance of securitized bonds for DEF. In that transaction, written certifications without material qualifications, were provided to the FPSC by each of the bookrunning underwriters, DEF and the financial advisor for the FPSC, Saber Partners.

Witness Schoenblum testified that receiving a confirming certification only from the Companies that pricing of the Storm Recovery Bonds met the Lowest Charge Standard is not sufficient as an indicator of a successful transaction. He testified from his perspective that IALs may not always be conflict free. He testified there is an inherent conflict of

interest on the part of utility and underwriters pricing any bonds. Based upon his experience as the Treasurer of a very large utility, he realized very quickly the underwriters of his company's issuances weren't necessarily "on the same page" as his company, the issuer, was. He testified that underwriters shared many of the same goals concerning the execution of an efficient transaction, but the underwriters' desire to maximize profits for themselves and investors was not always in line with his company's goals as issuer.

Witness Fichera testified that an important element of "best practices" is a basic business principle: "put it into writing." He testified that the key transaction participants – the Companies, the bookrunning underwriters, and an independent financial advisor – should deliver to the Commission independent written certifications, without material qualifications, confirming that the Lowest Charge Standard has been met. With these confirming certifications in hand, the Commission can make an informed final "go, no-go" decision.

The uncontroverted evidence was that the underwriters have no fiduciary duty to the issuer Companies, or to the customers. Although the Companies have a duty to obtain for their customers the lowest Storm Recovery Charges consistent with market conditions at the time of pricing, the Companies' principal duty is to their shareholders. In contrast, Public Staff witnesses Maher and Fichera testified they believe that as the Public Staff's financial advisor, Saber Partners has a fiduciary duty to act in the customers' best interests.

Witness Heath on rebuttal testified the Companies oppose the recommendation of the Public Staff consultants, Saber Partners, that the Commission require certifications from bookrunning underwriters and from the Public Staff consultant, Saber Partners, that the Lowest Charge Standard in fact had been achieved.

The Commission concludes it is appropriate to require that written certifications, without material qualification, be provided by the Companies, the bookrunning underwriters and the Public Staff's financial advisor that the Lowest Charge Standard in fact has been achieved. Ratepayers will pay all of the Storm Recovery Charges, and customers, along with the Commission, should have the benefit of confirming certifications from all these transaction participants.

### **MITIGATION OF RATE IMPACTS**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3453**

N.C. Gen. Stat. § 62-172(b)(1)g., requires a public utility petitioning the Commission for a financing order to provide “a comparison between the net present value of the costs to customers that are estimated to result from the issuance of ~~storm recovery bonds~~Storm Recovery Bonds and the costs that would result from the application of the traditional method of financing and recovering ~~storm recovery costs~~Storm Recovery Costs from customers.” In addition, N.C. Gen. Stat. § 62-172(b)1.g. requires a public utility petitioning the Commission for a ~~financing order~~Financing Order to demonstrate that “the comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers.”

In the DEC Settlement, DEC and the Public Staff agreed that to demonstrate quantifiable benefits to customers in accordance with N.C. Gen. Stat. § 62-172(b)(1)g., that DEC must show that the net present value of the costs to customers using securitization is less than the net present value of the costs that would result under traditional storm cost recovery. For purposes of settlement, DEC and the Public Staff also agreed on the



assumptions to be used in evaluating whether securitization of the Storm Recovery Costs provides quantifiable customer benefits when compared to traditional storm cost recovery. Specifically, the DEC Settlement requires that when conducting this comparison, DEC will make the following assumptions in determining what the “new rates” under the traditional method of recovery would have been absent the issuance of the Storm Recovery Bonds:

- 1) for traditional storm cost recovery, 12 months of amortization for each Storm was expensed prior to the new rates associated with traditional storm cost recovery going into effect;
- 2) for traditional storm cost recovery, no capital costs incurred due to the Storms during the 12-month period were included in the deferred balance;
- 3) for traditional storm cost recovery, no carrying charges were accrued on the deferred balance during the 12-month period following the dates of the Storms;
- 4) for traditional storm cost recovery, the amortization period for the Storms is a minimum of 10 years; and
- 5) for an issuance of ~~storm recovery bonds~~Storm Recovery Bonds, the imposition of the ~~storm recovery charges~~Storm Recovery Charges begins nine months after the new rates associated with traditional storm cost recovery would go into effect.

DEC provided the cost comparison required by N.C. Gen. Stat. § 62-172(b)(1)g. in witness Abernathy’s DEC Exhibit 5. Abernathy DEC Exhibit 5 calculates both the total estimated net present value of costs to customers under the Storm Recovery Charges as well as the total cumulative costs to customers under the traditional cost recovery method. In addition, witness Abernathy included the aforementioned DEC Settlement assumptions in Abernathy DEC Exhibits 5-7, and explained in her testimony that the Company utilized

the assumptions and adhered to the DEC Settlement in calculating its costs for the comparison. Therefore, as an initial matter, the Commission concludes that DEC has provided the necessary comparison required by N.C. Gen. Stat. § 62-172(b)(1)g. and properly adhered to the DEC Settlement.

As shown in [Exhibit 4 to the rebuttal testimony of Companies' witness Abernathy](#) ~~DEC Exhibit 5, assuming a 20 year term to final scheduled maturity of storm recovery bonds,~~ using the traditional method of cost recovery, the net present value of total retail costs to [DEC](#) customers is approximately ~~\$180~~[184.3](#) million.— Using the storm securitization method of cost recovery and recovering Storm Recovery Costs through the Storm Recovery Charge, the net present value of total retail costs to customers is approximately ~~\$122~~[116.3](#) million.— This results in approximately ~~\$58~~[67.9](#) million, or approximately ~~32.0~~[36.9](#)% percent, ~~in greater~~ quantifiable benefits to customers.—~~The calculation of these costs are detailed in Abernathy DEC Exhibits 5, 6 compared to traditional financing, as stated in Exhibit 4 and 7 on page 20 of witness Abernathy's rebuttal testimony.~~

Thus, we find that the issuance of the Storm Recovery Bonds and the imposition of the Storm Recovery Charges authorized by this Financing Order have a significant likelihood of providing quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds.

### **FLEXIBILITY**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. [3554](#)**

In this Financing Order, we approve the financing of DEC's Storm Recovery Costs and Up-front Financing Costs through Storm Recovery Bonds with terms to be established

by DEC, at the time of pricing, subject to compliance with the IAL procedures outlined in this Financing Order. As discussed above, in the Evidence and Conclusions for Finding of Fact No. [3453](#), DEC provided testimony establishing that the proposed issuance of Storm Recovery Bonds by DEC and the imposition and collection of the Storm Recovery Charge from DEC's retail customers are expected to provide quantifiable benefits to such customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds.

N.C. Gen. Stat. § 62-172(b)(3)b.8. requires this Commission to specify the degree of flexibility to be afforded to DEC in establishing the terms and conditions of the Storm Recovery Bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs consistent with N.C. Gen. Stat. § 62-172(b)(3)b.1.-7.

In the 2021 Stipulation, DEC proposed that its SPE issue Storm Recovery Bonds with a scheduled final payment date of no more than [1520](#) years from the date of the issuance of the Storm Recovery Bonds and that the legal maturity date may be longer in accordance with rating agency requirements. Pursuant to witness Atkins' testimony, this difference provides additional credit protection, allowing shortfalls in principal payments to be recovered over an additional time period and therefore helping in achieving the targeted AAA or equivalent ratings. The Commission finds that the recovery period proposed by DEC to recover the Storm Recovery Charges is appropriate.

We find that Storm Recovery Bonds should be issued in one or more series, each series of Storm Recovery Bonds should be issued in one or more tranches, and the Storm Recovery Bonds should be structured by DEC to achieve the Statutory Cost Objectives and the Lowest Charge Standard. Further, the Storm Recovery Bonds shall be structured

such that the expected payment of the principal of and interest on the Storm Recovery Bonds is expected to be substantially level on an annual basis over those expected terms.

Subject to the IAL procedures, DEC shall be afforded flexibility in determining the final terms of the Storm Recovery Bonds, including payment and maturity dates, interest rates (or the method of determining interest rates), the terms of any interest rate swap agreement, interest rate lock or similar agreement, the creation and funding of any supplemental capital, reserve or other subaccount, and the issuance of Storm Recovery Bonds through either one SPE or multiple SPEs, except as otherwise provided in this Financing Order.

As noted above, certain costs, such as debt service on the Storm Recovery Bonds, as well as the on-going fees of the trustee, rating agency surveillance fees, regulatory assessment fees and the On-going Financing Costs of any other credit enhancement or interest rate swaps, will not be known until after the pricing of a series of Storm Recovery Bonds. This Financing Order provides flexibility to recover such costs through the Storm Recovery Charge and the true-up of such charge. At the same time, we have established the IAL procedures of this Financing Order which are intended to ensure that the structuring and pricing of Storm Recovery Bonds achieves the Statutory Cost Objectives [and the Lowest Charge Standard](#).

The Commission finds that a bond structure, providing for substantially levelized annual revenue requirements over the expected life of the Storm Recovery Bonds, is in the general public interest and should be used. This structure offers the benefit of not relying upon public utility customer growth and will allow the resulting overall weighted average

Storm Recovery Charges to remain level or decline over time, if billing determinants remain level or grow.

**CONCLUSION**

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3655**

Based on the statutory criteria and procedures, the record in this proceeding, and other provisions of this Financing Order, the statutory requirements for issuance of a financing order have been met, specifically that the issuance of the Storm Recovery Bonds and the imposition and collecting of Storm Recovery Charges authorized by this Financing Order are expected to provide quantifiable benefits to customers of DEC as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and that the structuring and pricing of the Storm Recovery Bonds issued on behalf of DEC are reasonably expected to result in the lowest Storm Recovery Charges payable by the customers of DEC consistent with market conditions at the time such Storm Recovery Bonds are priced and the terms set forth in this Financing Order.

IT IS, THEREFORE, SO ORDERED, as follows:

**Approvals**

1. **Approval of Application.** DEC's Joint Petition for the issuance of a financing order pursuant to the Securitization Statute is approved, as provided in this Financing Order.

2. **Authority to Securitize.** DEC's Joint Petition for Financing Orders authorizing the issuances by DEC and DEP of ~~storm recovery bonds~~ Storm Recovery Bonds in one or more series is granted, subject to the terms set forth in the body of this Financing Order and the related financing order for DEP. DEC is hereby authorized to issue Storm Recovery Bonds secured by the pledge of Storm Recovery Property, in one or more series in an aggregate principal amount not to exceed the Securitizable Balance (as of the date the first series of Storm Recovery Bonds are issued). The proceeds are to be used to finance the equivalent of (i) recovery of Storm Recovery Costs, which includes Carrying Costs necessary to account for the number of days, as applicable, either greater than or less than assumed in the carrying costs calculation, calculated at the Company's approved weighted average cost of capital plus (ii) recovery of the Up-front Financing Costs incurred in connection with issuance of the Storm Recovery Bonds. Carrying Costs and Up-front Financing Costs are subject to update, adjustment and approval pursuant to the terms of this Financing Order and the IAL procedures as provided by this Financing Order.

3. **Audit of Storm Recovery Costs.** The Public Staff shall be able to audit DEC's Storm Recovery Costs, provided that (a) the Public Staff will conduct an audit of DEC's Storm Recovery Costs and report the findings to the Commission within sixty (60) days of the date of receipt of any requested documents, with the initial data request being

submitted by March 5, 2021, and such sixty (60) day period beginning upon the Public Staff's receipt of documents from DEC responsive to the Public Staff's initial data request, and (b) the Public Staff's audit shall be limited to the adjustments made since the Public Staff's audit in the 2019 rate case (beginning February 2020 for DEC).

3.4. **Approval of Regulatory Asset.** DEC's request to establish a regulatory asset to defer any prudently incurred ~~excess amounts of Up-front Financing Costs~~ is approved amounts of Up-front Financing Costs in excess of the amounts financed by Storm Recovery Bonds is approved. Any such excess amount of Up-front Financing Costs shall be recovered in DEC's next general rate case, together with carrying costs at DEC's net-of-tax weighted average cost of capital ("WACC"). If prudently incurred amounts of Up-front Financing Costs are less than the amounts financed by Storm Recovery Bonds, the shortfall shall be set aside as a regulatory liability , accruing carrying costs at DEC's net-of-tax WACC to be considered for return to customers in DEC's next general rate case.

4.5. **Recovery of Storm Recovery Charges.** DEC shall impose on, and shall collect, as initial servicer, from all existing and future customers receiving transmission or distribution service, or both, from DEC, even if such customer elects to purchase electricity from an alternative supplier, as provided in this Financing Order, Storm Recovery Charges in an amount sufficient to provide for the timely recovery of its Periodic Payment Requirement detailed in this Financing Order (including, without limitation, payment of principal and interest on the Storm Recovery Bonds).

5.6. **Approval of Tariffs.** The form of the Tariff schedule as shown in Byrd DEC Exhibit 2 is approved.

6.7. **True-Up Mechanism.** The True-Up Mechanism identified in Appendix B to this Financing Order is approved and shall be applied at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled final payment date of the last maturing tranche of a series of Storm Recovery Bonds).

7.8. **Form Agreements.** The Commission finds good cause to authorize DEC to provide service to the SPE under the Servicing Agreement and for the Servicing Agreement to become effective following the effectiveness of the IAL. The Commission finds good cause to authorize DEC to administer the SPE under the Administration Agreement and for the Administration Agreement to become effective following the effectiveness of the IAL. The Commission finds good cause to authorize DEC to enter into a Purchase and Sale Agreement with the SPE to become effective following the effectiveness of the IAL.

8.9. **State Pledge.** The SPE issuing Storm Recovery Bonds is authorized, pursuant to N.C. Gen. Stat. § 62-172(k)(2) and this Financing Order, to include the State of North Carolina pledge, which includes a pledge by this Commission, with respect to Storm Recovery Property and Storm Recovery Bonds and related documentation as provided for in N.C. Gen. Stat. § 62-172(k)(1). The Commission finds that this State Pledge will constitute a contract with the bondholders, the owners of Storm Recovery Property, the SRB Issuer, holders of SRB Securities and other financing parties. The Commission further acknowledges that the SRB Issuer and any holder of SRB Securities would be considered financing parties for purposes of N.C. Gen. Stat. § 62-172(k).

9.10. **Structure.** The proposed transaction structure for the Storm Recovery Bonds, as set forth in the body of this Financing Order is approved. The scheduled final



maturity of each series of Storm Recovery Bonds shall be between, and inclusive of, eighteen (18) and twenty (20) years from the date of issuance, such scheduled final maturity date to achieve the greatest net present value savings to customers compared to traditional cost recovery and based on market conditions at the time of pricing.

~~10.11.~~ **Mitigation of Rate Impacts.** DEC's comparison between the net present value of the costs to customers that are estimated to result from Storm Recovery Bonds and the costs that would result from the application of the traditional method of financing and recovering Storm Recovery Costs from customers satisfies the terms of the DEC Settlement.

### **Reports and Accounting**

~~11.12.~~ **Issuance Advice Letter.** DEC shall file a combined IAL/TUAL in final form with the Commission within one business day after actual pricing, substantially in the form of Appendix C to this Financing Order describing the final structure and terms of the Storm Recovery Bond issuance, including an updated accounting of the Up-front Financing Costs and the final Carrying Costs. Finally, the combined IAL/TUAL shall include certifications from DEC ~~if required,~~ that the structuring, pricing and Financing Costs of the Storm Recovery Bonds in fact achieved the Statutory Cost Objectives and the Lowest Charge Standard. Unless the Commission issues an order stopping the Storm Recovery Bond issuance before noon on the third business day after pricing because the Commission determines that the IAL/TUAL and all required certifications have not been delivered or the transaction does not comply with the Standards of this Financing Order, the transaction proceeds without any further action of this Commission. The Commission shall only issue an order to stop the transaction if the Commission determines that (a) the transaction does

not comply with the Standards of this Financing Order, or (b) DEC has not delivered the required certification in a form acceptable to the Commission.

Prior to the filing of the IAL/TUAL and through the period ending with the issuance of the Storm Recovery Bonds, DEC will, to extent requested by this Commission, provide this Commission or its Designated Member with timely information so that the Commission acting for itself or through its Designated Member can participate fully and in advance regarding all material aspects relating to the structuring and pricing of, and Financing Costs relating to the Storm Recovery Bonds.

12.13. **True-Up Adjustment Letter.** DEC or its assignee(s) are authorized to recover the Periodic Payment Requirement and shall file with the Commission at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled payment date of the latest maturing tranche of Storm Recovery Bonds) a TUAL as described in this Financing Order and shall be based upon the cumulative differences, regardless of the reason, between the Periodic Payment Requirement and the actual amount of Storm Recovery Charge remittances to the indenture trustee for the series of Storm Recovery Bonds. Upon the filing of a TUAL made pursuant to this Financing Order, the Commission shall either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer's true-up filing. Notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a TUAL and no potential modification to correct an error in a TUAL shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the

next TUAL. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of this Commission will be required prior to implementation of the true-up.

13.14. **Changes to Storm Recovery Charges.** Upon any change to customer rates and charges stemming from the True-Up Mechanism, DEC shall file appropriately-revised tariff sheets with this Commission, provided, however, that approval of the Storm Recovery Charges shall not be delayed or otherwise adversely impacted by the Commission's decision with respect to the tariff.

14.15. **Special Purpose Trust.** In the alternative to directly issuing and marketing the Storm Recovery Bonds to unaffiliated investors through either a registered public offering or unregistered exempt offering, the Storm Recovery Bonds may be sold to a single special purpose trust established by Duke Energy Corporation, parent of DEC as described in the Discussion and Conclusions.

15.16. **Imposition and Collection, Nonbypassability.** DEC is authorized to impose, bill, charge, collect, receive, and adjust from time to time pursuant to the True-Up Mechanism (as described in this Order) a Storm Recovery Charge, to be collected on a per kWh basis from each of its existing and future retail customers until the related Storm Recovery Bonds are paid in full and all related Financing Costs and other costs of the bonds have been recovered in full. Such Storm Recovery Charges shall be nonbypassable charges that are separate and apart from DEC's base rates and shall be paid by all DEC jurisdictional existing and future customers receiving transmission or distribution service, or both, from DEC or its successors or assignees under Commission-approved rate schedules as provided in this Financing Order. Such Storm Recovery Charges shall be in

amounts sufficient to ensure the timely recovery of DEC's Storm Recovery Costs and Financing Costs (Up-front and On-going) detailed in this Financing Order and the IAL (including payment of principal of and interest on the Storm Recovery Bonds).

~~16.17.~~ **Allocation.** The Storm Recovery Charges shall be allocated to the customer rate classes in accordance with the description included in witness Abernathy's testimony, in the manner in which these costs or its equivalent were allocated in the cost-of-service study filed by the Company and approved on \_\_\_ in the DEC Rate Order, until altered by a subsequent rate case order.

~~17.18.~~ **Collection Period.** This Financing Order and the Storm Recovery Charges authorized hereby shall remain in effect until the Storm Recovery Bonds and all Financing Costs (including tax liabilities) related thereto have been paid or recovered in full. This Financing Order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of DEC or its successors or assignees.

~~18.19.~~ Following repayment of Storm Recovery Bonds and the relevant Financing Costs authorized in this Financing Order and release of the funds by the indenture trustee, each SPE shall distribute the final balance of its Collection Account, as well as later collections of Storm Recovery Charges, to DEC and DEC shall credit other electric rates and charges by a like amount, less the amount of the relevant Capital Subaccount and any unpaid return on invested capital due to DEC as set forth in the body of this Financing Order.

~~19.20.~~ **Ownership Notification and Separate Line Item Charge.** The electric bills of DEC must explicitly reflect that a portion of the charges on such bill represents Storm Recovery Charges approved in this Financing Order and must include a statement

to the effect that the SPE is the owner of the rights to Storm Recovery Charges and that DEC is acting as servicer for the SPE. The tariff applicable to customers must indicate the Storm Recovery Charge and the ownership of that charge. DEC shall identify amounts owed with respect to its Storm Recovery Property as a separate line item on individual electric bills.

### **Storm Recovery Property**

**20.21. Outside Costs.** Costs associated with the Commission or Public Staff's outside consultant and outside counsel, to the extent such costs are eligible for compensation and approved for payment under the terms of such party's contractual arrangements with the Commission or Public Staff, as such arrangements may be modified by any amendment entered into at the Commission or Public Staff's sole discretion, will qualify as Up-front Financing Costs and be paid from proceeds of Storm Recovery Bonds.

**21.22. Creation of Storm Recovery Property.** The creation of the DEC's Storm Recovery Property as described in this Financing Order is approved and, upon transfer of the Storm Recovery Property to the SPE, shall be created, and shall consist of: (1) all rights and interests of DEC or its successors or assignees under this Financing Order, including the right to impose, bill, charge, collect, and receive Storm Recovery Charges authorized in this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order, and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, charged, received, collected, or maintained together with or commingled with other revenues, collections, rights to

payment, payments, money, or proceeds. The creation of Storm Recovery Property is conditioned upon, and shall be simultaneous with, the sale or other transfer of the Storm Recovery Property to the SPE, the issuance of the Storm Recovery Bonds and the pledge of the Storm Recovery Property to secure a series of Storm Recovery Bonds.

22.23. **Irrevocability.** Upon the earlier of either (i) the transfer of the Storm Recovery Property or (ii) issuance of the Storm Recovery Bonds, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this Financing Order, the Commission may not amend, modify, or terminate this Financing Order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust the Storm Recovery Charges approved in this Financing Order.

#### **Structure of Securitization**

23.24. **SPE.** DEC is authorized to form one or more SPEs to be structured as discussed in this Financing Order. DEC is authorized to execute one or more LLC Agreements, consistent with the form included as Heath Exhibit 2e to witness Heath's testimony and the terms and conditions of this Financing Order. The SPE shall be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions as contemplated in the Joint Petition and this Financing Order. The Commission approves an initial capital contribution of 0.5 percent of the initial aggregate principal amount of a series of Storm Recovery Bonds. The capital contributions by DEC to the SPE shall be funded by DEC and not from the proceeds of the sale of Storm Recovery Bonds. DEC will be permitted to earn a rate of return on its invested capital in its SPE equal to the rate of interest payable on the longest maturing tranche of Storm Recovery Bonds and this return on invested capital should be a component of the Periodic Payment Requirement.

~~24.25. Servicing and Administration Fees. The servicing and administration fees collected by DEC or any affiliate of DEC, acting as either the servicer or the administrator under the Servicing Agreement or Administration Agreement, respectively, will be included in DEC's cost of service such that DEC will credit back all periodic servicing fees in excess of DEC's or an affiliate of DEC's incremental costs of performing servicing as administration functions. The expenses incurred by DEC, or such affiliate to perform obligations under the Servicing Agreement or Administration Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service. DEC will establish a regulatory asset or regulatory liability account, separate and apart from the regulatory assets and liabilities of other types of securitization-related costs and benefits, for the purpose of tracking (as received and incurred) servicing and administrative fees received by DEC from its SPE and the incremental costs incurred by DEC in fulfilling the required functions under the Servicing Agreement and the Administration Agreement. Any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at DEC's net-of-tax WACC, and considered for recovery from or returned to customers in DEC's next general rate case.~~

~~25.26. DEC as Servicer.~~ DEC shall act as initial servicer under the proposed financing transaction, and is granted flexibility to act as initial servicer pursuant to the Servicing Agreement discussed in this Financing Order.

~~26.27. Third Party Supplier.~~ If the State of North Carolina or this Commission decides to allow billing, collection and remittance of the Storm Recovery Charges by a third party supplier within the DEC service territory, such authorization will be consistent with the rating agencies' requirements necessary for the Storm Recovery Bonds and SRB

Securities to receive and maintain the targeted triple-A rating as described in Findings of Fact No. 17.

27-28. **Issuance.** In accordance with the terms of this Financing Order and subject to the criteria and procedures described herein, the SPE is authorized to issue Storm Recovery Bonds in an aggregate principal amount not to exceed the Securitizable Balance (as of the date the Storm Recovery Bonds are issued) and may pledge to an indenture trustee, as collateral for payment of the Storm Recovery Bonds, the Storm Recovery Property, including the SPE's right to receive the related Storm Recovery Charges as and when collected, the SPE's rights under the Servicing Agreement and other collateral described in the Indenture. As provided in N.C. Gen. Stat. § 62-172(c)(2)., DEC retains sole discretion regarding whether to assign, sell, or otherwise transfer Storm Recovery Property or to cause the Storm Recovery Bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance and this Commission will not refuse to allow DEC to recover Storm Recovery Costs in an otherwise permissible fashion.

28-29. **IRS Safe Harbor Provisions.** DEC shall be responsible to structure the Storm Recovery Bond transactions in a way that complies with the "safe harbor" provisions of IRS Revenue Procedure 2005-62.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_ day of \_\_\_\_\_, 2021.

NORTH CAROLINA UTILITIES COMMISSION



**APPENDIX A****SUMMARY OF CALCULATION OF DEC'S  
SECURITIZABLE BALANCE**

Estimated Storm Recovery Costs (incremental O&M costs and capital investments)	\$ 188,374,000
Estimated Carrying Costs through bond issuance date <sup>16</sup>	\$ 37,196,000
Estimated Up-front Financing Costs <sup>17</sup>	\$ 5,230,000
	<hr/>
Estimated Principal Amount of Storm Recovery Bonds	\$ 230,800,000

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<sup>16</sup> Assuming the Storm Recovery Bonds are issued on approximately June 1, 2021.

<sup>17</sup> Final Up-front Financing Costs to be included in the Issuance Advice Letter.

**APPENDIX B**

[Form of Standard True-Up Adjustment Letter]



[ , 20 ]

**VIA ELECTRONIC FILING**

Ms. Kimberly A. Campbell  
 Office of the Chief Clerk  
 North Carolina Utilities Commission  
 4325 Mail Service Center  
 Raleigh, North Carolina 27699-4335

**Re: Duke Energy Carolinas, LLC's True-Up Adjustment Letter  
 Docket No. E-7, Sub 1243**

Dear Clerk Campbell:

Pursuant to the North Carolina Utilities Commission's ("Commission") [ , 20 ] Order in Docket No. E-7, Sub 1243 (the "DEC Financing Order"), Duke Energy Carolinas, LLC ("DEC") as Servicer of the [ ] ("Storm Recovery Bonds") has filed a request for an adjustment to the storm recovery bond charges ("Storm Recovery Charges"). This adjustment is intended to satisfy the requirements of N.C. Gen. Stat. § 62-172(b)(3)d., and the Financing Order by ensuring that the Storm Recovery Charges will recover amounts sufficient to timely provide for payments of debt service and other required amounts in connection with the Storm Recovery Bonds.

Per the Financing Order, "After issuance of Storm Recovery Bonds on behalf of DEC, the servicer will submit at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled final payment date of the last maturing tranche of...Storm Recovery Bonds) a letter in this docket for Commission review, as described in N.C. Gen. Stat. § 62-172(b)(3)d., and in the form attached hereto...and as an exhibit to the Servicing Agreement" ("True-up Adjustment Letter" or, "TUAL"). The Storm Recovery Bonds were issued on [ , 20 ]. DEC filed its first True-Up Adjustment Letter on [ , 20 ].

Ordering Paragraph 11 of the Financing Order describes how such True-Up Adjustment Letters are to be handled.

Upon the filing of a TUAL made pursuant to this Financing Order, Commission Staff shall either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the

servicer's true-up filing. Notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a TUAL and no potential modification to correct an error in a TUAL shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the next TUAL. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of this Commission will be required prior to implementation of the true-up.

Attached is the [ TBD ] Revised Sheet No. [ ] reflecting the change in the Storm Recovery Charge.

Per DEC's request in its True-Up Adjustment Letter and in accordance with the Financing Order, the proposed adjustments to the Storm Recovery Charges will be effective on [ , 20 ].

Respectfully submitted,

Duke Energy Carolinas, LLC

Attachments

**DUKE ENERGY CAROLINAS, LLC**  
**Storm Recovery Charge True-Up Mechanism Form For the**  
**Period , 20 through 20,**

	Description		Calculation of the True-up (1)		Projected Revenue Requirement to be Billed and Collected (2)		Revenue Requirement for Projected Two Remittance Periods (1)+(2)=(3)
<b>1</b>	<b>Storm Recovery Bond Repayment Charge (remitted to SPE)</b>						
<b>2</b>	True-up for the Prior Remittance Period Beginning and Ending:						
<b>3</b>	Prior Remittance Period Revenue Requirements						
<b>4</b>	Prior Remittance Period Actual Cash Receipt Transfers Interest income:						
<b>5</b>	Cash Receipts Transferred to the SPE						
<b>6</b>	Interest income on Subaccounts at the SPE						
<b>7</b>	Total Current Period Actual Daily Cash Receipts Transfers and Interest Income (Line 5 + 6)						
<b>8</b>	(Over)/Under Collections of Prior Remittance Period Requirements (Line 3+7)						
<b>9</b>	Cash in Excess Funds Subaccount						
<b>10</b>	Cumulative (Over)/Under Collections through Prior Remittance Period (Line 9+10)		\$				\$
<b>11</b>	Current Remittance Period Beginning _____ and Ending _____						
<b>12</b>	Principal						
<b>13</b>	Interest						
<b>14</b>	Servicing Costs						
<b>15</b>	Other On-Going Costs						

16	Total Current Remittance Period Revenue Requirement (Line 2+3+4+5)		\$				
17	Current Remittance Period Cash Receipt Transfers and Interest Income:						
18	Cash Receipts Transferred to SPE	(A)		(B)			
19	Interest Income on Subaccounts at SPE	(A)		(B)			
20	Total Current Remittance Period Cash Receipt Transfers and Interest Income (Line 18+19)		\$		\$		
21	Estimated Current Remittance Period (Over)/Under Collection (Line 19+24)		\$		\$		\$
22	Projected Remittance Period Beginning _____ and Ending _____						
23	Principal						
24	Interest						
25	Servicing Costs						
26	Other On-Going Financing Costs						
27	Projected Two Remittance Periods Revenue Requirement (Line 23+24+25+26)				\$		\$
28	Total Revenue Requirements to be Billed During Projected Two Remittance Periods (Line 10+21+27)						\$
29	Forecasted KWh Sales for the Projected Two Remittance Periods (adjusted for uncollectibles)						
30	Average Retail Storm Recovery Charge per kWh (Line 28/29)					(C)	
31	Notes:						
32	(A) Amounts are based on a billed and collected basis.						
33	(B) Includes estimated amounts for through .						
34	(C) Allocation of this amount to each rate class is addressed by witness Jonathan Byrd in his testimony.						

## APPENDIX C

## [Form of Issuance Advice Letter]



[ , 20 ]

VIA ELECTRONIC FILING

Ms. Kimberly A. Campbell  
 Office of the Chief Clerk  
 North Carolina Utilities Commission  
 4325 Mail Service Center  
 Raleigh, North Carolina 27699-4335

**Re: Duke Energy Carolinas, LLC's Issuance Advice Letter  
 Docket No. E-7, Sub 1243**

Dear Clerk Campbell:

Pursuant to the financing order in the above-captioned docket ("Financing Order"), Duke Energy Carolinas, LLC (the "Company") hereby transmits for filing this combined Issuance Advice Letter and Form of True-Up Adjustment Letter. Any terms not defined herein shall have the meanings ascribed thereto in the Financing Order or N.C. Gen. Stat. § 62-172.

In the Financing Order, the Commission requires the Company to file an Issuance Advice Letter following pricing of a series of Storm Recovery Bonds.

The terms of pricing and issuance of the first series of Storm Recovery Bonds are as follows:

Name of Storm Recovery Bonds: [ ]

Name of SPE: [ ]

Name of Storm Recovery Bond Trustee:

Name of SRB Securities: [SRB Notes]

Name of SRB Issuer: [ ]

Name of SRB Trustee: [ ]

Expected Closing Date: [ ]

Preliminary Bond Ratings<sup>18</sup>: Moody's, [Aaa(sf)]; Standard & Poor's, [AAA(sf)]; Fitch, [AAAsf|AAA(sf)] (final ratings to be received prior to closing)

Total Principal Amount of Storm Recovery Bonds to be Issued (i.e., Amount of Storm Recovery Costs and Up-Front Financing Costs to be Financed): \$[ ] (See Attachment 1)

<sup>18</sup> The Company anticipates receiving bond ratings from at least two of the three major rating agencies.

Estimated Up-Front Financing Costs: \$[ ] (See Attachment 2)  
Interest Rates and Expected Amortization Schedules of the Storm Recovery Bonds [and SRB Notes] (See Attachment 3):  
Distributions to Investors: Semi-annually  
Weighted Average Coupon Rate<sup>19</sup>: [ ]%  
Annualized Weighted Average Yield<sup>20</sup>: [ ]%  
Initial Balance of Capital Subaccount: \$[ ]  
Estimated/Actual On-going Financing Costs for first year of Storm Recovery Bonds: \$[ ] (See Attachment 4)

The Financing Order requires the Company to confirm, using the methodology approved therein, that the actual terms of the [SRB Notes and] Storm Recovery Bonds result in compliance with the standards set forth in the Financing Order. These standards are:

1. the issuance of Storm Recovery Bonds and imposition and collection of Storm Recovery Charges as authorized in this Financing Order provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds;
2. the aggregate principal amount of Storm Recovery Bonds issued does not exceed the Securitizable Balance;
3. the [SRB Notes and] Storm Recovery Bonds will be issued in one or more series comprised of one or more tranches having target final payment of ~~15~~[20] years;
4. the [Storm Recovery Bonds / SRB Notes] have received a rating of Aaa(sf) / AAA(sf) from at least two of the three major rating agencies;
5. the [SRB Notes and] Storm Recovery Bonds are structured to achieve substantially level debt service payments on an annual basis;
6. the issuance of the [SRB Notes and] Storm Recovery Bonds has been structured in accordance with IRS Rev. Proc. 2005-62; and
7. the structuring, marketing and pricing of the Storm Recovery Bonds;~~;~~ including the issuance of SRB Notes;~~;~~ resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order: (the Lowest Charge Standard).

The initial storm recovery charge (the “Initial Charge”) has been calculated in accordance with the methodology described in the Financing Order and based upon the structuring and pricing terms of the Storm Recovery Bonds set forth in this combined Issuance Advice Letter and Form of True-Up Adjustment Letter.

<sup>19</sup> Weighted by modified duration and principal amount of each tranche.

<sup>20</sup> Weighted by modified duration and principal amount, calculated including selling commissions.

Attachment 5 provides the Revenue Requirements for calculating the Initial Charge. Attachment 6 calculates the Initial Charge based upon the cost allocation formula approved in the Financing Order. Attachment 7 is a comparison between the net present value of costs to customers that are estimated to result from the issuance of Storm Recovery Bonds and the costs that would result from the application of the traditional method of recovering Storm Recovery Costs from customers. Also attached are the calculations and supporting data for such tables. The Company's certification is Attachment 8.

Pursuant to the Financing Order, the transaction may proceed and the Initial Charge will take effect unless **a stop order is issued by the Commission prior to noon on [ , 20 ](3 business days after pricing)**; and the Company, as servicer, or any successor servicer and on behalf of the trustee as assignee of the SPE, is required to apply at least semi-annually for mandatory periodic adjustment to the Storm Recovery Charges. The Initial Charge shall remain in effect until changed in accordance with the provisions of Ordering Paragraph [12] of the Financing Order.

The Company's certification required by the Financing Order is set forth in Attachment 8, which also includes the statement of the actions taken by the Company to achieve the Statutory Objectives as required by the Financing Order.

Respectfully submitted,

Duke Energy Carolinas, LLC

Attachments



**Attachment 1**

**TOTAL PRINCIPAL AMOUNT OF STORM RECOVERY BONDS TO BE ISSUED  
(TOTAL AMOUNT OF STORM RECOVERY COSTS AND UP- FRONT FINANCING  
COSTS TO BE FINANCED)**

Storm Recovery Costs, including carrying costs through [date of the Rate Order]	\$
Carrying costs subsequent to [the date of the Rate Order] to bond issuance date	
Estimated Up-front Financing Costs included in Proposed Structure (refer to attachment 2)	\$
<b>Total Storm Recovery Bond Issuance (rounded up)</b>	<b>\$</b>

**Attachment 2**

**ESTIMATED UP-FRONT FINANCING COSTS**

Underwriters' Fees and Expenses	\$
Servicer Set-up Fee (including IT Programming Costs)	\$
Legal Fees	\$
Rating Agency Fees	\$
Public Staff Financial Advisor Fees	\$
Public Staff Legal Fees	\$
DEC Structuring Advisor Fee	\$
Accounting Fees	\$
SEC Fees	\$
SPE Set-up Fee	\$
SRB Trust Set-up Fee allocable to DEC	\$
Marketing and Miscellaneous Fees and Expenses	\$
Printing / Edgarizing Expenses	\$
Trustees/Trustees Counsels Fee and Expenses	\$
Original Issue Discount	\$
Other Ancillary Agreements	\$
<b>TOTAL ESTIMATED UP-FRONT FINANCING COSTS</b>	<b>\$</b>

**Attachment 3**

**EXPECTED AMORTIZATION SCHEDULE**

**A. General Terms**

Tranche	Price	Coupon	Fixed/ Floating	Average Life	Expected Final Maturity	Legal Final Maturity

**B. Scheduled Amortization Requirement of [SRB Notes]**

Series [ ], Tranche [A-1]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-2]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-3]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-4]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-5]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

**C. Scheduled Amortization Requirement of Storm Recovery Bonds**

Series [ ], Tranche [A-1]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance


Series [ ], Tranche [A-2]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-3]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

Series [ ], Tranche [A-4]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance


Series [ ], Tranche [A-5]					
Payment Date	Beginning Principal Balance	Interest	Principal	Total Payment	Ending Principal Balance

**Attachment 4****ESTIMATED ANNUAL ON-GOING FINANCING COSTS**

	Annual Amount
Servicing Fee <sup>1</sup>	\$
Return on Invested Capital	\$
Administration Fee	\$
Accounting Fees	\$
Regulatory Assessment Fees	\$
Legal Fees	\$
Rating Agency Surveillance Fees	\$
Trustee Fees	\$
SRB Trustee Fees Allocable to DEC	\$
Independent Manager Fees	\$
Miscellaneous Fees and Expenses	\$
<b>TOTAL ESTIMATED ANNUAL ON-GOING FINANCING COSTS</b>	<b>\$</b>

<sup>1</sup> Low end of the range assumes the Company is the servicer (0.05%). Upper end of the range reflects an alternative servicer (0.60%).

**Attachment 5**

**REVENUE REQUIREMENT AND INPUT VALUES**

<b>Initial Payment Period from [     , 20 ] to [     , 20 ]</b>	<b>Bond Repayment</b>	<b>Total</b>
Forecasted retail kWh sales		
Percent of billed amounts expected to be charged-off		%
Forecasted % of billings paid in the applicable period		%
Forecasted retail kWh sales billed and collected		
Storm Recovery Bond principal payment	\$	\$
Storm Recovery Bond interest payment	\$	\$
Forecasted On-going Financing Costs (excluding principal and interest)	\$	\$
Total collection requirement for applicable period	\$	\$



## Attachment 6

Rate Class	Applicable Schedules	(A) Revenue Requirement Allocated by Class <sup>(1)</sup> (\$'000)	(B) Effective Sales <sup>(2)</sup> (MWh)	(C) Storm Recovery Charge (c/kWh)
				(A) * 100 / (B)
Residential	ES, RE, RE-CPP, RE-TOU-CPP, RE-TOUD-DPP, RS, RS-CPP, RS-TOU-CPP, RS-TOUD-DPP, RT	\$12,563	22,221,707	0.0565
General Service	BC, HP, LGS, OPT-E, OPT-V, PG, S, SGS, SGS-CPP, SGS-TOU-CPP, SGS-TOUD-DPP, TS	\$3,598	22,921,898	0.0157
Industrial	HP, I, OPT-E, OPT-V, PG	\$1,015	12,257,066	0.0083
Lighting	NL, OL, PL	\$897	665,536	0.1348
<b>Total</b>		<b>\$18,073</b>	<b>58,066,207</b>	<b>0.0311</b>

<sup>(1)</sup> *Abernathy Exhibit 3 - Allocation of Storm Recovery Charge to Customer Classes as filed in Docket No. E-7, Sub 1243. Revenue Requirements were grossed-up to reflect uncollectible account write-offs and regulatory fees.*

<sup>(2)</sup> *Effective Sales are based on the Company's 2020 IRP retail load forecast for year 2021. Effective Sales have been allocated to Rate Classes using billed kWh sales for year 2018.*

**Attachment 7**

**Quantifiable Benefits to Customers**

[To be updated]

[Workpapers to be attached]

**Attachment 8****Form of Company Certification**

[           , 20    ]

Ms. Kimberly A. Campbell  
 Chief Clerk  
 North Carolina Utilities Commission  
 4325 Mail Service Center  
 Raleigh, North Carolina 27603-5918

**Re:   Duke Energy Carolinas, LLC’s Company Certification  
       Docket No. E-7, Sub 1243**

Dear Clerk Campbell,

Duke Energy Carolinas, LLC (the “Company”) submits this Certification pursuant to Ordering Paragraphs [10 and 11] of the Financing Order in Docket No. E-7, Sub 1243 (the “Financing Order”). All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

In its issuance advice letter dated [   , 20 ], the Company has set forth the following particulars of the Storm Recovery Bonds:

Name of Storm Recovery Bonds:

Name of SPE: [    ]

Name of Storm Recovery Bond Trustee:

Name of SRB Issuer: [    ]

Name of SRB Securities: [SRB Notes]

Name of SRB Trustee: [    ]

Closing Date: [           , 20    ]

Preliminary Bond Ratings<sup>21</sup>: Moody’s [Aaa(sf)]; Standard & Poor’s [AAA(sf)]; Fitch [~~AAAsf~~AAA(sf)] (final ratings to be received prior to closing)

Total Principal Amount of Storm Recovery Bonds to be Issued: \$   (See Attachment 1)

Estimated Up-front Financing Costs: \$           (See Attachment 2)

Interest Rates and Expected Amortization Schedule: (See Attachment 3)

Distributions to Investors: Semi-annually

<sup>21</sup> The Company anticipates receiving bond ratings from at least two of the three major rating agencies.

Weighted Average Coupon Rate<sup>22</sup>: %  
 Annualized Weighted Average Yield<sup>23</sup>: %  
 Initial Balance of Capital Subaccount: \$  
 Estimated/Actual On-going Financing Costs for first year of Storm Recovery Bonds:  
 \$[ ]

As required by the Financing Order, the Company prepared a comparison between the net present value of costs to customers that are estimated to result from the issuance of Storm Recovery Bonds and the costs that would result from the application of the traditional method of recovering storm recovery costs from customers.

In accordance with the procedures set forth in the Financing Order, the following actions were taken in connection with the structuring and pricing and financing costs of the Storm Recovery Bonds in order to satisfy the ~~statutory cost objectives~~: Statutory Cost Objectives and the Lowest Charge Standard:

- [Included credit enhancements in the form of the true-up mechanism and an equity contribution to [ ] of 0.50% of the original principal amount of the bonds;
- Structured the financing so that the [SRB Notes] would not be asset backed securities within the meaning of Item 1101(c) of Regulation AB;
- [Sold the Storm Recovery Bonds to [ ], a Delaware grantor trust, which offered SRB Notes secured by the Storm Recovery Bonds and ~~storm recovery bonds~~ Storm Recovery Bonds issued by DEP; ]
- Ensured the Registration Statement contained proper disclosures to communicate the superior credit features of the [SRB Notes, which are secured by the] Storm Recovery Bonds;
- Developed rating agency presentations and worked actively with the rating agencies during the rating agency process to achieve Aaa(sf) / ~~AAAsf~~ AAA(sf) from at least two of the three major rating agencies;
- Worked to select key transaction participants, including lead underwriters and co-managers through an RFI process to determine that they have relevant experience and execution capabilities, and who were aligned with DEC's objectives, namely broad distribution to investors and willingness to market the bonds in a manner consistent with the superior credit quality and uniqueness of the bonds;
- Hired a diverse group of underwriters, including underwriters with international and mid-tier expertise in order to attract a wide variety of potential investors;
- Reviewed detailed marketing plans submitted by each lead underwriter;
- Developed all bond transaction documents, marketing materials and legal opinions in a plain English manner while balancing SEC disclosure requirements, in an effort to

<sup>22</sup> Weighted by modified duration and principal amount of each tranche.

<sup>23</sup> Weighted by modified duration and principal amount, calculated including selling commissions.

ensure investors could more easily understand the high-quality nature of the bond offering;

- Allowed sufficient time for investors to review [relevant marketing materials] and preliminary prospectus and to ask questions regarding the transaction;
- Attended telephonic pre-marketing investor meetings throughout 2021;
- Arranged issuance of rating agency pre-sale reports during the marketing period;
- During the period that the bonds were marketed, held numerous market update discussions with the underwriting team, [and the Commission or its Designated Member] to develop recommendation for pricing;
- Had multiple conversations with all of the members of the underwriting team during the marketing phase in which we stressed the requirements of the Financing Order;
- Developed and implemented a marketing plan designed to encourage each of the underwriters to aggressively market the bonds to a broad base of prospective corporate and asset backed securities investors, including investors who have not previously purchased this type of security;
- Conducted in person and telephonic roadshows with over [ ] investors in [ ] cities;
- Provided other potential investors with access to an internet roadshow for viewing at investors' convenience;
- Adapted the bond offering to market conditions and investor demand at the time of pricing consistent with the guidelines outlined within the Financing Order. Variables impacting the final structure of the transaction were evaluated including the length of the average lives and maturity of the bonds and the interest rate requirements at the time of pricing so that the structure of the transaction would correspond to investor preferences and rating agency requirements for the highest rating possible; and
- Developed bond allocations, underwriter compensation and preliminary price guidance designed to achieve customer savings.]

Based on the statutory criteria and procedures, the record in this proceeding, and other provisions of ~~this~~the Financing Order, DEC certifies the ~~statutory~~ requirements for issuance of a financing order and Storm Recovery Bonds have been met, specifically (i) that the issuance of the [SRB Notes and underlying] Storm Recovery Bonds on behalf of DEC and the imposition and collecting of ~~storm recovery charges~~Storm Recovery Charges authorized by ~~this~~the Financing Order provide quantifiable benefits to customers of DEC as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds (the Statutory Cost Objectives), and (ii) that the structuring, marketing and pricing of the [SRB Notes and underlying] Storm Recovery Bonds issued on behalf of DEC in fact result in the lowest ~~storm recovery charges~~Storm Recovery Charges payable by the customers of DEC consistent with market conditions at the time such [SRB Notes and underlying] Storm Recovery Bonds are priced and the terms set forth in the Financing Order: (the Lowest Charge Standard).

This certification is being provided to the Commission by the Company in accordance with the terms of the Financing Order, and no one other than the Commission shall be entitled to rely on the certification provided herein for any purpose.

Respectfully Submitted,

Duke Energy Carolinas, LLC