

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1146

In the Matter of)	TESTIMONY OF
Application of Duke Energy Carolinas,)	JAMES S. MCLAWHORN
LLC, for Adjustment of Rates and)	PUBLIC STAFF – NORTH
Charges Applicable to Electric Utility)	CAROLINA UTILITIES
Service in North Carolina)	COMMISSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**DOCKET NO. E-7, SUB 1147****TESTIMONY OF JAMES S. MCLAWHORN
ON BEHALF OF THE PUBLIC STAFF
NORTH CAROLINA UTILITIES COMMISSION****JANUARY 23, 2018**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**
2 **PRESENT POSITION.**

3 A. My name is James S. McLawhorn. My business address is 430
4 North Salisbury Street, Dobbs Building, Raleigh, North Carolina. I
5 am the Director of the Electric Division of the Public Staff – North
6 Carolina Utilities Commission.

7 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

8 A. My qualifications and duties are included in Appendix A.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. The purpose of my testimony is to give an overview of the Public
11 Staff's investigation in this case, including our investigation of Duke
12 Energy Carolina's (DEC or Company) coal ash management
13 practices, and introduce the other Public Staff witnesses who are

1 presenting testimony. I will also highlight some of the differences
2 between the issues in this case and the issues in Duke Energy
3 Progress, LLC's (DEP) rate case in Docket No. E-2, Sub 1142 (the
4 DEP rate case). Finally, I will provide the Public Staff's
5 recommendations on DEC's request to implement a Job Retention
6 Rider, originally filed in Docket No. E-7, Sub 1152, on August 14,
7 2017, and consolidated with this general rate case application by
8 Commission Order dated October 18, 2017.

9 **OVERVIEW OF THE PUBLIC STAFF'S INVESTIGATION**

10 **Q. PLEASE DESCRIBE THE ROLE OF THE PUBLIC STAFF.**

11 A. The Public Staff is an independent agency created in 1977 to review,
12 investigate and make appropriate recommendations to the North
13 Carolina Utilities Commission with respect to the reasonableness of
14 rates charged, and adequacy of service provided, by public utilities.
15 The Public Staff is composed of approximately 80 professionals,
16 including attorneys, engineers, accountants, economists and
17 analysts, all of whom are dedicated to advocating for utility
18 consumers.

1 **Q. WHO DOES THE PUBLIC STAFF REPRESENT BEFORE THE**
2 **UTILITIES COMMISSION?**

3 A. Pursuant to G.S. §62-15, the Public Staff intervenes in cases on
4 behalf of the using and consuming public.

5 **Q. WHO IS THE USING AND CONSUMING PUBLIC IN THIS CASE?**

6 A. The using and consuming public in this case is the retail ratepayers
7 of DEC. Retail ratepayers include residential, commercial and
8 industrial customers. The using and consuming public does not
9 include the customers of wholesale electric providers such as electric
10 membership cooperatives or municipalities.

11 **Q. HOW DID THE PUBLIC STAFF APPROACH ITS INVESTIGATION**
12 **IN THIS CASE?**

13 A. The Public Staff approached this case in the same manner as all
14 other cases, which is to gather and analyze the evidence and present
15 recommendations to the Commission on behalf of our clients, the
16 North Carolina retail customers of DEC, that are consistent with the
17 law, rules, regulations, and relevant case precedent. Our
18 investigation explored how technical, investment, accounting, and
19 management decisions were made within the utility and tested
20 whether those decisions were reasonable, prudent, and the lowest
21 reasonable cost option. We approached each issue collectively and

1 reached internal consensus for each position we have put forward in
2 this case. The Public Staff takes its job very seriously and seeks to
3 produce the best possible outcome for consumers within the bounds
4 established for us by the statutes adopted by the North Carolina
5 General Assembly and case law.

6 **Q. PLEASE DESCRIBE THE PUBLIC STAFF'S INVESTIGATION.**

7 A. Upon receipt of DEC's rate case application, the Public Staff
8 immediately organized an internal task force composed of engineers,
9 accountants, attorneys, and economists responsible for investigating
10 all aspects of the case. In total, the Public Staff utilized 19 internal
11 personnel in its investigation, 10 of whom will testify in this
12 proceeding. Another 13 professionals were utilized in the Consumer
13 Services Division who answered phone calls, processed emails and
14 written correspondence, and reviewed complaints and inquiries from
15 DEC customers.

16 The Public Staff also retained the services of six consultants to assist
17 with the investigation and make recommendations regarding highly
18 specialized topics arising in this case. The Public Staff retained the
19 services of Garrett and Moore, P.E. to assist in the evaluation of
20 DEC's coal ash compliance activities; Technical Associates, Inc. to
21 assist in the evaluation of DEC's cost of capital; William W. Dunkel
22 & Associates to assist in the evaluation of DEC's depreciation and

1 non-nuclear decommissioning studies; and Global Energy & Water
2 Consulting LLC to assist in the evaluation of DEC's request for
3 approval of cost recovery in connection with the cancellation of the
4 William States (W.S.) Lee III Nuclear Project (Lee Nuclear Project).
5 In addition, Katherine Fernald and Randy Edwards, former
6 employees of the Public Staff, provided contract accounting services
7 on specialized topics such as excess deferred income taxes and
8 nuclear decommissioning.

9 The Public Staff reviewed DEC's Form E-1, testimony and exhibits,
10 the testimony of other intervenors, and customer statements filed in
11 the docket, which amounted to thousands of pages of testimony and
12 supporting exhibits. We also reviewed DEC's supplemental filings.
13 The Public Staff served 133 data requests on DEC and reviewed
14 numerous documents responding to those requests. The Public
15 Staff also reviewed DEC's responses to the data requests of the
16 other intervenors. Public Staff accountants and engineers have
17 reviewed ledger entries and invoices, work orders, change orders,
18 and other supporting documentation. We reviewed over four years
19 of Duke Energy board of director minutes, presentations, and the
20 materials of related board committees.

1 In addition to reviewing numerous documents and ledger entries, the
2 Public Staff conducted plant site visits to inspect new capital projects
3 that have been placed into service since the last rate case. We also
4 interviewed a number of DEC employees to assist in our
5 understanding of the Company's positions in the case.

6 Finally, by the time of the evidentiary hearing in this case, the Public
7 Staff will have attended the three customer hearings located
8 throughout DEC's service territory to listen to what customers had to
9 say about this case.¹

10 **Q. PLEASE DESCRIBE THE PUBLIC STAFF'S INVESTIGATION**
11 **INTO DEC'S COAL ASH MANAGEMENT PRACTICES AND**
12 **COSTS.**

13 A. The Public Staff's investigation into DEC's coal ash management
14 practices began before DEC filed its rate case application. We knew
15 it would be a huge undertaking, and it has been. As I stated above,
16 we engaged the services of Garrett & Moore to assist us with this
17 investigation. We had access to a database of over 300,000
18 documents and sent 50 data requests that resulted in the production
19 of an extremely large number of additional documents. We also
20 reviewed DEC's responses to the data requests of other intervenors

¹ Additionally, the Public Staff attended the five public hearings in the DEP rate case, where a number of DEC customers testified.

1 and participated in the deposition of DEC's coal ash witness, Mr.
2 Kerin. We interviewed staff at the Department of Environmental
3 Quality in order to enhance our understanding of the coal ash basin
4 closure process and environmental issues resulting from coal ash.
5 Members of Garrett & Moore and our staff visited plant sites and
6 viewed the handling of coal combustion residuals. Public Staff
7 members also visited the Brickhaven facility, which is the disposal
8 site for ash from DEC's Riverbend Plant and DEP's Sutton Plant.

9 **Q. WHO ARE THE WITNESSES PRESENTING TESTIMONY IN**
10 **SUPPORT OF THE PUBLIC STAFF'S CASE?**

11 A. The Public Staff's other witnesses presenting testimony in support of
12 this case are:

13 1. Michael C. Maness, Director of the Public Staff Accounting
14 Division, who presents accounting adjustments related to
15 DEC's coal ash management practices, including the
16 regulatory treatment of deferred coal ash costs, future coal
17 ash costs, and allocations of coal ash costs. He also
18 discusses the Company's proposed Grid Reliability and
19 Resiliency (GRR) Rider, nuclear decommissioning, Lee
20 Nuclear Project AFUDC, and meter retirements.

- 1 2. Michelle M. Boswell, Public Staff accountant, who
2 presents the accounting and ratemaking adjustments
3 resulting from the Public Staff's investigation of the
4 revenue, expenses, and rate base presented by DEC.
- 5 3. Jack L. Floyd, Public Staff engineer, who presents
6 testimony regarding DEC's cost of service, Customer
7 Connect, AML deployment, revenue assignment, and rate
8 design.
- 9 4. Dustin R. Metz, Public Staff engineer, who presents
10 testimony regarding Public Staff adjustments related to
11 DEC's coal inventory and the Lee Nuclear Project.
- 12 5. Jay B. Lucas, Public Staff engineer, who presents
13 testimony regarding the Company's proposal to recover
14 certain coal ash costs through the fuel adjustment rider.
- 15 6. Charles M. Junis, Public Staff engineer, who presents
16 testimony regarding Public Staff adjustments related to
17 DEC's coal ash management practices, environmental
18 violations, and CCR and CAMA compliance activities.
- 19 7. Scott J. Saillor, Public Staff engineer, who presents
20 testimony regarding operating revenues associated with
21 DEC's customer growth and usage.

- 1 8. Tommy W. Williamson, Public Staff engineer, who
2 presents testimony regarding DEC's quality of service, the
3 Company's Power/Forward Carolinas initiative, including
4 the proposed GRR Rider, and vegetation management.
- 5 9. Vance F. Moore, P.E., President of Garrett & Moore, and
6 L. Bernard Garrett, P.E., Secretary/Treasurer of Garrett &
7 Moore, who present testimony regarding the prudence of
8 DEC's coal ash management strategy decisions.
- 9 10. David C. Parcell, Principal and Senior Economist of
10 Technical Associates, Inc., who presents his analysis of
11 DEC's cost of capital and capital structure. Witness
12 Parcell makes a recommendation for an allowed return on
13 equity (ROE) that is fair to both customers and the
14 company.
- 15 11. Roxie McCullar, of William W. Dunkel & Associates who
16 presents her analysis of DEC's depreciation study filed in
17 this case, including adjustments related to terminal net
18 salvage.
- 19 12. John R. Hinton, Director of the Public Staff's Economic
20 Research Division, who presents the results of his
21 investigation of DEC's nuclear decommissioning funding
22 and weather normalization analysis.

1 **Q. PLEASE SUMMARIZE THE ADJUSTMENTS MADE BY THE**
2 **PUBLIC STAFF TO DEC’S APPLICATION.**

3 A. The Public Staff proposes a number of adjustments that will be
4 discussed in greater detail by the witnesses listed above. Many of
5 these adjustments are substantially similar in approach to the Public
6 Staff’s recommended adjustments in the DEP rate case, including:

- 7 • Coal inventory
- 8 • ROE and capital structure
- 9 • Customer growth and usage
- 10 • Customer Connect
- 11 • Depreciation and depreciation rates
- 12 • Vegetation management
- 13 • Costs to comply with the Coal Ash Management Act and
14 federal Coal Combustion Rule
- 15 • Costs associated with coal ash litigation defense, fines,
16 penalties, voluntary payments, settlement payments, and
17 environmental violations
- 18 • Costs associated with the federal criminal plea agreement
- 19 • Costs related to coal ash disposal activities at certain DEC
20 plants

4 A. In addition to the issues that DEC had in common with DEP in the
5 DEP Rate Case, the Public Staff investigated the Company's request
6 to cancel and recover the costs of the Lee Nuclear Project; the costs
7 of the W.S. Lee Combined Cycle Project; and the Company's request
8 to establish a GRR Rider. Also unique to this case includes
9 adjustments relating to the effects of the decrease in federal income
10 tax rates pursuant to the recent passage of the federal Tax Cuts and
11 Jobs Act, the overfunding of DEC's nuclear decommissioning trust
12 fund, and certain Lee Nuclear Project costs.

14 Q. PLEASE DISCUSS THE COMPANY'S PROPOSED JOB
15 RETENTION RIDER (JRR).

16 A As I stated above, DEC filed a petition on August 14, 2017, seeking
17 approval of a Job Retention Rider JRR-1 (JRR-1) in Docket No. E-7,
18 Sub 1152. By Order dated October 18, 2017, the Commission
19 consolidated this matter with the Sub 1146 general rate case. DEC's
20 proposed JRR-1 was filed in accordance with the requirements and
21 guidelines the Commission established in its *Order Adopting*

1 *Guidelines for Job Retention Tariffs* (JRT Order) dated December 8,
2 2015, in Docket No. E-100, Sub 73. My review of DEC's filing was
3 reviewed in the context of the JRT Order and the guidelines,
4 conditions, and contract provisions enumerated in the JRT Order.

5 **Q. WHAT ARE THE GUIDELINES AND FILING REQUIREMENTS**
6 **THAT ARE NECESSARY FOR APPROVAL OF A JRT BY THE**
7 **NCUC?**

8 A. Appendix A to the JRT Order (JRT Guidelines), details the guidelines
9 and filing requirements for any proposed JRT. As such, these criteria
10 are applicable to DEC's proposed JRR-1. These guidelines require
11 that the Company show:

- 12 1. That the proposed JRT is not unduly discriminatory
13 and is in the public interest;
- 14 2. That the proposed JRT is needed and will help avoid
15 a loss of jobs;
- 16 3. That the proposed JRT is intended to be temporary;
17 and
- 18 4. That the proposed discount covers at least the
19 variable costs and provides some contribution to fixed
20 costs.

1 The Commission also outlined several conditions that are applicable
2 to individual customers seeking service under a JRT. These
3 conditions include:

- 4 1. A customer cannot be served by the JRT in excess of
5 the tariff expiration date, which is a maximum of five
6 years from the date of approval;
- 7 2. A customer cannot be served under both a JRT and
8 another economic development or self-generation tariff
9 at the same time;
- 10 3. A customer must enter into a JRT contract with the
11 utility, detailing the agreed upon jobs and load to be
12 maintained, termination provisions for failure to
13 maintain, and an affirmation that the discount will be
14 used to achieve job retention;
- 15 4. A customer that fails to maintain the agreed upon
16 number of jobs or load, must have its JRT participation
17 discontinued;
- 18 5. A customer is required to have at least 12 months of
19 operating experience with the utility;
- 20 6. A customer must demonstrate financial viability;

- 1 7. A customer must agree to an energy audit;
- 2 8. The utility is required to compile a customer-by-
3 customer analysis each year that the JRT is in effect,
4 detailing the impact of the JRT on targeted jobs,
5 electric demand, and energy sales;
- 6 9. The Public Staff should have an opportunity to review
7 the customer-by-customer analysis information so that
8 the Public Staff can report to the Commission on the
9 JRT's effectiveness, customer compliance with
10 contract terms, and whether the JRT remains in the
11 public interest; and
- 12 10. A customer's eligibility determination shall include use
13 of meaningful, verifiable qualifications establishing that
14 the customer will achieve job retention and retain
15 customer load, and that the customer will use the
16 discount in doing so.
- 17 The Commission's guidelines also provide the opportunity for utilities
18 to seek waivers from these requirements if they are impossible,
19 impractical, or unduly burdensome to the participant or utility, or
20 would not materially aid the Commission in determining whether the
21 proposed rate is just, reasonable, not unduly discriminatory, and in
22 the public interest.

1 **Q. HAVE YOU REVIEWED DEC'S PROPOSED RIDER JRR-1?**

2 A. Yes. DEC stated in its application that it filed the proposed Rider
3 JRR-1 in accordance with the requirements of the JRT Guidelines.
4 I have reviewed the Company's application, proposed tariff, and draft
5 application and agreement (customer contract, including terms and
6 conditions of the proposed Rider JRR-1) to determine compliance
7 with the guidelines, conditions, and contract provisions contained in
8 the JRT Guidelines. I also reviewed the Company's responses to
9 the Public Staff's data request, including workpapers associated with
10 the proposed discount.

11 **Q. DOES THE PROPOSED PILOT RIDER JRR-1 COMPLY WITH THE**
12 **FOUR JRT GUIDELINES THAT YOU HAVE IDENTIFIED ABOVE?**

13 A. Yes.

14 **Q. PLEASE EXPLAIN HOW THE PROPOSED PILOT RIDER JRR-1**
15 **IS NOT UNDULY DISCRIMINATORY AND IN THE PUBLIC**
16 **INTEREST.**

17 A. The proposed pilot Rider JRR-1 is not unduly discriminatory because
18 it is designed to reach the largest industrial customers who, as stated
19 by the JRT Order, have the unique characteristics of being able to
20 impact other commercial and residential customer classes. When
21 jobs or load leave DEC's system, the economic impact is likely to be

1 felt across all customer classes. The JRT Order recognized that
2 while the criteria for establishing eligibility is not an exact science,
3 the need to retain jobs and electric load must be balanced with the
4 costs of a JRT. DEC's proposal provides for a balancing of benefits
5 and costs between those customers eligible for Rider JRR-1 and
6 those that will bear the reduction in revenues that result from
7 implementation of the rider. Therefore, I do not believe the proposed
8 Rider JRR-1 is unduly discriminatory and I believe it is in the public
9 interest.

10 **Q. HAS DEC DEMONSTRATED THAT RIDER JRR-1 IS NEEDED**
11 **AND WILL AVOID THE POTENTIAL FOR JOB LOSSES?**

12 A. Yes. DEC's application asserts an "undisputed decline in industrial
13 sales in North Carolina."² A review of several recent DEC integrated
14 resource plans filed with the Commission shows a forecast of slightly
15 positive growth in industrial sales. This growth follows several years
16 of decreasing sales. While the forecasted growth is positive, it is not
17 robust and is not necessarily reflective of all industrial customers or
18 categories of industrial customers. The discount as proposed
19 represents an average revenue reduction of 5.65% for eligible
20 participants and should assist them in maintaining jobs and load in

² Application at page 6.

1 North Carolina.

2 **Q. HAS DEC SHOWN THAT THE JRT WILL BE TEMPORARY?**

3 A. Yes. Rider JRR-1, as filed, is specified to be a five-year pilot.
4 However, as outlined below I believe Rider JRR-1 should be modified
5 to reflect the date of expiration.

6 **Q. HAS DEC DEMONSTRATED THAT THE PROPOSED DISCOUNT**
7 **AT LEAST COVERS BOTH THE VARIABLE COSTS AND A**
8 **PORTION OF THE FIXED COSTS OF RIDER JRR-1**
9 **PARTICIPANTS?**

10 A. Yes. DEC provided confidential workpapers related to the
11 calculation of the proposed discount and potential impact to
12 revenues associated with Rider JRR-1. My review of those
13 confidential workpapers indicates that the discounted revenue
14 collected from participating customers will likely be greater than the
15 marginal cost to serve all eligible participants.

16 **Q. HAS DEC ADDRESSED IN ITS APPLICATION AND PROPOSED**
17 **TARIFF EACH OF THE TEN CONDITIONS YOU OUTLINED THAT**
18 **ARE APPLICABLE TO INDIVIDUAL CUSTOMERS RECEIVING**
19 **SERVICE UNDER RIDER JRR-1?**

20 A. Yes. My review of the proposed Rider JRR-1 indicates that each of
21 the several conditions I discussed above for Rider JRR-1 has been

1 addressed at least in part; however, I would like to bring four
2 concerns to the Commission's attention.

3 **Q. WHAT IS YOUR FIRST AREA OF CONCERN?**

4 A. My first concern has to do with the availability provision of Rider
5 JRR-1. As filed, the tariff would be available for a customer using
6 electric power "as a principal motive power for the manufacture of a
7 finished product, the extraction, fabrication or processing of a raw
8 material, or the transportation or preservation of a raw material of a
9 finished product." My specific concern has to do with the phrase
10 "transportation or preservation of a raw material of a finished
11 product," which the Public Staff understands to refer to pipelines,
12 particularly natural gas pipelines. In order to be eligible to participate
13 in a JRT tariff, the Commission has been clear that there must be a
14 demonstrated need and a way to verify the retention of jobs and load.
15 In other words, there must be a real threat of the loss of jobs or load.
16 The Commission also stated the following regarding eligibility: "...the
17 Commission agrees...that industrial customers or a subset of
18 industrial customers are unique from other customers in that they are
19 not generally tied to any particular location and can more readily or
20 easily relocate."³

³ Order Adopting Guidelines For Job Retention Tariffs, issued December 8, 2015, page 23.

1 A gas pipeline is a very different entity than an industrial
2 manufacturing facility, or even a mining operation. Pipelines are
3 fixed investments that are not easily relocated to another area. They
4 must be located in close proximity to refineries and transport their
5 commodity to areas of customer demand. Further, pipelines do not
6 produce a finished product as industrial manufacturing facilities do.
7 In addition, there are many other types of entities not eligible for
8 Rider JRR-1 that have the capability, and are much more likely, to
9 relocate, go out of business, or reduce jobs and load than a gas
10 pipeline. For these reasons, I recommend that the phrase
11 “transportation or preservation of a raw material of a finished product”
12 be eliminated from the Availability section of Rider JRR-1.

13 **Q. WHAT IS YOUR SECOND AREA OF CONCERN?**

14 A. My second area of concern centers around the detail of customer
15 and other JRT-specific data available to the Public Staff for audit, as
16 well as the quality of the review we will be capable of providing to the
17 Commission annually. Section (b)(9) of the JRT Guidelines reads as
18 follows:

19 The utility shall be required to compile a customer by
20 customer analysis each year during the duration of the
21 JRT of the impact of the JRT on targeted jobs, electric
22 demand, and electric energy sales, and provide the
23 Public Staff the opportunity to visit and review the
24 information so that the Public Staff can evaluate both
25 the effectiveness of the tariff and customer compliance

1 with the terms of the tariff. The Public Staff shall file a
2 report with the Commission indicating generally,
3 without customer specific information, whether the JRT
4 is effective, that customers were in compliance with
5 their contracts, and whether the JRT remains in the
6 public interest.

7 In the proposed Rider JRR-1, under "Application Requirements," the
8 customer is required to submit to DEC a written statement or other
9 documentation that demonstrates the customer's plans regarding
10 load shifting and employment, as well as the impact of the cost of
11 electricity on its employment decisions and the load that is at risk. In
12 addition, the customer is required to submit current financial
13 information demonstrating financial viability. Proposed Rider JRR-1
14 then includes the following statement: "All such statements and
15 documentation shall be confidential, but shall be subject to in camera
16 review by only the Commission upon request." [Emphasis added]
17 While other aspects of Rider JRR-1, as well as the proposed
18 "Application and Agreement" refer to a review by both the
19 "Commission and Public Staff," I am concerned that the above
20 statement in the tariff could cause confusion and misunderstanding,
21 and prevent or delay the Public Staff from performing its duties;
22 therefore, I request that the wording be changed to state that the
23 information shall be subject to review "by only the Commission and
24 Public Staff upon request."

1 My next area of concern with the review process is that the
2 Commission guidelines direct the Public Staff to annually review and
3 evaluate the JRT for compliance and effectiveness and report its
4 findings to the Commission. I want to bring to the Commission's
5 attention what the customer filing requirements and level of
6 verification planned to be conducted by DEC will require for the
7 Public Staff's annual review and report to the Commission. In
8 response to a Public Staff data request, the Company outlined the
9 level of scrutiny it intended to give the data submitted by JRR-1
10 customers. Specifically, DEC repeatedly informed the Public Staff,
11 in response to questions, that it would not review other sources or
12 otherwise verify the information submitted by the customers applying
13 for Rider JRR-1.

14 **Q. WHAT ARE YOUR CONCERNS ABOUT THE PUBLIC STAFF'S**
15 **JRT ANNUAL REPORT TO THE COMMISSION?**

16 A. My concerns stem from the fact that the Public Staff will be reviewing
17 data that has been collected but not independently verified by DEC,
18 with no ability to verify the information itself. Therefore, our annual
19 report to the Commission will consist primarily of a verification that
20 statements were received by the Company, and that the Company's
21 files contain these statements.

1 **Q. WHAT IS YOUR THIRD AREA OF CONCERN?**

2 A. My third area of concern deals with the requirement in section (b)(12)
3 of the JRT Guidelines that states that participating customers are
4 obligated to use the discount received to retain jobs and any agreed
5 upon load. While there is a statement pertaining to use of the
6 discount for job retention near the end of the proposed Application
7 and Agreement (Contract), I recommend that it be relocated as a
8 fourth bullet point under the section of the Contract entitled "To
9 qualify for the Job Retention Rider the Customer shall:" and restated
10 as follows: "Use the discount received under the Rider to achieve job
11 retention as well as to retain the load at the Customer's operations
12 in North Carolina, as agreed to elsewhere in this Application and
13 Agreement."

14 **Q. WHAT IS YOUR FOURTH AREA OF CONCERN?**

15 A. My fourth concern deals with the effective period for the proposed
16 Rider JRR-1. The Availability section of proposed Rider JRR-1
17 specifies that it is a "pilot program." A pilot program is not a
18 permanent offering, and as such, it should have a clearly defined
19 beginning and ending; section (b)(3) of the JRT Guidelines provides
20 that the tariff "shall only be in effect for a maximum of five years
21 measured from the date the approved tariff becomes effective."
22 Assuming the Commission approves proposed Rider JRR-1, I

1 recommend that it require DEC to include language in the
2 compliance filing that clearly states that the rider will terminate for all
3 customer participants five years from the date it is first approved by
4 the Commission.

5 **Q. DO YOU HAVE RECOMMENDATIONS TO ADDRESS YOUR**
6 **SECOND, THIRD, AND FOURTH AREAS OF CONCERN?**

7 A. Yes. To address these concerns, DEC should impose a requirement
8 that an officer of the customer sign the application and the signature
9 be notarized. This information should be provided to the Company
10 in compliance with the guidelines and should be available for review
11 by the Public Staff.

12 **Q. DO YOU HAVE RECOMMENDATIONS CONCERNING THE**
13 **PROPOSED RECOVERY OF ANY DISCOUNTED REVENUE AS**
14 **PROPOSED BY THE COMPANY?**

15 A. Yes. I disagree with the Company's proposal for deferral accounting
16 between rate cases of the discounted revenue, and its proposal for
17 sharing of the discount between DEC's customers and shareholders.
18 I also have a recommendation for allocation of any revenue impacts
19 resulting from the rider.

20 DEC has specifically requested deferral, with interest, of any costs
21 associated with proposed Rider JRR-1 that exceed a one-time

1 shareholder contribution of \$4.5 million. The Company's request
2 would defer, with interest, the amount of any discount provided to
3 participants from now through the test year period of a future general
4 rate case, minus \$4.5 million. The resulting balance would be
5 incorporated into rates in a future rate case. DEC estimated the rate
6 impact on residential customers, assuming participation by all
7 eligible customers, to be 54 cents per month for usage of 1,000 kWh.

8 **Q. DO YOU HAVE AN ALTERNATIVE RECOMMENDATION**
9 **CONCERNING THE PROPOSED RECOVERY OF ANY**
10 **DISCOUNTED REVENUE?**

11 A. Yes. I propose that the JRR revenue credits be recovered from all
12 retail customers concurrent with the JRR implementation through the
13 implementation of a JRR Recovery Rider. The JRR Recovery Rider
14 shall be reviewed and will be subject to adjustment annually
15 coincident with DEC's January fuel adjustment to match anticipated
16 recovery revenues and true-up any past over- or under-recovery. If
17 needed, a final true-up shall be applicable upon termination of Rider
18 JRR. DEC should provide an annual report to the Commission of
19 Rider JRR and the JRR Recovery Rider revenues.

20 **Q. WHY DO YOU DISAGREE WITH DEC'S PROPOSED SHARING**
21 **OF THE RATE DISCOUNT BETWEEN CUSTOMERS AND**
22 **SHAREHOLDERS?**

1 A. DEC has estimated that Rider JRR-1 could produce a discounted
2 annual revenue impact of approximately \$31 million as proposed. As
3 such, DEC has offered that its shareholders account for \$4.5 million
4 of this discount one time only, with ratepayers responsible for the
5 balance in the first year, and the full amount in subsequent years. I
6 have already stated that the Commission should not approve the
7 Company's requested deferral accounting for the rate discount, but
8 should instead approve a JRR Recovery Rider; however, I
9 recommend that DEC's shareholders should be responsible for the
10 first \$4.5 million on an annual basis while the Rider is in effect;

11 I believe my recommendation represents a fair sharing of revenue
12 credit responsibility between DEC's customers and shareholders.
13 While customers benefit from jobs and resulting load and revenue
14 retention from Rider JRR-1 eligible customers, shareholders will also
15 benefit. Just as customers will pay a portion of the discounted
16 revenue credit on an annual basis under my recommendation of a
17 JRR Recovery Rider, the shareholder benefit will not end after one
18 year as is proposed by the Company in its filing. Thus, an ongoing
19 sharing of responsibility between customers and shareholders is
20 both fair and appropriate. The Public Staff believes that the fact that
21 the Company's shareholders will benefit from the JRR is material per
22 G.S. 62-133(d), and as such, the Commission should authorize an
23 annual JRR Recovery Rider amount based on the actual discounted

- 1 revenue credit less \$4.5 million for as long as the JRR Recovery
2 Rider is in effect.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

- 4 **A.** Yes, it does.

JAMES S. MCLAWHORN

I graduated with honors from North Carolina State University with the Bachelor of Science Degree in Industrial Engineering in May of 1984. I received the Master of Science Degree in Management with a finance concentration from North Carolina State University in December of 1991. While an undergraduate, I was selected for membership in both Tau Beta Pi and Alpha Pi Mu engineering honor societies.

I began my employment with the Public Staff Communications Division in June of 1984. While with the Communications Division, I testified before the Commission in general rate proceedings regarding matters of telephone quality of service.

In September of 1987, I was employed by GTE-South as an engineer in the Capital Recovery Department. I was responsible for analysis and recommendations to Company management regarding appropriate depreciation rates for recovery of the Company's capital investments.

I began my employment with the Electric Division of the Public Staff in November of 1988. I assumed my present position as Director of the Electric Division in October of 2006. It is my responsibility to supervise and make policy recommendations on all electric utility matters before the Commission.

I have testified previously before the Commission in numerous proceedings including Duke Energy Carolinas, LLC's Rate Cases Docket No. E-7, Subs 487, 909 and 989; Duke Energy Progress, LLC's Rate Cases Docket No. E-2, Subs 1023 and 1142; Virginia Electric and Power Company's Rate Cases Docket No. E-22, Subs 314, 333, 412, and 532; New River Light and Power Company Rate Cases Docket No. E-34, Subs 28 and 32; Nantahala Power and Light Company Rate Case Docket No. E-13, Sub 157; in the Application of Dominion North Carolina Power to join PJM in Docket No. E-22, Sub 418; in Duke Power Company's request to merge with Cinergy Corporation in Docket No. E-7, Sub 795; in Duke Energy Carolinas, LLC's request for approval of its Save-A-Watt cost recovery model in Docket No. E-7, Sub 831; and, in the Generic Investigation into Section 111 of the 1992 Energy Policy Act in Docket No. E-100, Sub 69.